FARGO CITY COMMISSION AGENDA
Monday, October 7, 2019 - 5:00 p.m.

Executive Session at 4:00 p.m.

Roll call.

PLEASE NOTE: The City Commission will meet in Executive Session to discuss ongoing negotiations with the Fargo Municipal Airport Authority. The Executive Session will allow discussion of negotiating strategy and to provide negotiating instructions to the City's negotiator or attorneys with respect to said negotiations and the potential agreement between the City and the Fargo Municipal Airport Authority has financial implications and an open meeting discussion of the negotiations, strategy and direction to the City's negotiator would create an adverse fiscal effect on the bargaining position of the City. This executive session is authorized pursuant to ND Century Code § 44-04-19.1(9).

Regular Meeting at 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, September 23, 2019).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. 1st reading of the following Ordinances:
   a. Relating to the Sale of Tobacco, Sale of Tobacco to Minors and Use and Possession by Minors Prohibited, and Sale of Flavored E-Liquid to Minors Prohibited.
   b. Relating to Classification of Ordinance Violations.
   c. Relating to the Sale of Flavored E-Liquid to Minors Prohibited.
   d. Relating to the Authority for the Sale of Tobacco Products.

2. 2nd reading and final adoption of the following Ordinances, 1st reading, 9/23/19:
   a. Relating to Waterworks System.
   b. Relating to Lodging Tax.

3. Purchase Agreement with Minda, LLC.

4. Applications for Games of Chance:
   a. Kick it with Kate Cancer Benefit for a raffle on 11/21/19; Public Spirited Resolution.
   b. Dakota Medical Foundation for a raffle on 10/18/19.
   c. El Zagal Shrine Arab Patrol for a raffle on 3/13/20.
   d. Bennett Elementary PTA for bingo from 11/1/19 to 5/29/20.

e. River Keepers for a raffle on 10/13/19.
f. FM Raise Your Spirits, Inc. for a raffle and raffle board on 10/25/19.

5. Site authorization for Fargo Metro Baseball Association at Specks Bar.

6. Change Order No. 3 for an increase of $73,800.13 for Project No. UR-19-A1.

7. Change Order No. 11 for an increase of $13,690.00 for Project No. FM-15-K1.

8. Final Balancing Change Order No. 3 for an increase of $27,975.30 for Project No. SR-19-A1.

9. Final Balancing Change Order No. 3 for an increase of $10,694.65 for Project No. TR-17-A1.

10. Amendment No. 1 with Houston Engineering in the amount of $24,000.00 for Project No. FM-19-F0.

11. Amendment No. 4 with KLJ in the amount of $1,730.00 for Project No. FM-15-K0.

12. Access Agreement with David J. Clardy for property located at 1349 Elm Circle North (Project No. FM-19-E).

13. Encroachment Agreement with 701 Brew, LLC.

14. Encroachment Agreement (Canopy and Parking) with Farmers Union Oil Company of Moorhead, Minnesota.

15. Sole Source Procurement with ICS General Contractor to service and repair the Magic Carpet II football turf mechanical system.

16. Rejection of bids for the Newman Outdoor Field-Stadium Reroof Project and rebid in the first quarter of 2020.

17. Memorandum of Understanding with the Fargo Park District for processing FEMA reimbursements for the spring 2019 flood event.

18. Notice of Grant Award with the ND Department of Emergency Services – Division of Homeland Security for the FY 2019 State Homeland Security Grant Program.

19. Notice of Grant Award – Restricted Funding from the ND Department of Health and Human Services for regional public health network opioid implementation (CFDA #93.354).

20. Contract Agreement for Services (Amendment) with Erica Frank.

21. Missiontracker Service Agreement with MissionTracker, LLC.

22. Service Agreement with Fargo Public Schools Department of Support Services.

23. Agreement for Services with Nate Hendrickson.

24. Contract Agreement for Services with American Lung Association.

25. Agreement for Services with Megan Nies.

26. Grant award with the US Food and Drug Administration for food code training for FCPH Environmental Practitioners.

27. Notice of Grant Award from the ND Department of Health for regional public health network implementation (CFDA #93.758).

28. Direct the City Attorney's Office to revise existing and draft new Ordinances pertaining to Pet Shops, pet licensing and licensing and boarding.

29. Agreement for Physician Services with Heidi Lako-Adamson, M.D.

30. Grant from Lutheran Social Services of ND to provide TB Nurse Case Management and interpretation for new refugees for FY 2020.

31. Purchase of the remaining replacement Panasonic mobile data computers for Police vehicles (PBC17065).

32. Resolution Approving Amendments to the Community Development Block Grant (CDBG)/HOME 2019 Action Plan.

33. Traffic Safety Contract with the ND Department of Transportation (CFDA #s 20.616 and 20.600).

34. NDDES grant funds for the purchase of a ROOK Tactical Vehicle, attachments and trailer.

35. Notice of Grant Award from the NDDES for the FY 2019 State Homeland Security Grant Program (CFDA #97.067).

36. Firehouse Subs Public Safety Foundation grant funds for the purchase of a 2019 Kubota RTV UTV.

37. Bid award for partial roof replacement at Public Works (RFP19153).

38. Bid award for lease contract for one crawler dozer (RFP19016).

39. Bid award for snow hauling services (RFP19140).

40. Bid award for sidewalk snow and ice removal services (RFP19142).

41. Bills.

42. Change Order No. 2 for an increase of $59,772.50 and time extension to 6/1/20 for Improvement District No. AN-19-G1.

43. Change Order No. 3 for an increase of $6,492.05 and a 1-day time extension for Improvement District No. BN-19-J1.

44. Change Order No. 3 for an increase of $11,416.02 for Improvement District No. BR-18-F1.

45. Change Orders Nos. 8 – 19 in the total amount of $131,227.50 for Improvement District No. BN-19-A2.

46. Change Order No. 2 for a time extension to 6/1/20 for Improvement District No. TN-19-A1.

47. Final estimate and Amendment No. 1 for an increase of $42,980.22 for Improvement District No. SN-16-B1.

48. Create Improvement District No. BR-19-A.

REGULAR AGENDA:

49. Flag Ceremony and Indigenous Peoples Day Recognition.

50. State Water Commission requests for Cost Reimbursement for FM Diversion Flood Project Costs:
    a. Costs totaling $6,250.00.
    b. Costs totaling $750,500.56.

51. Public Hearings - 5:15 pm:
    a. Renaissance Zone Project for Great Plains Mercantile Holdings, LLC for a new construction project located at 401 Broadway Avenue; 410 and 412 5th Street North; continued from the 9/23/19 Regular Meeting.

    b. Renaissance Zone Project for 201 Hospitality, LLC for a rehab project located at 201 5th Street North; continued from the 9/23/19 Regular Meeting.

    c. CONTINUE to 11/18/19 - Zoning Change from DMU, Downtown Mixed Use with a C-O, Conditional Overlay to DMU, Downtown Mixed Use and a request to repeal the C-O, Conditional Overlay on Lot 1, Block 7, Harwoods First Addition (701 University Drive North and 702 12th Street North); approval recommended by the Planning Commission on 10/1/19:
        1. 1st reading of rezoning Ordinance.

    d. Zoning Change from LC, Limited Commercial to LI, Limited Industrial on a portion of Lot 2, Block 1, Agassiz Nursery Addition (PKG Contracting) (4203 University Drive South); approval recommended by the Planning Commission on 9/3/19:
        1. 1st reading of rezoning Ordinance.

    e. Zoning Change from SR-3, Single-Dwelling Residential to P/I, Public and Institutional on Lot 1, Block 1, Agassiz Nursery Addition (City of Fargo) (1421 42nd Avenue South); approval recommended by the Planning Commission on 9/3/19:
        1. 1st reading of rezoning Ordinance.

    f. Resolution regarding proposed corrected Plat of The Edge Addition to the City of Fargo.

52. Recommendation from the Forestry Department to preserve two elm trees on 11th Street North.

53. Applications for property tax exemptions for improvements made to buildings:
    a. Norman D. and Jodi J. Robinson, 907 35th Avenue South (3 year).
    b. Chad A. Mertz T/O/D, 1014 20th Street South (5 year).
    c. Lesley P. and Marsha L. Wilke, 1353 3rd Street North (5 year).
    d. Todd J. and Kimberly J. Kramer, 2951 Southgate Drive South (5 year).
    e. Derald C. and Pamala R. Brunette, 1601 5th Street South (5 year).

54. Recommendation for an incentive option for the Main Avenue Reconstruction Project (Improvement District No. BR-19-A1).

55. Recommendation for appointments to the Parking Commission.

56. Mercantile Project:
    a. Agreement with Walker Consultants for Parking Consulting Services.
    b. Development Agreement with Great Plains Mercantile Holdings, LLC.
    c. Direct Staff to prepare a Development Agreement with Tom Smith for the owner-occupied housing units.
    d. Preliminary Resolution Approving the Financing of the Mercantile Project, the Issuance of Bonds and the Mercantile Development Agreement.

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.

THE CITY OF Fargo FAR MORE

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

49

Date: October 3, 2019

To: City Commission

From: Nicole Crutchfield, Planning Director NC
Sharon White Bear, Native American Commission Chair

Re: Flag Ceremony and Indigenous Peoples Day Recognition

The flags of five tribal nations will be on display at the main entrance of City Hall from October 7 through November 30 in honor of Indigenous Peoples Day (October 14) and Native American Heritage Month (November). While there are many tribes represented in the metro area, each flag represents one of the five federally recognized tribal nations located within North Dakota: Mandan, Hidatsa, and Arikara Nation; Sisseton-Wahpeton-Oyate; Spirit Lake; Standing Rock; and Turtle Mountain. Mayor Tim Mahoney accepted these flags during last year's Indigenous Peoples Day celebration.

In 2015, the Fargo City Commission passed a resolution recognizing the second Monday in October as Indigenous Peoples Day. It is a day to enhance understanding and promote harmony through recognition of Indigenous peoples' culture and contributions. This year the City of Moorhead also passed a resolution acknowledging Indigenous Peoples Day. This year the two cities start a tradition of jointly recognizing this day through a series of events. The public is encouraged to participate in the community-wide Indigenous Peoples Day programming co-hosted by the Fargo Native American Commission next Monday, October 14, including:

- **The Moorhead-Fargo Indigenous Peoples Day Morning Kickoff**, from 9:00-9:30am at Moorhead City Hall, featuring the Buffalo River Singers and messages from local leaders.
- **Indigenous Peoples Day Cultural Competency Lunch and Learn:** Understanding Inter-Generational Issues as Impacted by Historical Trauma, from 12:00-3:00pm at Fargo City Hall, geared toward professionals with Indigenous clients.
- A community-wide **Inaugural Moorhead Indigenous Peoples Day Meal and Powwow**, from 5:00-9:00pm, at Moorhead High School, free and open to the public. This event will include the presentation of the Fargo Native American Commission's prestigious Gladys Ray Award.

During November's Native American Heritage Month, the Fargo Public Library and partners will host the annual Native American Festival and Education Series. The public is invited to attend this series of events which will feature speakers, storytellers, musicians, artists, activities, and documentaries.

CITY OF Fargo

Finance Office
P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

50a

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **KENT COSTIN, DIRECTOR OF FINANCE** KC

RE: **STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL**

DATE: **September 30, 2019**

The existing legislation in place for State Water Commission funding related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project requires that the Fargo City Commission, Cass County Commission, and the Cass Water Resource Board approve all payment reimbursement requests prior to their submission and ultimate payment.

As requested previously by the City Commission, the costs related to the Oxbow Hickson Bakke levee are being presented separately from the rest of the Metro Flood Diversion expenses. This request includes only the OHB levee related costs for August 2019.

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling $6,250.00.

Printed on Recycled paper.

CITY OF Fargo

Finance Office
P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

September 30, 2019

Garland Erbele, P.E.
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Dear Garland,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #94 pursuant to the terms and conditions of House Bill 1020 for costs incurred on the OHB Levee project from August 1, 2019 to August 31,2019. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is $6,250.00.

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
$310,500,000	**$208,350,846.51**	**$12,500.00**	**50%**	**$6,250.00**	**$102,142,903.49**

Project Narrative, this request:

Project Number	Project Description
V02411	Residential relocation assistance for homeowners that will be displaced by the O/H/B ring levee project

We certify that $83,562,226 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of SB 2020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

The City of Fargo, Cass County Commission, and the Cass County Joint Water Resource Board have approved our request for funds as required in SB 2020. Copies of their approval letters are included.

If you have any questions relating to our request, please contact me directly.

Sincerely,

Kent Costin

Kent Costin
Director of Finance, City of Fargo
Metro Flood Diversion Authority

Required Local Approvals:

_____
City of Fargo

_____
Cass County Commission

_____
Cass County Joint Water Resource Dist.

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FM Metropolitan Area Flood Risk Management Project
Summary of Cash Disbursements Eligible for SWC Funding
August 2019 - OHB Levee Related Costs

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description 1	Project Number	Project Description
790-7930-429.67-11	8/29/2019	298629	CASS COUNTY JOINT WATER RESOURCE DI	12,500.00	CHRIS AND SHERI CHAMP	V02411	OXBOW MOU-RESIDENT RLCTN
Total LERRDS - North Dakota - Residential Relocation Assistance				**12,500.00**			
Total Expense for Period				**12,500.00**			

CITY OF Fargo

Finance Office
P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

506

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **KENT COSTIN, DIRECTOR OF FINANCE** KAC

RE: **STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL**

DATE: **September 30, 2019**

The existing legislation in place for State Water Commission funding related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project requires that the Fargo City Commission, Cass County Commission, and the Cass Water Resource Board approve all payment reimbursement requests prior to their submission and ultimate payment.

The attached reimbursement request has been prepared by Finance staff and is ready for processing. Your approval of the request for funds is hereby requested as required.

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling $750,500.56.

Printed on Recycled paper.

CITY OF Fargo

Finance Office
P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

September 30, 2019

Garland Erbele, P.E.
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Dear Garland,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #93 pursuant to the terms and conditions of House Bill 1020 for costs incurred from August 1, 2019 to August 31, 2019 on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is $750,500.56.

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
$310,500,000	**$207,600,345.95**	$223,765.51	100%	$223,765.51	
		1,053,470.10	50%	526,735.05	
		$1,277,235.61		**$750,500.56**	**$102,149,153.49**

Project Narrative, this request:

Project Number	Project Description
V01701	Land for Red River Control Structure
V01701	Residential relocation assistance for homeowners living in the areas of the Red River Control Structure, Staging Area, and Upstream Mitigation Area
V02825	Pay Application #7 for WP42E – 2nd St S and Main Ave Flood Mitigation
V03802	Pay Application #1 for WP50A – Property Structure Mitigation
V05301	Removal of temporary approach and CR17 ditch cleaning

We certify that $83,562,226 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of SB 2020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

The City of Fargo, Cass County Commission, and the Cass County Joint Water Resource Board have approved our request for funds as required in SB 2020. Copies of their approval letters are included.

If you have any questions relating to our request, please contact me directly.

Sincerely,

Kent Costin

Kent Costin
Director of Finance, City of Fargo
Metro Flood Diversion Authority

Printed on Recycled paper.

Required Local Approvals:

_____
City of Fargo

_____
Cass County Commission

_____
Cass County Joint Water Resource Dist.

FM Metropolitan Area Flood Risk Management Project
Summary of Cash Disbursements Eligible for SWC Funding
August 2019

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description 1	Project Number	Project Description
790-0000-206.10-00	8/21/2019	298583	SCHMIDT AND SONS CONSTRUCTION INC	(2,800.00)	PROPERTY STRUCTURE MITIGA	V03802	PROPERTY STRUCTR MITIGATN
790-0000-206.10-00	8/21/2019	298537	INDUSTRIAL BUILDERS INC	(3,173.14)	2 ST & MAIN FLOOD MITIGAT	V02825	2ND ST S FLOOD MITIGATION
790-0000-206.10-00	8/21/2019	298537	INDUSTRIAL BUILDERS INC	0.63	CITY OF FARGO'S SHARE PAY APP #7	V02825	2ND ST S FLOOD MITIGATION
			Total Retainage	**(5,972.51)**			
790-7930-429.67-11	8/29/2019	298629	CASS COUNTY JOINT WATER RESOURCE DI	9,650.00	5 STAR MOVING, INC.	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-11	8/29/2019	298629	CASS COUNTY JOINT WATER RESOURCE DI	19,079.15	GEORGE AND NIURIS LEHER	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-11	8/29/2019	298629	CASS COUNTY JOINT WATER RESOURCE DI	18,943.07	LORI ANDERSON	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-11	8/29/2019	298629	CASS COUNTY JOINT WATER RESOURCE DI	1,700.00	DAVID & SHANNON CAMPBELL	V01701	ND LAND PURCH-OUT OF TOWN
			Total LERRDS - North Dakota - Residential Relocation Assistance	**49,372.22**			
790-7930-429.71-30	8/29/2019	298629	CASS COUNTY JOINT WATER RESOURCE DI	34,000.00	Joseph Merz	V01701	ND LAND PURCH-OUT OF TOWN
			Total LERRDS - North Dakota - Land Purchases	**34,000.00**			
790-7930-429.73-20	8/21/2019	298583	SCHMIDT AND SONS CONSTRUCTION INC	28,000.00	PROPERTY STRUCTURE MITIGA	V03802	PROPERTY STRUCTR MITIGATN
			Total LERRDS - North Dakota - Site Improvements	**28,000.00**			
790-7950-429.38-99	8/7/2019	298261	NAASTAD BROTHERS, INC	25,796.40	CO RD 17 DITCH CLEANING	V05301	APPROACH RMVL/DITCH CLEAN
			Total ND Construction - Other Services	**25,796.40**			
790-7950-429.73-52	8/21/2019	298537	INDUSTRIAL BUILDERS INC	1,146,267.00	2 ST & MAIN FLOOD MITIGAT	V02825	2ND ST S FLOOD MITIGATION
790-7950-429.73-52	8/21/2019	298537	INDUSTRIAL BUILDERS INC	(227.50)	CITY OF FARGO'S SHARE PAY APP #7	V02825	2ND ST S FLOOD MITIGATION
			Total ND Construction - Flood Control	**1,146,039.50**			
			Total Expense for Period	**1,277,235.61**			

THE CITY OF Fargo
FAR MORE

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225 4th Street North
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Email: planning@FargoND.gov
www.FargoND.gov

5la

MEMORANDUM

TO: City Commission

FROM: Nicole Crutchfield, Planning Director NC

DATE: October 2, 2019

RE: Renaissance Zone Application for Great Plains Mercantile Holdings, LLC (279-F) located at 401 Broadway North; 410 and 412 5th Street North

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The city received a Renaissance Zone (RZ) application from Great Plains Mercantile Holdings LLC to construct a mixed-use commercial and residential building at 401 Broadway North; 410 and 412 5th 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 transform the former Goodyear Service Station and surface parking lots into a 6-story, 115,000 square foot building with 370 structured parking stalls, 11,000 square feet of ground floor commercial, 100 apartments, and a line of for-sale townhomes adjacent to the Great Northern Cycle to the north. Phase 1 is the 370 stall parking garage, developed as a public-private partnership, and Phase 2 is the mixed-use portion of the project.

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 $20,816,279 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 Mercantile Holdings LLC and grant state income tax and property tax exemptions as recommended by the Renaissance Zone Authority.

THE CITY OF Fargo FAR MORE

Staff Report
Renaissance Zone Application for
Great Plains Mercantile Holdings, LLC (279-F)
401 Broadway North; 410 and 412 5th Street North

Project Evaluation:

The City of Fargo received a Renaissance Zone application from Great Plains Mercantile Holdings, LLC to construct a mixed-use commercial and residential building at 401 Broadway North; 410 and 412 5th Street North. Pursuant to the application, the intent of the project is to transform the former Goodyear Service Station and surface parking lots into a 6-story, 115,000 square foot building with 370 structured parking stalls, 11,000 square feet of ground floor commercial, 100 apartments, and a line of for-sale townhomes adjacent to the Great Northern Cycle to the north. Phase 1 is the 370 stall parking garage, developed as a public-private partnership, and Phase 2 is the mixed-use portion of the project.

The construction would begin Fall 2019 and the proposed timeframe of opening in 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): As noted in the 2015 Renaissance Zone Development Plan the desired land use on the southwest corner of Block 3 is identified as: *clearance and redevelopment, re-establish corners with multiple stories in height and ground level retail/commercial activity on 4th Avenue.*

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: Broadway/4th Avenue North.

   The mixed-use project will generate activity by replacing the former Goodyear Service Station and surface parking lots with residential and commercial/retail land uses. The project adds 100 residential units, 11,000 square feet of commercial space, and 370 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 building structure will use design elements to create a walkable environment. Commercial/retail storefronts will be provided along the street. The east façade is mainly the parking structure, and does not generate much activity on 5th 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.

   The ground floor will provide commercial/retail uses along Broadway and 4th Avenue North, and will feature request entrances and large amount of glass, which creates a walkable environment. However, the east façade is mainly the parking structure, and does not generate much activity on 5th Street North.

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

The project faces Broadway and is directly adjacent to Broadway along 4th Avenue North, which provides a walkable mixed-use development with storefronts adjacent to the street. The project provides structured parking in the northern 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 replaces the Goodyear Service Station and surface parking lots with a six-story building with 100% lot coverage and zero lot lines. The structured parking will be centered on the lot and surrounded by the mixed-use liner building, except on the east façade, which is visible from the right-of-way. While there is the understanding of site logistics, there is a question if all options for enhanced screening were explored, as well as how the east façade interfaces with the right-of-way.

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 mixed-use project will provide parking capacity for downtown, especially in the northern part of downtown. Visitors, residents and employees will have more opportunities to park, and will increase foot traffic.

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 proposed project will replace surface parking with an active ground floor of commercial/retail. The residential units will add population to downtown and provide additional foot traffic. The glass storefronts will add activity and "natural surveillance".

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 proposed residential units will add 100 mark rate residential units, and provides amenities of a rooftop patio, clubroom and secure bike parking. A row of townhomes on the north side is proposed, which provides an option of for-sale housing.

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 site is underutilized with low building to land ratio. The proposed project will have 100% lot coverage, with six stories of mixed-use surrounding the structured parking.

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 proposed project provides a rooftop patio, clubroom, secure bike parking and access to the parking garage. Additionally, the location of the building will be in close proximity to amenities provided on Broadway and is located two blocks north of the future Block 9 Plaza.

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 proposed mixed-use project will enhance the auto entry experience on Broadway and 4th Avenue North, as the project will improve the built environment and streetscape along those streets.

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 proposed project would be a component of the overall vision of downtown Fargo. The project proposes additional commercial/retail locations and additional parking options for visitors and residents.

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.

    There are no historic properties on site, but it is intended that the original Mercantile building is used as inspiration for the 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.

    The proposed project will be activated during working hours of the commercial/retail, and office hours for employees using the parking structure. The 100 residential units will activate the area throughout the day, evening and weekends.

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

    The surface parking lot will be replaced with a mixed-use project with active ground floor commercial/retail that incorporates frequent doors, high percentage of glass, and pedestrian scale design, which enhances connectivity and encourages walking.

(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 114,315 square feet, as follows:

Lot Size: 53,198 SF

Proposed Building Total: approximately 114,315 SF
Commercial: approximately 16,000 SF
Residential: approximately 98,000 SF
Parking: approximately 150,000 SF

Overall, the application estimates a total capital investment of $20,816,279, which calculates to approximately $182.00 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 mixed-use project will have active commercial/retail storefronts in Fargo's downtown core and increase activity on an underutilized block.**

Mixed Use Development: **The proposed uses will include commercial/retail, residential units (multi-dwelling apartments and townhomes), and structured parking in one building structure.**

Large, upscale residential units: **The proposed residential development will include 100 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 contains a single story former service station and surface parking lot for many years.

(5/5 points)

2) Parcels specifically targeted for clearance:
The RZ Plan identifies the southwest corner of Block 3 for: clearance and redevelopment, re-establish corners with multiple stories in height and ground level retail/commercial activity on 4th Avenue. Possible vacate all or portion of the 5th Street right-of-way.

(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 by framing the street, creating a strong corner with active ground floor commercial/retail storefronts.

(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 $20,816,279.

(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 historic mercantile building will be used as inspiration for the design.

(10/10 points)

Summary:

This application received a score of 94 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.

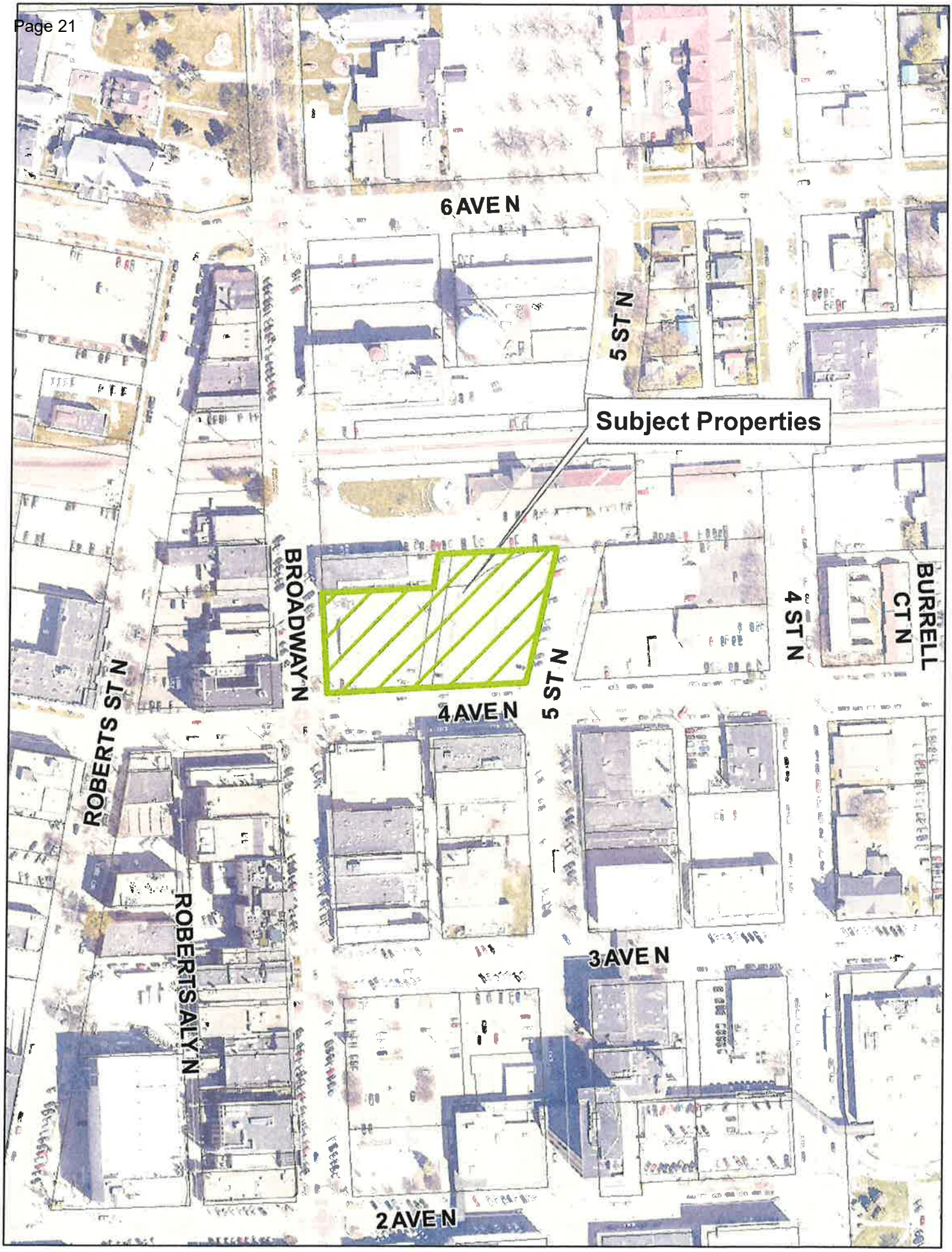
The amount invested in the project exceeds state and local guidelines. The project does not involve the relocation of commercial businesses from another North Dakota city. The applicant will not be seeking any historic preservation tax credits, ~~however the applicant is proposing to secure a PILOT project 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 Mercantile 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: • 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: • 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: • 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: • 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: • 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? • 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**	**94**


6 AVE N
5 ST N
Subject Properties
BROADWAY N
4 AVE N
5 ST N
4 ST N
BURRELL CT N
ROBERTS ST N
ROBERTS ALY N
3 AVE N
2 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 (*printed*): Great Plains Mercantile Holdings, LLC
Address: 210 Broadway Suite 300
Primary Phone: 701.237.2279
Alternative Phone:
Email:

Representation Information *(if applicable)*

Name (*printed*): Mike Zimney
Address: 210 Broadway Suite 300
Primary Phone: 701.237.2279
Alternative Phone:
Email: zimney@kilbournegroup.com

Location of property involved in the application decision

Address or Parcel Number: 401 BROADWAY N, 410 5 ST N, 412 5 ST N
Legal Description (*attach separate sheet if more space is needed*): see attached
Renaissance Zone Block Number: 3
Current Use of Property: A combination of privately-owned surface parking lots and the former Goodyear service station.
How will this property affect historical properties: Property does not contain any historic buildings. Site was the location of the former Fargo Mercantile Company building torn down in 1966.

Application Type (Please place a checkmark next to corresponding application type requested)

Purchase	☐	Purchase with Major Improvements	☑	Historic Preservation and Renovation	☐
Rehabilitation	☐	Lease	☐		

Is this A Historic Tax Credit Project: ☐ Yes ☑ No

Square Footage

Lot: 22,500 & 30,698 sf Building: 9,420 sf
List Each Floor sf Separately 9,420
N/A

Project Description

Expected Date of Purchase: n/a

Expected Date of Occupancy: 2021

Will this be your primary place of Residency? n/a

Scope of Work

Phase 1 - Publicly owned 370 stall parking garage developed as a public private partnership.

Phase 2 - Develop a mixed-use project on the former Goodyear Service Station and surface parking lots to the east. The project will be a six story 115,000 SF building with 11,000 SF of ground floor commercial, 100 apartments, and a liner of for-sale town homes adjacent to Great Northern Cycle.

Estimated Tax Impact

Current True and Full Value: $1,365,000

Current Annual Property Tax: $19,696

Estimated Value of Building after Improvements: $17,693,836

Estimated Five-Year Impact: $1,276,610

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*): _____ Date: 5-8-19

Representative (*Signature*): _____ Date: 5-7-19

Office Use Only

Date Filed: _____ Planning Office Contact: _____

Legal Description (*attach separate sheet if more space is needed*):

401 BROADWAY N
Lot: 1 Block: 21 KEENEY & DEVITTS 2ND LOTS 1 11 & 12 BLK 21 01-1540-01160-000

410 5 ST N
Lot: 2 Block: 21 KEENEY & DEVITTS 2ND ALL LOTS 2 3 4 & THAT PT OF LOT 5 BLK 21 DESC AS FOLL:BEG AT S E COR LOT 5 W ALG S LN 113.6' THENCE NE 141.6' TO PT IN NW LN OF 5TH ST 52.2' FROM SE COR THENCE SW 52.2' TO BEG
01-1540-01170-000

412 5 ST N
Lot: B Block: 1 GREAT NORTHERN DEPOT PT LT B BLK 1 DESC AS FOLL: BEG AT SW COR OF SD LT B THN N 11D G23'24"" E ON ASSM BRG ON THE W LN OF LT B A DIST OF 51' THN N 90DG00'00"" E A DIST OF 152.40' TO TH E SLY LN OF SD LT B THN SWLY ON THE SLY LN OF LT B ON A CURVE CONC TO THE SE A DIST OF 140.05' HAVIN G A RAD OF 196.70 FT A CENT ANG OF 40DG47'42"" & A CHD BRG S 68DG36'54"" W A DIST OF 137.11' THN N 9 0DG00'00"" W ON S LN A DIST OF 34.80' TO THE PT OF BEG. **10-13-06 PETITIONED SPL FRM 01-1040-00020-
01-1040-00023-000

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** 3 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?

   The addition of 100 apartments, 11,000 SF of commercial space, and 370 structured parking stalls will greatly improve the amount of activity to this area of Broadway.

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?

   The ground floor along Broadway and 4th Ave will include retail. The storefronts will feature frequent entrances and large amounts of glass, both critical design elements for creating an interesting environment. The mixed-use building will replace surface parking lots and greatly improve the built environment. The structured parking at this location will provide another transportation node at this

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 be comprised of commercial storefronts. The storefronts will feature frequent entrances and large amounts of glass, both critical design elements for creating an interesting and walkable environment.

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 include the first structured parking in the northern area of downtown and will both anchor this area and help spur additional development by increasing parking capacity.

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?

   This project will replace surface parking with a 6story building with 100% lot coverage. The building will have zero lot lines and frame the street with ground floor commercial storefronts and apartments on the upper floors. The structured parking will be centered on the lot and surrounded by the mixed-use liner building.

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?

   This mixed-use development and parking structure will anchor this area of downtown. The new parking structure will provide much needed additional parking capacity for downtown and especially this area. The additional parking will catalyze new development, generate more parking for visitors, residents, and office workers and in turn greatly increase foot traffic.

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 redevelopment of this block will further enhance the natural human surveillance by replacing a surface parking lot with an active ground floor of mixed retail. The introduction of residential units will expand downtown's population and provide additional foot traffic and activity in this area. The commercial storefronts will also help to add activity and "natural surveillance."

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?

This project will add 100 market rate residential apartments. These apartments will feature a rooftop patio, club room, secure bike parking, and other amenities. In addition, a row of town homes is being proposed which would line the north side of the parking garage adjacent to Great Northern Bicycle Co. and offer for-sale housing option.

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?

This site currently is very under utilized with a low building to land ratio. The new project will have 100% lot coverage with six stories of mixed use liner surrounding the structured parking.

Prior to the planning redevelopment of this site, we worked with local artists, makers and small local businesses to activate the site through a number of pop-up activities, including the Red River Market. These events illustrated the benefit of open space in downtown Fargo for public events. This site has been embraced by community builders and has had a positive impact on downtown. We are very excited of having a permanent at the Block 9 plaza with public bathrooms, ample seating, and all the the necessary infrastructure to host the Red River Market and other events.

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?

The apartments will feature a rooftop patio, club room, secure bike parking, access to the parking garage, and other amenities. In addition, the new commercial space in the project will also serve as an amenity to the residents.

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?

Replacing surface parking lots with this six story mixed-use building will greatly improve the built environment and streetscape along Broadway and 4th Ave N.

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?

The additional residents at this location will help support existing and new retail. The additional retail shops at this location will help grow this area of downtown as a retail destination. The additional parking at this location will undoubtedly provide much needed parking in this location and for downtown as a whole. This convenient parking will make it easier for visitors coming to downtown for events, shopping, and entertainment.

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?

There are no historic properties on the site, but its our intention to use the original Mercantile building as inspiration for the new design and brand.

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?

Currently most activity on this site is the result of 8-5 office works parking on this site. There is limited use in the evenings and weekends. Upon completion, this location will be activated during working hours from the ground floor retail and those office workers parking in the 370 stall parking garage. The 100 residential units will activate this area throughout the day as well as during the evenings and weekends.

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?

This project will be thoughtfully designed to enhance the walkability of this area. The surface parking will be replaced with a mixed-use building with active ground floor retail and a design that encourages walking (frequent doors, high percentage of glass, and pedestrian scale design).

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 114,315 square feet, as follows:
   a. Lot Size: 53,198 SF
   b. Proposed Building Total: 114,315 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 $ 20,816,279, which calculates to approximately $ 182 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 will have active commercial storefronts

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

Yes, mix of commercial, apartments, town homes, and phase 1 will be 370-stall parking garage

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

Yes, these will be 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, site contains single story former service station and surface parking.

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

Yes - RZ plans calls for "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?

The project will improve the public realm by framing the street, creating a strong corner with a active ground floor commercial storefronts.

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

Yes, investment will exceed the $100/SF threshold

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

N/A

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, the project will restore the original historic building pattern by building to the sidewalk, the storefronts will have high transparency similar to historic buildings, the parking will be hidden, and the scale will be context sensitive.

MERCANTILE MIXED-USE: SCHEMATIC

ELEVATION

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JLG

DESIGN

MERCANTILE MIXED-USE: SCHEMATIC

ELEVATION - BROADWAY OPTION 1

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bjc 19052 6.5.19

MERCANTILE MIXED-USE: SCHEMATIC

ELEVATION - BROADWAY OPTION 2

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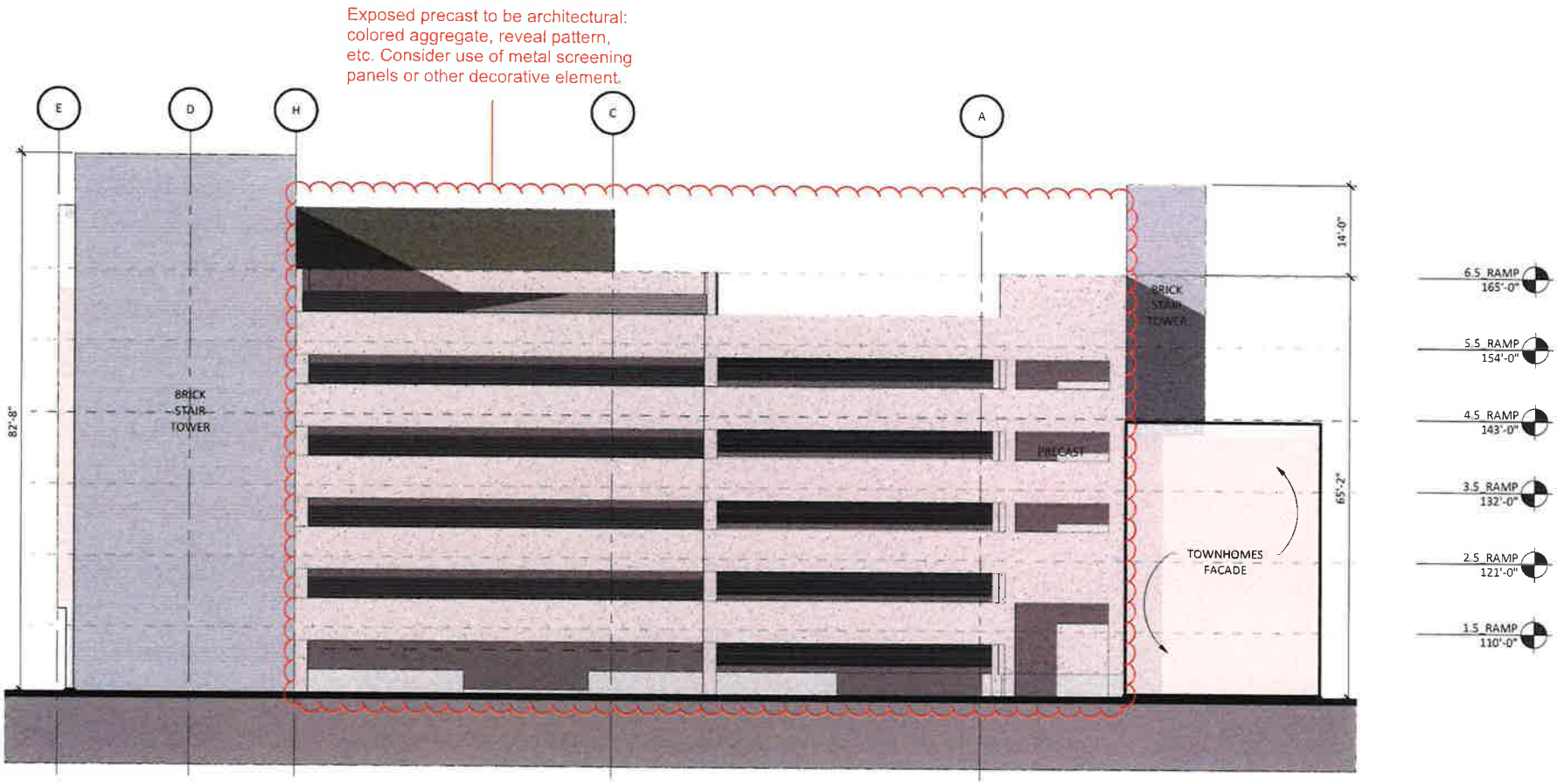
bjc 19052 6.5.19



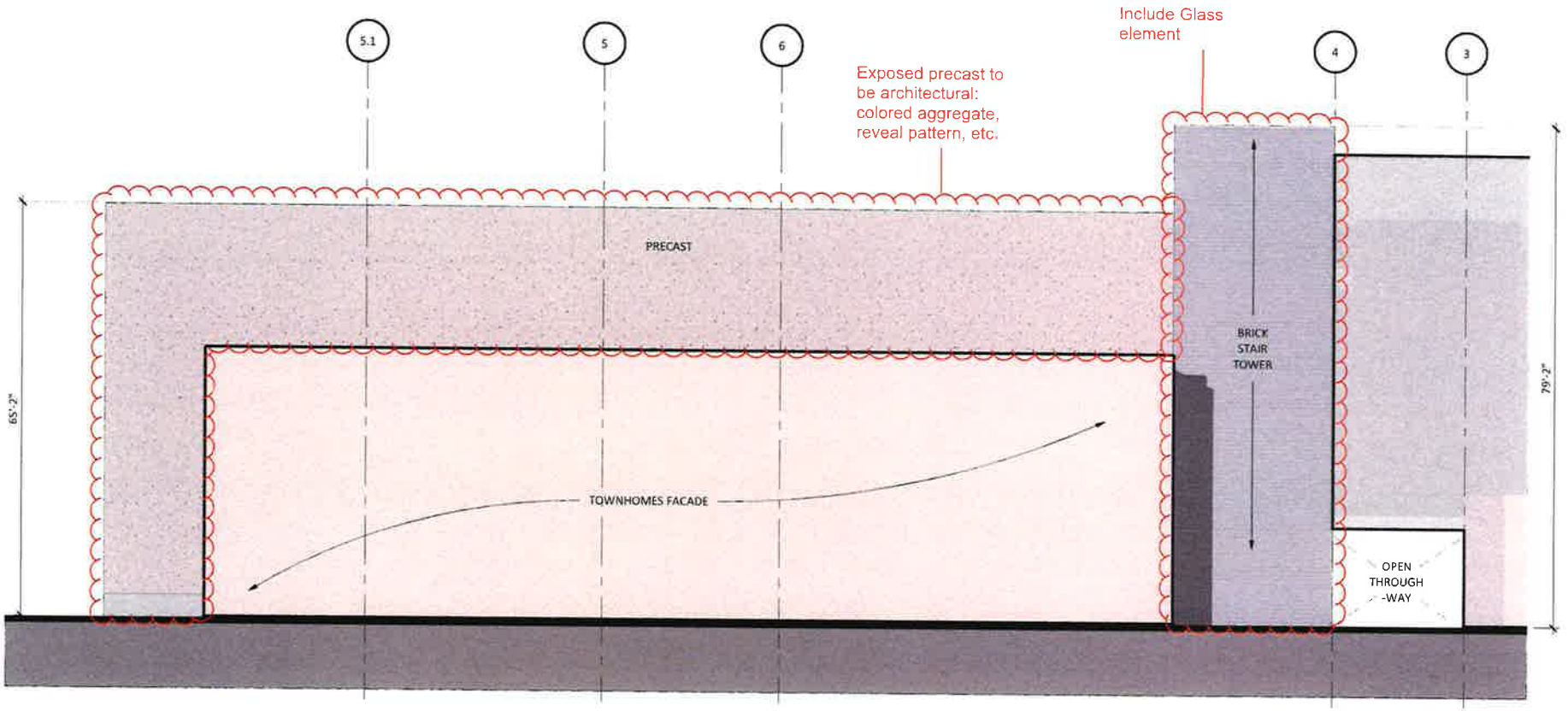
MERCANTILE MIXED-USE: RAMP

EXTERIOR EAST ELEVATION

05/17/19 | JLG 19052 | © 2019 JLG ARCHITECTS

0 8 16 32

JLG architects



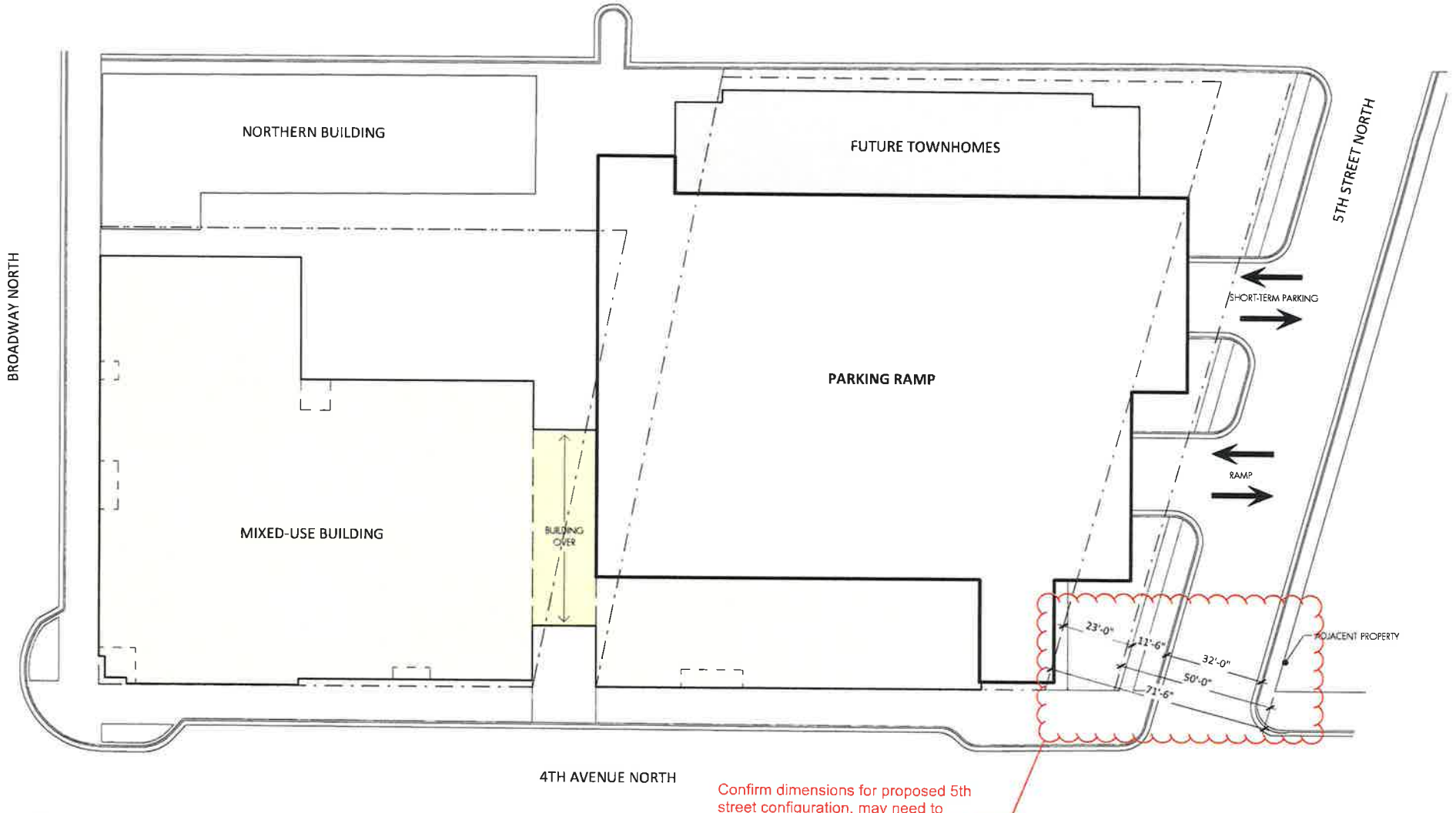
MERCANTILE MIXED-USE: RAMP

EXTERIOR NORTH ELEVATION

05/17/19 | JLG 19052 | © 2019 JLG ARCHITECTS

0 8 16 32

JLG architects



MERCANTILE MIXED-USE: RAMP

SITE PLAN

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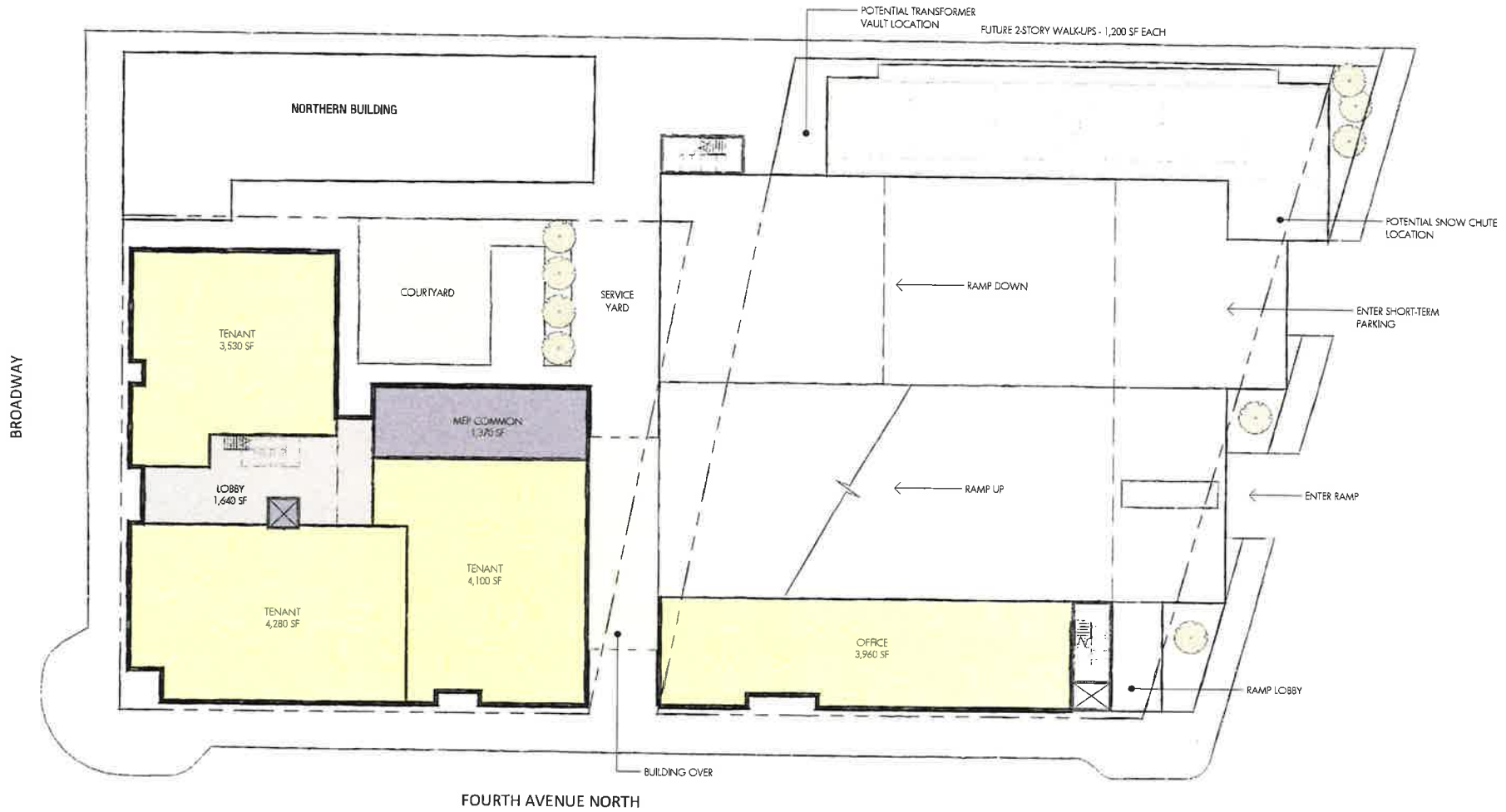

MERCANTILE MIXED-USE: PRE-DESIGN

FIRST FLOOR / SITE PLAN

0 15 30 60

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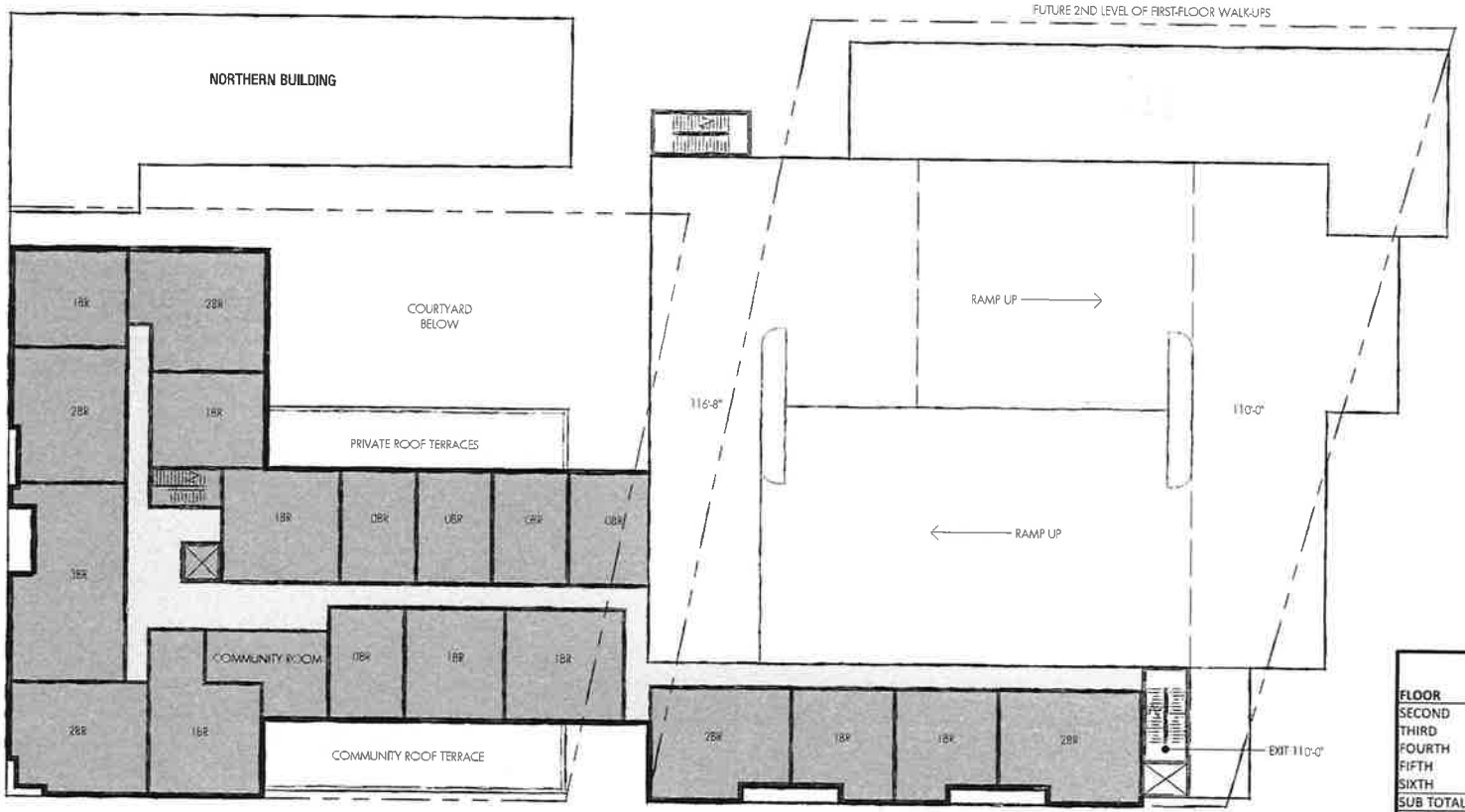

UNIT SUMMARY				
FLOOR	0BR	1BR	2BR	3BR
SECOND	5	8	5	1
THIRD	4	8	6	1
FOURTH	4	8	6	1
FIFTH	4	8	6	1
SIXTH	5	9	6	0
SUB TOTAL	22	41	29	4
UNIT MIX	22.9%	42.7%	30.2%	4.2%

GRAND TOTAL = 96 UNITS

0BR: 512 SF - 561 SF
1BR: 718 SF - 1033 SF
2BR: 989 SF - 1370 SF
3BR: 1290 SF

MERCANTILE MIXED-USE: PRE-DESIGN

SECOND FLOOR PLAN

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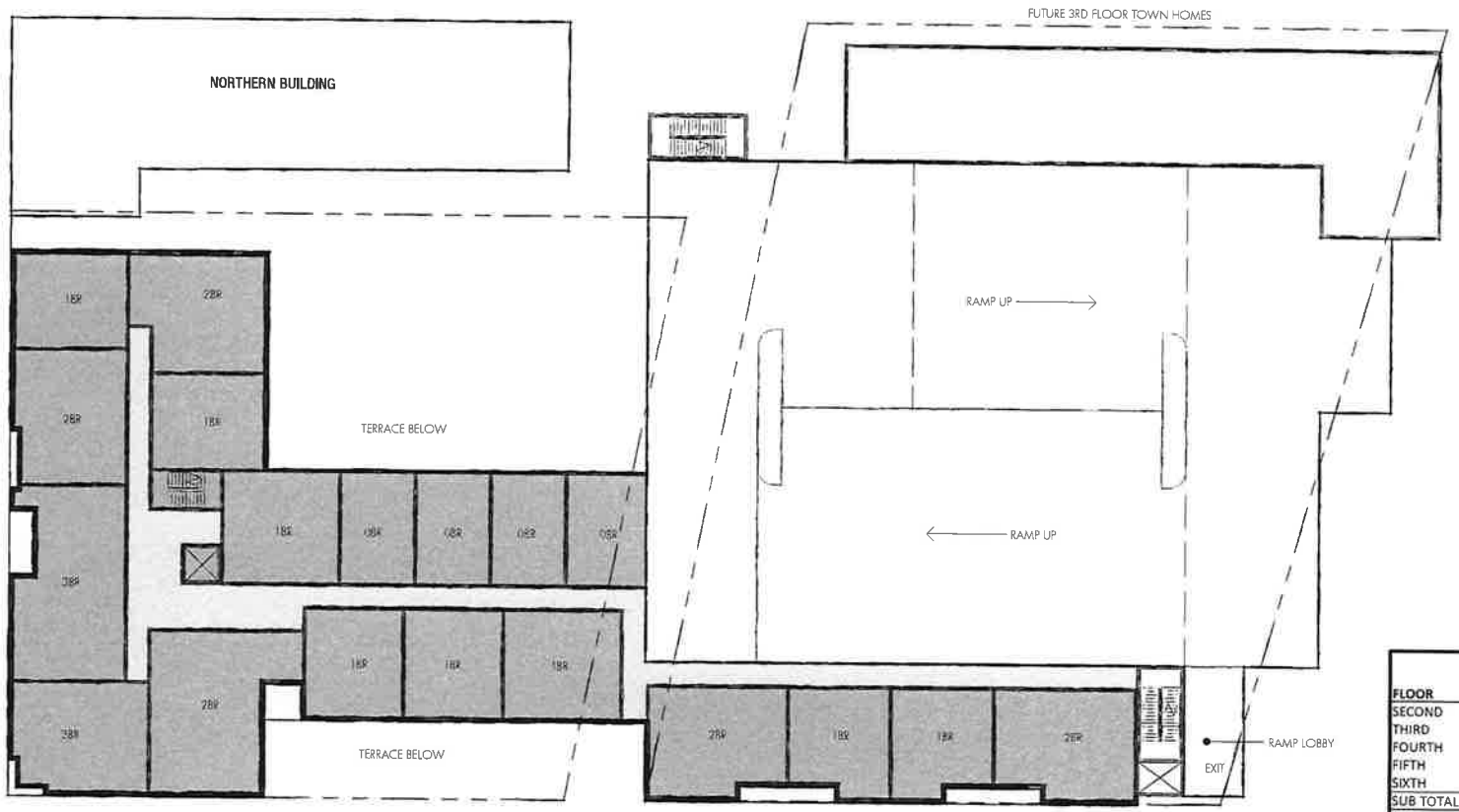
0 15 30 60

JLG architects



UNIT SUMMARY				
FLOOR	0BR	1BR	2BR	3BR
SECOND	5	8	5	1
THIRD	4	8	6	1
FOURTH	4	8	6	1
FIFTH	4	8	6	1
SIXTH	5	9	6	0
SUB TOTAL	22	41	29	4
UNIT MIX	22.9%	42.7%	30.2%	4.2%
GRAND TOTAL = 96 UNITS				
0BR: 512 SF - 561 SF				
1BR: 718 SF - 1033 SF				
2BR: 989 SF - 1370 SF				
3BR: 1290 SF				

MERCANTILE MIXED-USE: PRE-DESIGN

THIRD FLOOR PLAN (4TH-5TH SIMILAR)

05.10.19 | JLG 19052 | © 2019 JLG ARCHITECTS

0 15 30 60

JLG architects

UNIT SUMMARY				
FLOOR	0BR	1BR	2BR	3BR
SECOND	5	8	5	1
THIRD	4	8	6	1
FOURTH	4	8	6	1
FIFTH	4	8	6	1
SIXTH	5	9	6	0
SUB TOTAL	22	41	29	4
UNIT MIX	22.9%	42.7%	30.2%	4.2%
GRAND TOTAL = 96 UNITS				

0BR: 512 SF - 561 SF
1BR: 718 SF - 1033 SF
2BR: 989 SF - 1370 SF
3BR: 1290 SF

MERCANTILE MIXED-USE: PRE-DESIGN

SIXTH FLOOR PLAN

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0 15 30 60

JLG architects

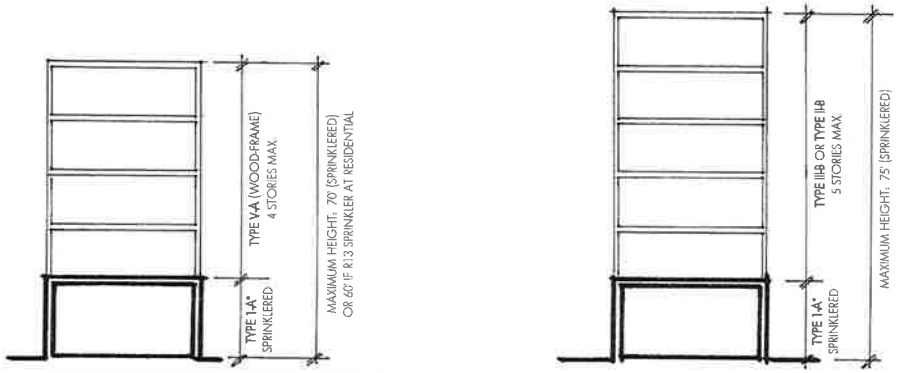
BROADWAY NORTH

APARTMENTS
COMMERCIAL
BROADWAY NORTH

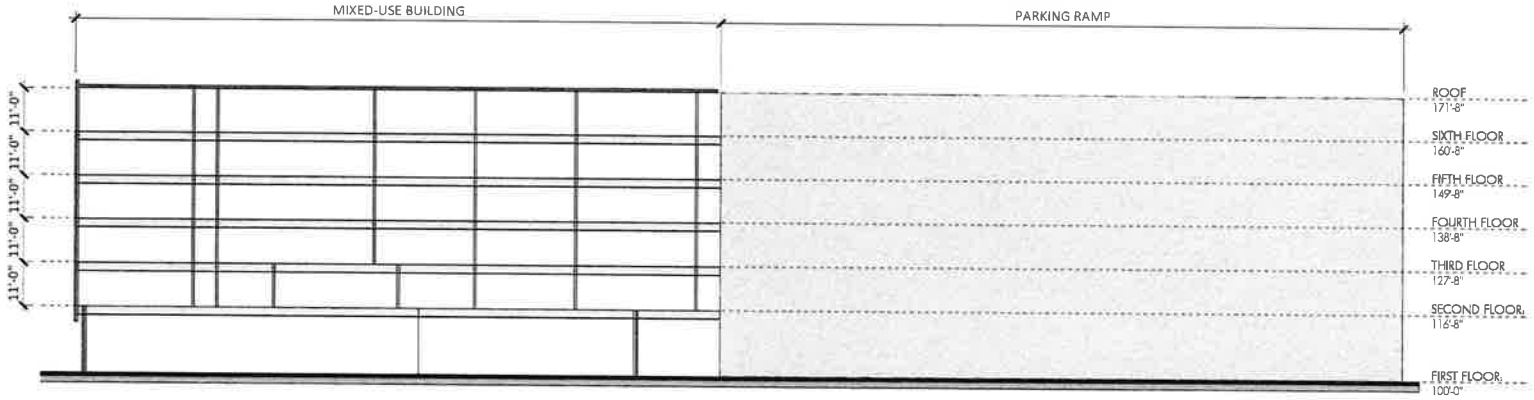
5TH STREET NORTH
4TH AVENUE NORTH
RAMP ACCESS
FIRST LEVEL
QUICK ACCESS
MECHANICAL
AIR WATER

SUMMARY OF CONTSTRUCTION TYPES
I-A = NON-COMBUSTIBLE MATERIALS, 3-HOUR PRIMARY STRUCTURE, 2-HOUR FLOORS (CONCRETE/MASONRY)
II-B = NON-COMBUSTIBLE MATERIALS, UNPROTECTED (STEEL FRAME/METAL STUDS).
III-B = NON-COMBUSTIBLE EXTERIOR (METAL STUDS OR FIRE-TREATED WOOD)
- EXTERIOR WALLS HAVE 2-HOUR PROTECTION
- INTERIOR CAN BE WOOD FRAMING.

V-A = WOOD FRAME, STRUCTURAL ELEMENTS HAVE 1-HOUR PROTECTION



* ADDITIONAL LEVELS OF I-A CONSTRUCTION WILL INCREASE ALLOWABLE STORIES, BUT NOT BUILDING HEIGHT



MERCANTILE MIXED-USE: PRE-DESIGN

BUILDING SECTION AND CONSTRUCTION TYPE

05/10/19 | JLG 19052 | © 2019 JLG ARCHITECTS

0 15 30 60

JLG architects

THE CITY OF Fargo FAR MORE

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

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MEMORANDUM

TO: City Commission

FROM: Nicole Crutchfield, Planning Director

DATE: October 2, 2019

RE: Renaissance Zone Application for 201 Hospitality, LLC (288-F) located at 201 5th Street North

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The city received a Renaissance Zone (RZ) application from 201 Hospitality, LLC to rehabilitate the existing building at 201 5th Street North. The request was reviewed by the Renaissance Zone Authority (RZA) on August 28, 2019.

Pursuant to the application, the intent of the project is to complete extensive interior renovations. The rehabilitation would be a full renovation of all rooms which includes new carpet, granite, vinyl wall covering, etc. The fitness room will be expanded and the public space will have a light remodel as well. The construction would begin in the fall of 2019.

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 nearly $6,000,000.00 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 201 Hospitality, LLC and grant state income tax and property tax exemptions as recommended by the Renaissance Zone Authority.

Staff Report
Renaissance Zone Application for
201 5th Street North (288-F)
201 Hospitality, LLC

Project Evaluation:

The City of Fargo received a Renaissance Zone application from 201 Hospitality, LLC to rehabilitate the existing hotel at 201 5th Street North. Pursuant to the application, the intent of the project is to complete extensive interior renovations. The rehabilitation would be a full renovation of all rooms which includes new carpet, granite, vinyl wall covering, etc. The fitness room will be expanded and the public space will have a light remodel as well. The construction would begin in the fall of 2019.

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 Block 56 is identified as *Redevelopment and Infill; mixed-use and commercial* 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: 2nd Avenue North and 5th Street North

   This project will enhance the image of downtown Fargo by creating the first upper-upscale hotel in the FM area. This improved product will draw more guests downtown and these guests will have the means for significant spend in the shops and restaurants throughout downtown.

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

   Although not creating a walkable district, this project will greatly enhance the hotel which sits along 2nd Ave North, which has been contemplated as a pedestrian-focused corridor, that will expand expand downtown well beyond the current, narrower view of downtown, as simply North Broadway.

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 2018 addition of Beans Coffee on the ground floor corner of 2nd Ave and 5th St will encourage additional street traffic and improvements made on the 2nd floor restaurant and lounge will pull additional foot traffic into the building where guests can view Broadway and 2nd Ave.

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

   These improvements will help enhance and widen downtown Fargo's footprint with Broadway carrying business north/south and 2nd Ave's carrying business east/west.

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.

We will take this iconic high rise building in downtown Fargo and give it the look and feel of the Radisson Blu. Radisson Blu is typically found in European cities like Copenhagen, Paris and London. In the United States, Radisson Blu is currently found in Minneapolis and Chicago. We will be adding Fargo to an impressive list of Blu destinations.

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.

   We are working with the city to reduce our employee parking in the Civic Center ramp and open more parking to the guests of downtown Fargo. This move does not hinge on the renovation but is currently in process.

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 conversion to Radisson Blu will include better security systems for our guests as well as increased staffing to better serve the and monitor our public spaces.

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.

   N/A

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..

   N/A

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.

    N/A

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.

    N/A

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.

    Fargo having a Radisson Blu will enhance the service and feel of downtown. This property will offer premium lodging to business and leisure guests as well as elevate the reputation of downtown Fargo.

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.

    N/A

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.

Our hotel will be open 24/7/365 with expanded food and beverage hours to serve both our guests and the downtown community.

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

The design of our renovation focuses on a Scandinavian look and feel that is typical of the historical roots of our community. The idea is to help connect the guests of our community to the spirit of our community.

(10/10 points)

Line 2: Will exterior rehabilitation or the proposed improvements be sufficient to eliminate any and all deteriorated conditions that are visible on the exterior of the building? Does the project scope address the interior and exterior of the building in a comprehensive manner?:

Proposed improvements will include: renovating all rooms which includes new carpet, granite, vinyl wall covering, etc. The fitness room will be expanded and the public space will have a light remodel as well.

(10/ 10 points)

Line 3: Does the investment comply with the minimum State standard that requires an investment of no less than 50% of the current true and full valuation of the building?:

The property is currently assessed at $11,538,000. The applicant has proposed a total rehabilitation investment of $6,000,000 which exceeds the required 50% investment guideline. These improvements will result in $45 per SF (RZ minimum is $40 per SF) being invested into the existing space.

(10 / 10 points)

Line 4: Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in the RZ Plan?:

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 131,497 square feet.

Overall, the application estimates a total capital investment of $6,000,000 which calculates to approximately $45 per square foot.

(10 / 10 points)

Line 5: **Sub-Total:** The sub-total of lines 1–4 equals 40 points.

~~Line 6: Use consistent with the RZ Plan (as per Visions and Goals)?:~~

~~Line 7: Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in the RZ Plan?~~

~~Line 8: Tenant must be lensing space in a building that has been approved as a Zone project: NA~~

Line 9: The new construction or proposed improvements are representative of "High Priority Land Uses" as defined in the RZ Plan: These criteria are defined by four sub-categories, as follows:

***Primary Sector Business*: N/A**

***Active Commercial, Specialty Retail or Destination Commercial*: Yes, the building has commercial floors as well as a coffee shop, restaurant, as well as sleeping rooms.**

Mixed Use Development: **Yes, the building has commercial floors as well as a coffee shop, restaurant, as well as sleeping rooms.**

Large, upscale residential units: **N/A**

(5 / 10 points)

Line 10: The investment is located in a 'Target Area' as defined by the RZ Plan:

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

   No
   (2/5 points)

2) Parcels specifically targeted for clearance:

   No
   (3/5 points)

(5 / 10 points)

Line 11: The project will create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or will contribute to street level activation:

Yes, a coffee shop was added in the first floor and there is access to parking as well as the skyway.

(8/ 10 points)

Line 12: Consideration and analysis as to the total actual investment in the project:

As proposed, the rehabilitation project and improvement costs exceed both the 50% (true and full value of the building) and $40 per square foot requirement. As previously noted, the application represents a total estimated investment of $6,000,000.

(10 / 10 points)

Line 13: 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 14: 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 outside the boundary of the Downtown Historic District.

(10 / 10 points)

Summary:

This application received a score of 88 on a 100-point scale. The applicant met all required criteria and the use is consistent with the RZ Plan. In addition, the proposed rehabilitation 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 as activity generators and walkable districts are important initiatives highlighted in the plan. The proposal will increase activity in the NP Avenue corridor.

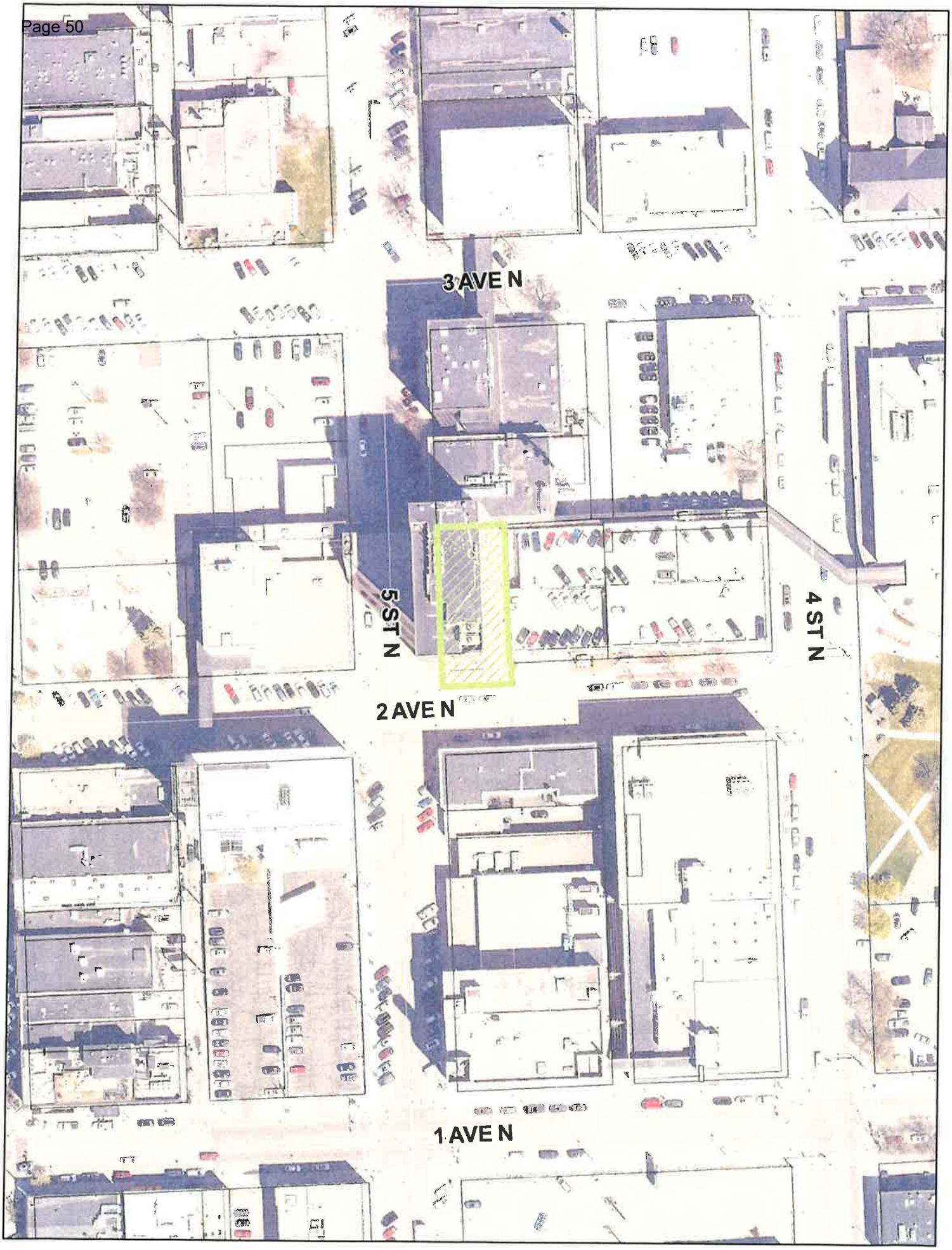
The amount invested in the project exceeds state and local guidelines. The project does not involve the relocation of commercial businesses from another North Dakota city. The applicant is not seeking historic preservation tax credits. The applicant will pursue a Storefront Grant to aid in the rehabilitation effort.

This project will make use of a structure 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:

Approve the application submitted by 201 Hospitality, 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)	10	10
2*	Exterior rehabilitation sufficient to eliminate any and all deteriorated conditions that are visible on the exterior of the building	10	10
3*	Re-investment that totals no less than 50 percent of the current true and full valuation of the building	10	10
4	The investment totals at least $40 in capital improvements per square foot for commercial properties or $25 in capital improvements per square foot for residential properties (The authority may waive the square foot investment requirement for certain projects)	10	10
5	**Sub Total**	**40**	**40**
	Minimum Criteria (Proposals involving new construction or additions)		
6	Use consistent with the plan (as per Vision and Goals)	12	NA
7	Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in the RZ Plan?	10	NA
8	Tenant must be leasing space in a building that has been approved as a Zone project	NA	NA
	Project Review Guidelines (Rate 1-10)		
9	The new construction or proposed improvements are representative of "High Priority Land Uses" as defined in the RZ Plan: • 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	10	5
10	The investment is located in a 'Target Area' as defined by the RZ Plan: • Parcels that have been vacant or underutilized for an extended period of time • Parcels specifically targeted for clearance	10	5
11	The project will create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or will contribute to street level activation: • 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
12	Consideration and analysis as to the total actual investment in the project: • 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
13	Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community: • 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
14	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? • 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
15	**Sub Total**	60	**48**
	Total Rating (100 possible points)	**100**	**88**


3 AVE N
5 ST N
4 ST N
2 AVE N
1 AVE N

5d

City of Fargo Staff Report			
Title:	Agassiz Nursery Addition (PKG Contracting)	**Date:**	8/16/2019 10/1/2019
Location:	4203 University Drive South	**Staff Contact:**	Luke Morman
Legal Description:	Lot 2, Block 1, Agassiz Nursery Addition		
Owner(s)/Applicant:	PKG Contracting, Inc.	**Engineer:**	Lowry Engineering
Entitlements Requested:	**Zoning Change** (from LC, Limited Commercial to LI, Limited Industrial)		
Status:	City Commission Public Hearing: October 7, 2019		

Existing		Proposed
Land Use: Outdoor storage		**Land Use:** unchanged
Zoning: LC, Limited Commercial		**Zoning:** LI, Limited Industrial
Uses Allowed: LC allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, self-service storage, vehicle repair, limited vehicle service.		**Uses Allowed:** LI allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation.
Maximum Lot Coverage Allowed: 55% building coverage		**Maximum Lot Coverage Allowed:** 85% building coverage

Proposal:

The applicant is seeking a zoning change from LC, Limited Commercial to LI, Limited Industrial. The property is located at 4203 University Drive South and encompasses approximately 2.72 acres.

The subject property has the same owner as the adjacent lot to the south at 4301 University Drive South, PKG Office Investments, and is used by the same business, PKG Contracting, Inc. In 2009, PKG Contracting acquired the subject property and began to expand into it for primarily outdoor storage soon after. This zone change's purpose is to better match the existing use to a more suitable zone.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: P/I, Public and Institutional, owned by the Fargo Park District;
- East: LC, Limited Commercial with the use of ROW, owned by the NDDOT and directly across University Drive South is SR-2, Single-Dwelling Residential, owned by the City of Fargo;
- South: LI, Limited Industrial with office and warehouse use;
- West: SR-3, Single-Dwelling Residential, owned by the City of Fargo, proposed to be rezoned from SR-3, Single-Dwelling Residential to P/I, Public and Institutional.

Area Plans:

This property is not included in any Growth Plan.

Neighborhood Context:

Neighborhood: Rose Creek

Schools: The subject property is located within the boundary of the Fargo School District, specifically Centennial Elementary, Discovery Junior High, and Davies Senior High schools.

Parks: Rose Creek Golf Course (1401 & 1501 East Rose Creek Parkway South, 4145 & 4701 University Drive South, and 1451 42nd Avenue South) are located adjacent to the subject property, providing amenities of a golf course.

Pedestrian / Bicycle: An off-road shared use path are located along the north and west edge of the Rose Creek Golf Course, on one side of 40th Avenue South, on both sides of University Drive South, and along one side of East Rose Creek Pkwy S, which is a component of the metro area trail system.

Staff Analysis:

Zoning

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**
   Staff is unaware of any zoning map error in regard to the subject property. Staff finds that the requested zone change is justified by a change in conditions, as the owner has expanded his business further into the subject property from 4301 University Drive South (the adjacent property to the south). The zone change is requested in order to align a more suitable zoning for the existing use and to allow future development that is accurate with the zoning.
   (Criteria Satisfied)

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**
   The development is served with city services (water, sewer, streets, police/fire protection, etc.) as well as other needed utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified. **(Criteria Satisfied)**

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**
   Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has not received any phone calls or comments in response to these notices. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity.
   (Criteria Satisfied)

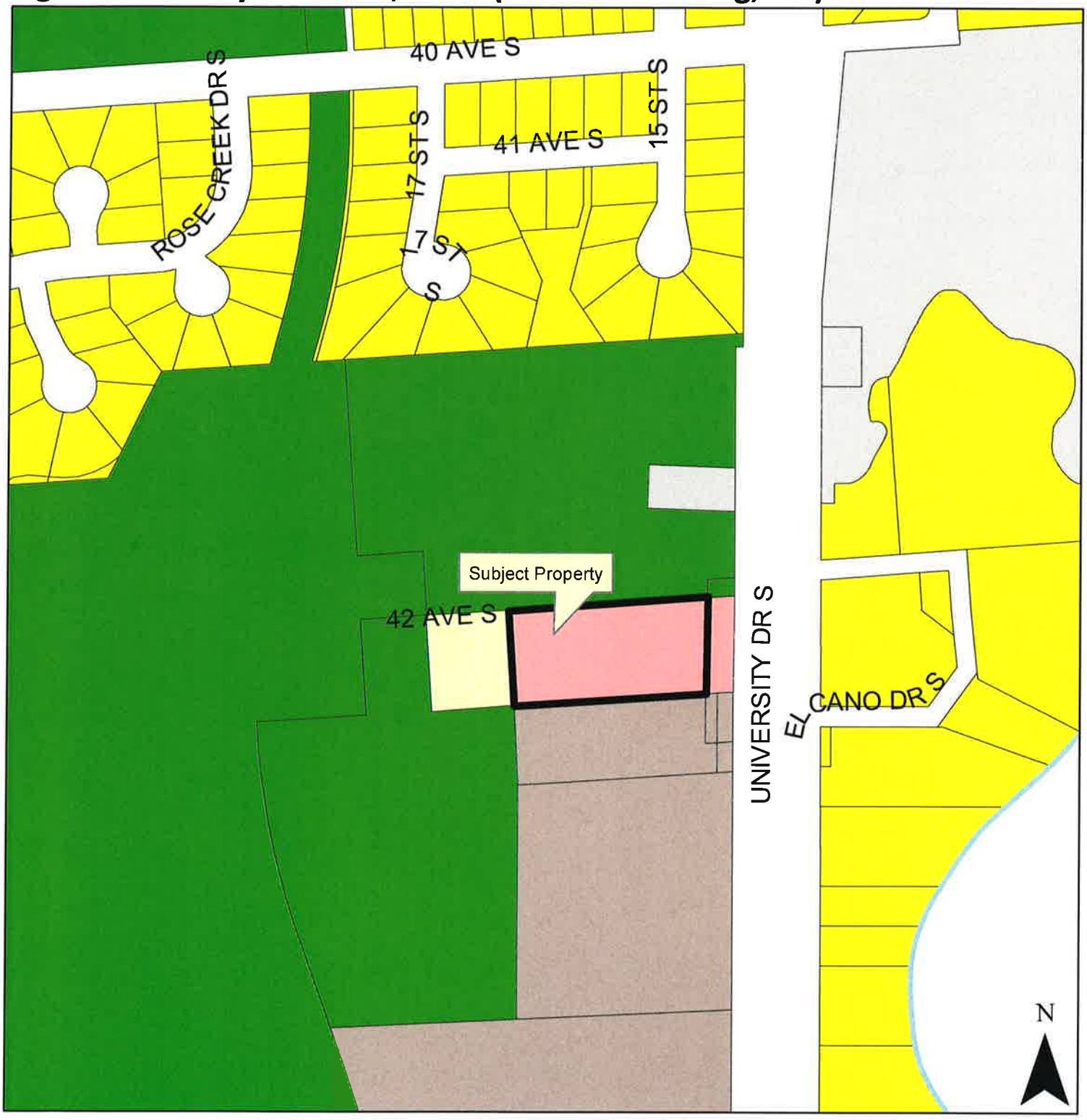
4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**
   The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC-and other adopted policies of the City.
   (Criteria Satisfied)

Staff Recommendation:
Suggested Motion: "To accept the findings and recommendations of staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading, and move to approve the proposed zoning change from LC, Limited Commercial to LI, Limited Industrial on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."
Planning Commission Recommendation: September 3, 2019
On September 3, with a 9-0 vote, with one Commissioner absent, the Planning Commission accepted the findings and recommendations of staff and recommend approval to the City Commission of the proposed zoning change from LC, Limited Commercial to LI, Limited Industrial on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.
Attachments:
1. Zoning Map 2. Location Map

Zone Change (LC to LI)

Agassiz Nursery Addition, Lot 2 (PKG Contracting, Inc)

4203 University Dr S



THE CITY OF Fargo FAR MORE

Legend

AG LC MHP SR-2
DMU LI NC SR-3
GC MR-1 NO SR-4
GL MR-2 PI SR-5
GO MR-3 UMU City Limits

300 Feet

Fargo Planning Commission
September 3, 2019

Zone Change (LC to LI)

Agassiz Nursery Addition, Lot 2 (PKG Contracting, Inc)

4203 University Dr S

THE CITY OF Fargo FAR MORE

300 Feet

Fargo Planning Commission
September 3, 2019

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

5101

AN ORDINANCE REZONING CERTAIN PARCELS
OF LAND LYING IN AGASSIZ NURSERY ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on September 3, 2019; and,

WHEREAS, the rezoning changes were approved by the City Commission on October 7, 2019,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Lot Two (2), Block One (1), less the East 70 feet thereof of Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "LC", Limited Commercial, District to "LI", Limited Industrial, District;

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

5e

City of Fargo Staff Report			
Title:	Agassiz Nursery Addition (City of Fargo)	**Date:**	8/19/2019 10/1/2019
Location:	1421 42nd Avenue South	**Staff Contact:**	Luke Morman
Legal Description:	Lot 1, Block 1, Agassiz Nursery Addition		
Owner(s)/Applicant:	City of Fargo	**Engineer:**	N/A
Entitlements Requested:	**Zoning Change** (from SR-3, Single-Dwelling Residential to P/I, Public and Institutional)		
Status:	City Commission Public Hearing: October 7, 2019		

Existing		**Proposed**
Land Use: Vacant Land		**Land Use:** unchanged
Zoning: SR-3, Single-Dwelling Residential		**Zoning:** P/I, Public and Institutional
Uses Allowed: SR-3 allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities.		**Uses Allowed:** P/I allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, schools, offices, commercial parking, outdoor recreation and entertainment, industrial service, manufacturing and production, warehouse and freight movement, waste related use, agriculture, aviation, surface transportation, and major entertainment events.
Maximum Density Allowed: 8.7 units per acre		Takes dimensional standards of adjacent zoning district(s)

Proposal:

The applicant is seeking a zoning change from SR-3, Single-Dwelling Residential to P/I, Public and Institutional. The property is located at 1421 42nd Avenue South and encompasses approximately 1.16 acres.

A single-family house used to be on the subject property, but was removed in about 2017 to place a flood control levee which was built through the subject property soon after the removal. This zone change's purpose is to better match the existing use to a more suitable zone.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: P/I, Public and Institutional, owned by the Fargo Park District;
- East: LC, Limited Commercial with the use of outdoor storage, proposed to be rezoned from LC, Limited Commercial to LI, Limited Industrial;
- South: P/I, Public and Institutional, owned by the Fargo Park District;
- West: P/I, Public and Institutional, owned by the Fargo Park District.

Area Plans:

This property is not included in any Growth Plan.

Neighborhood Context:

Neighborhood: Rose Creek

Schools: The subject property is located within the boundary of the Fargo School District, specifically Centennial Elementary, Discovery Junior High, and Davies Senior High schools.

Parks: Rose Creek Golf Course (1401 & 1501 East Rose Creek Parkway South, 4145 & 4701 University Drive South, and 1451 42nd Avenue South) are located adjacent to the subject property, providing amenities of a golf course.

Pedestrian / Bicycle: An off-road shared use path are located along the north and west edge of the Rose Creek Golf Course, on one side of 40th Avenue South, on both sides of University Drive South, and along one side of East Rose Creek Pkwy S, which is a component of the metro area trail system.

Staff Analysis:

Zoning

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**
   Staff is unaware of any zoning map error in regard to the subject property. Staff finds that the requested zone change is justified by a change in conditions, as the subject property used to have a house located on it, but was purchased by the City and removed to build a flood control levee. The zone change is requested in order to align a more suitable zoning for the existing use.
   (Criteria Satisfied)

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**
   The City Engineer and other applicable review agencies have reviewed this proposal. This property is City-owned for flood control and cannot be developed upon, thus there is no need to provide any additional public services, facilities and programs to this development. **(Criteria Satisfied)**

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**
   Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has not received any phone calls or comments in response to these notices. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity.
   (Criteria Satisfied)

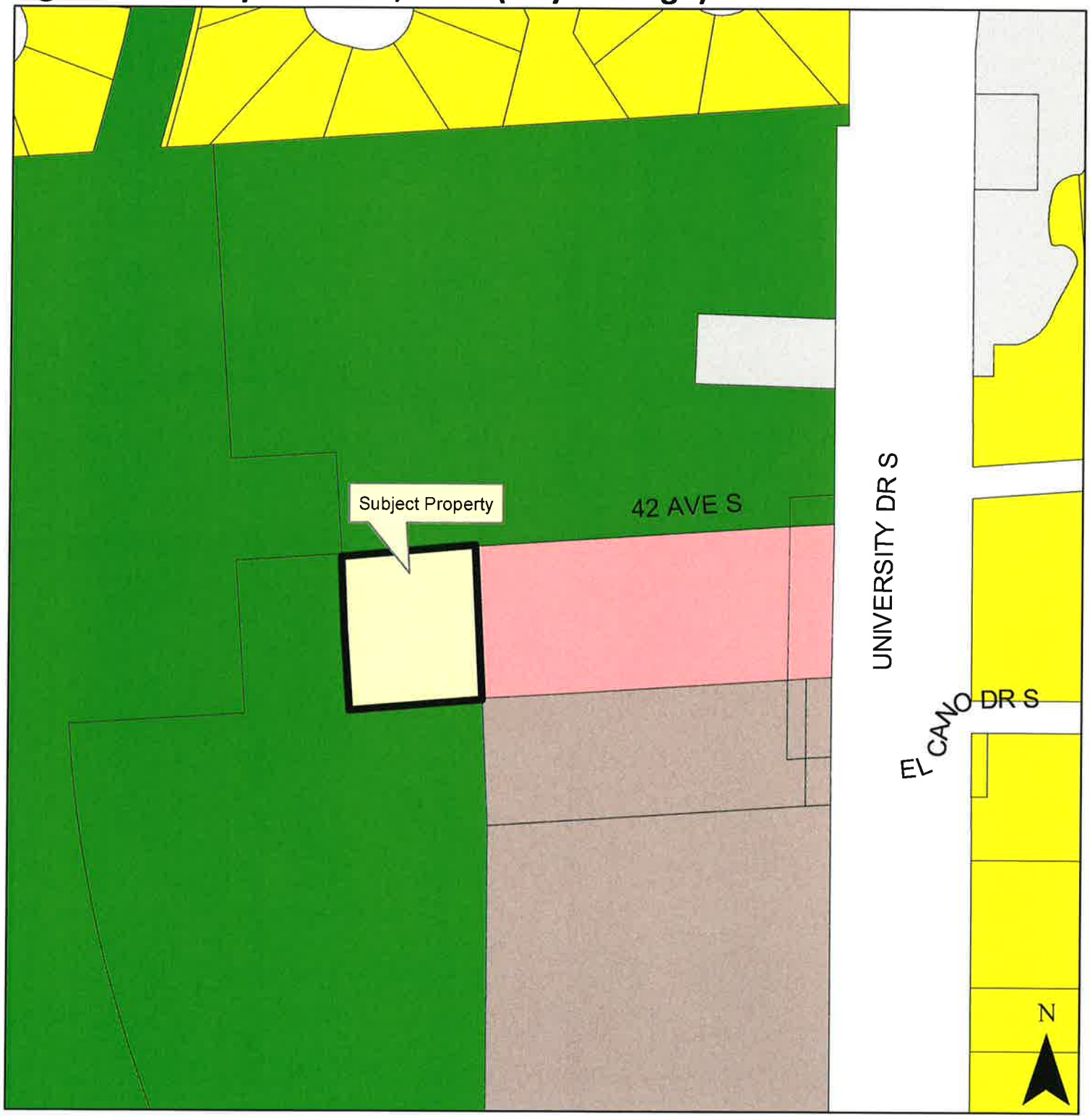
4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**
   The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC-and other adopted policies of the City.
   (Criteria Satisfied)

Staff Recommendation:
Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading, and move to approve the proposed zoning change from SR-3, Single-Dwelling Residential to P/I, Public and Institutional on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."
Planning Commission Recommendation: September 3, 2019
On September 3, with a 9-0 vote, with one Commissioner absent, the Planning Commission accepted the findings and recommendations of staff and recommended approval to the City Commission of the proposed zoning change from SR-3, Single-Dwelling Residential to P/I, Public and Institutional on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.
Attachments:
1. Zoning Map **2.** Location Map

Zone Change (SR-3 to P/I)

Agassiz Nursery Addition, Lot 1 (City of Fargo)

1421 42nd Ave S



THE CITY OF Fargo FAR MORE

Legend

AG LC MHP SR-2
DMU LI NC SR-3
GC MR-1 NO SR-4
GI MR-2 P/I SR-5
GO MR-3 UMU City Limits

300 Feet

Fargo Planning Commission
September 3, 2019

Zone Change (SR-3 to P/I)

Agassiz Nursery Addition, Lot 1 (City of Fargo)

1421 42nd Ave S

THE CITY OF Fargo FAR MORE

300 Feet

Fargo Planning Commission
September 3, 2019

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

5e.1

AN ORDINANCE REZONING A CERTAIN PARCEL
OF LAND LYING IN AGASSIZ NURSERY ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on September 3, 2019; and,

WHEREAS, the rezoning changes were approved by the City Commission on October 7, 2019,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Lot One (1), Block One (1) of Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "SR-3", Single-Dwelling Residential, District to "P/I", Public and Institutional, District;

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

5f

MEMORANDUM

TO: Board of City Commissioners

FROM: Donald Kress, Current Planning Coordinator

DATE: October 3, 2019

RE: Correction by resolution of The Edge Addition plat

The Edge Addition plat was approved by the City Commission on May 7, 2018 and recorded on May 16, 2018. This plat created two lots. Lot 1 is currently owned by DFI AU LLC. Lot 2 is currently owned by The Edge Artist Flats, LLC. Subsequent to recordation of the plat, the owners of both lots discovered that two easements were incorrectly depicted and included in the plat. After thoroughly investigating options for correcting the errors, both owners determined the most effective means of correcting the errors is through a corrected plat as provided in North Dakota Century Code (NDCC) Section 40-50.1-07 et seq. The Edge Artist Flats, LLC has paid for the cost of preparing the corrected plat and will pay for all other costs associated with processing and recording the corrected plat.

The resolution regarding the correction of this plat that was adopted by the City Commission on September 9, 2019 was published as required by North Dakota Century Code Section 40-50.1-06.

October 7, 2019 is the date set by the City Commission to hear to hear and consider:

a. any written objections that have been filed with the City by any interested owner of the Affected Property as to the proposed plat-corrective work or to its cost; and,
b. any objections by any interested party or parties who, after having viewed the proposed corrected plat that has been filed with the City and is available for viewing at the Department of Planning and Development, Fargo City Hall.

As of this date, staff has not received any objections.

The September 9, 2019 resolution and copy of the plat are attached for your reference.

RECOMMENDED MOTION:
To affirm the corrected plat if The Edge Addition by resolution, with plat recordation contingent on the City Engineer's final review and signing the plat.

RESOLUTION

[regarding proposed corrected plat of
The Edge Addition to the City of Fargo]

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, at its regular meeting of May 7, 2018, the Board of City Commissioners of the City of Fargo, North Dakota, approved a subdivision plat of a certain parcel of land within the City of Fargo entitled "The Edge Addition" which parcel is situate in the County of Cass and State of North Dakota, more fully described as:

The Edge Addition to the City of Fargo

[hereinafter the "Affected Property"] and the plat for which was filed and recorded with the Office of the Recorder, Cass County, North Dakota, on the 16th day of May, 2018, as Document No. 1537236; and,

WHEREAS, it has been determined that said plat contains two errors, as follows: (1) it improperly includes on the pictorial portion a private easement that had been terminated prior to plat recording; and (2) said plat improperly dedicated to the public certain cross access easements shown on the pictorial portion of the plat that were created and intended only as private--not public--easements; and,

WHEREAS, a proposed corrected plat: (1) omits the private easement that was terminated prior to plat recording and (2) does not dedicate to the public cross-access easements, but instead includes a reference by document number on the pictorial portion of the plat for the instrument that created the private cross-access easements; and,

WHEREAS, N.D.C.C. §40-50.1-06 *et seq.* provides a procedure by which a an incorrect or deficient plat may be corrected by preparation of, approval of, and recording of a corrected plat thereof; and,

WHEREAS, The Edge Artist Flats, LLC, being the owner of Lot Two (2), Block One (1) of The Edge Addition to the City of Fargo has agreed to pay the cost of preparing the corrected plat and, in fact, has already paid such cost, and has agreed to pay for all other costs associated with processing and recording the corrected plat; and,

WHEREAS, a land surveyor designated to make such corrections has already completed a proposed completed plat—said completed plat being a corrected plat of The Edge Addition—and said land surveyor having filed said completed plat with the chief administrative officer of the City;

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Commissioners of the City of Fargo, North Dakota:

1. That the above-described plat of The Edge Addition to the City of Fargo is in error, as described in the above-stated recitals, making said plat incorrect or deficient and it is therefore necessary for said plat to be corrected by approval and recording of a corrected plat of The Edge Addition.

2. The Edge Artist Flats, LLC, being the owner of Lot Two (2), Block One (1) of The Edge Addition to the City of Fargo, by agreement thereof, will pay all costs of preparing the corrected plat including all other costs associated with processing and recording the corrected plat.

3. **The Board of City Commissioners of the City of Fargo will meet in the City Commission Room, Fargo City Hall, 225 4th Street North, Fargo, on October 7, 2019 at 5:15 p.m. to hear and consider:**

a. any written objections that have been filed with the City by any interested owner of the Affected Property as to the proposed plat-corrective work or to its cost; and,

b. any objections by any interested party or parties who, after having viewed the proposed corrected plat that has been filed with the City and is available for viewing at the Department of Planning and Development, Fargo City Hall.

4. Written objections must be filed with the Department of Planning and Development, Fargo City Hall.

5. This RESOLUTION shall be published in the official newspaper for the City at least ten (10) days prior to the above-stated hearing.

Dated this 9th day of September, 2019.

/signed/
Timothy J. Mahoney, M.D., Mayor

ATTEST:

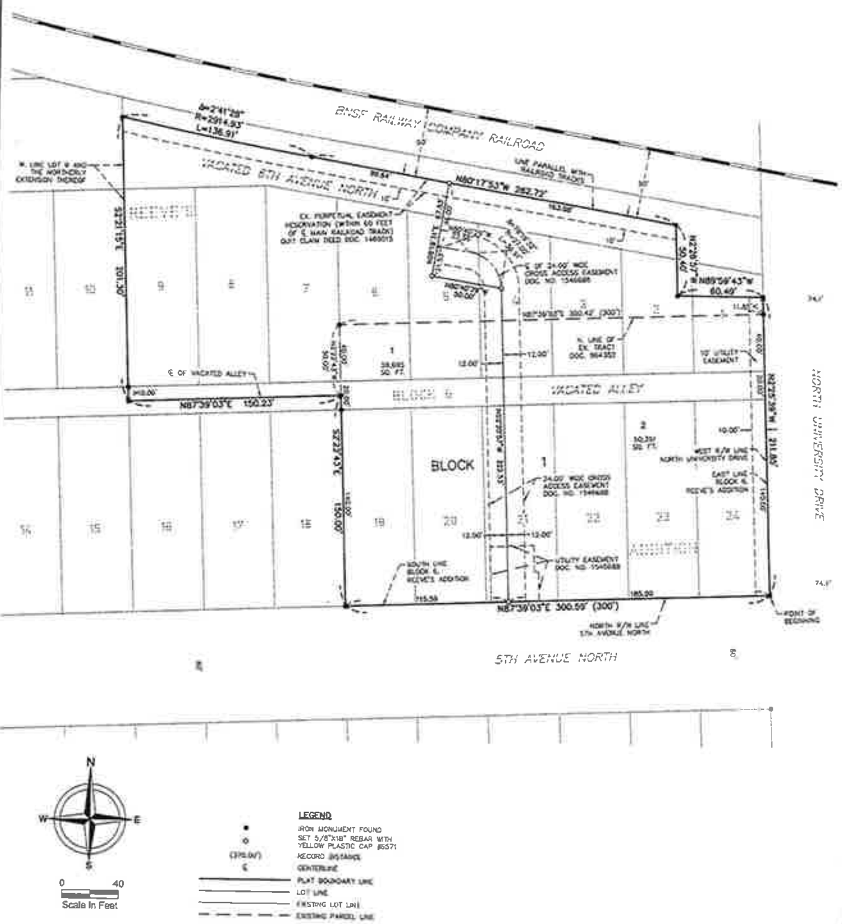
/signed/
Steven Sprague, City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER Gehrig, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS Gehrig, Grindberg, Piepkorn, Strand and Mahoney. The following were absent and not voting: None, and the following voted against the same: None, whereupon the resolution was declared duly passed and adopted.

CORRECTED PLAT OF

THE EDGE ADDITION

TO THE CITY OF FARGO, A REPLAT OF PART OF LOTS 1 AND 2, ALL OF LOTS 3 - 9, ALL OF LOTS 19 - 24 AND PART OF THE VACATED ALLEY, ALL IN BLOCK 6, REEVE'S ADDITION TO THE CITY OF FARGO AND A PLAT OF PART OF VACATED 6TH AVENUE NORTH LYING NORTH OF SAID BLOCK 6, CASS COUNTY, NORTH DAKOTA



BASIS OF BEARINGS: THE EAST LINE OF BLOCK 6, REEVE'S ADDITION HAS AN ASSUMED BEARING OF N02°25'39"W.

DEDICATION

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "CORRECTED PLAT OF THE EDGE ADDITION" TO THE CITY OF FARGO, A REPLAT OF PART OF LOTS 1 AND 2, ALL OF LOTS 3 - 9, ALL OF LOTS 19 - 24 AND PART OF THE VACATED ALLEY, ALL IN BLOCK 6, REEVE'S ADDITION TO THE CITY OF FARGO AND A PLAT OF PART OF VACATED 6TH AVENUE NORTH LYING NORTH OF SAID BLOCK 6, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF STEVEN W. HOLM, REGISTERED LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT. WE HEREBY DEDICATE ALL 10' UTILITY EASEMENTS SHOWN ON SAID PLAT TO THE USE OF THE PUBLIC.

OWNER OF LOT 1: DFI AU LLC

BILL ROTHMAN, VICE PRESIDENT

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS 14 DAY OF February 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BILL ROTHMAN, VICE PRESIDENT, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF DFI AU LLC.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

LISA OSLAND
Notary Public
State of North Dakota
My Commission Expires November 15, 2019

OWNER OF LOT 2: THE EDGE ARTIST FLATS, LLC, A WISCONSIN LIMITED LIABILITY COMPANY
BY: THE EDGE ARTIST FLATS MM, LLC, A WISCONSIN LIMITED LIABILITY COMPANY
ITS: MANAGING MEMBER
BY: COMMONWEALTH MANAGEMENT CORPORATION
ITS: MEMBER

LOUIE A. LANGE III, PRESIDENT

STATE OF WISCONSIN
COUNTY OF Fond du Lac

ON THIS 21st DAY OF January 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED LOUIE A. LANGE III, PRESIDENT, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF THE EDGE ARTIST FLATS, LLC, A WISCONSIN LIMITED LIABILITY COMPANY, BY: THE EDGE ARTIST FLATS MM, LLC, A WISCONSIN LIMITED LIABILITY COMPANY, ITS MANAGING MEMBER, BY: COMMONWEALTH MANAGEMENT CORPORATION, ITS MEMBER.

NOTARY PUBLIC, Fond du Lac COUNTY, WISCONSIN

NOTARY PUBLIC STATE OF WISCONSIN

COLLATERAL ASSIGNEE OF LOT 2: NORTH DAKOTA HOUSING FINANCE AGENCY

JOLENE KLINE, EXECUTIVE DIRECTOR

STATE OF NORTH DAKOTA)
COUNTY OF Burleigh)

ON THIS 20th DAY OF February 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOLENE KLINE, EXECUTIVE DIRECTOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE NAME OF NORTH DAKOTA HOUSING FINANCE AGENCY.

NOTARY PUBLIC, Burleigh COUNTY, NORTH DAKOTA

WILLIAM J. HOLRIGAN
Notary Public
State of North Dakota
My Commission Expires September 29, 2020

MORTGAGEE OF LOT 2: WISCONSIN PARTNERSHIP FOR HOUSING DEVELOPMENT, INC.

~~KATHY KEMP~~, EXECUTIVE DIRECTOR
Katherine Kemp

STATE OF WISCONSIN)
COUNTY OF Dane)

ON THIS 18 DAY OF February 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED KATHY KEMP, EXECUTIVE DIRECTOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE NAME OF WISCONSIN PARTNERSHIP FOR HOUSING DEVELOPMENT, INC.

JENNIFER WEKDTLAND
Notary Public
State of Wisconsin

NOTARY PUBLIC, Dane COUNTY, WISCONSIN

MORTGAGEE OF LOT 2: STERLING BANK

PHIL MINDEL, SENIOR VICE PRESIDENT

STATE OF ~~NORTH DAKOTA~~)
COUNTY OF CASS)

ON THIS 6th DAY OF February 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED PHIL MINDEL, SENIOR VICE PRESIDENT, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF STERLING BANK.

NOTARY PUBLIC, CASS COUNTY, ~~NORTH DAKOTA~~

CITY ENGINEER'S APPROVAL

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS ________ DAY OF ____________________ 2018.

BRENDA E. DERRIG, CITY ENGINEER

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS ________ DAY OF ________________ 2018, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BRENDA E. DERRIG, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME AS HER FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

CERTIFICATE

STEVEN W. HOLM, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "CORRECTED PLAT OF THE EDGE ADDITION" TO THE CITY OF FARGO, A REPLAT OF PART OF LOTS 1 AND 2, ALL OF LOTS 3 - 9, ALL OF LOTS 19 - 24 AND PART OF THE VACATED ALLEY, ALL IN BLOCK 6, REEVE'S ADDITION TO THE CITY OF FARGO AND A PLAT OF PART OF VACATED 6TH AVENUE NORTH LYING NORTH OF SAID BLOCK 6, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY THEREOF; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID ADDITION IS DESCRIBED AS FOLLOWS, TO WIT:

THAT PART OF LOTS 1 AND 2, ALL OF LOTS 3 THROUGH 9 INCLUSIVE, ALL OF LOTS 19 THROUGH 24 INCLUSIVE AND THAT PART OF THE VACATED ALLEY, ALL IN BLOCK 6, REEVE'S ADDITION TO THE CITY OF FARGO, ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA, AND THAT PART OF VACATED 6TH AVENUE NORTH LYING NORTH OF SAID BLOCK 6, DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON MONUMENT WHICH DESIGNATES THE SOUTHEAST CORNER OF SAID BLOCK 6; THENCE NORTH 02 DEGREES 25 MINUTES 39 SECONDS WEST ON AN ASSUMED BEARING ALONG THE EAST LINE OF SAID BLOCK 6 FOR A DISTANCE OF 211.85 FEET TO AN IRON MONUMENT; THENCE NORTH 89 DEGREES 59 MINUTES 43 SECONDS WEST FOR A DISTANCE OF 60.40 FEET TO AN IRON MONUMENT; THENCE NORTH 02 DEGREES 28 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 50.40 FEET TO AN IRON MONUMENT ON A LINE 50.00 FEET SOUTHERLY OF THE CENTERLINE OF THE RAILROAD TRACKS OF THE BURLINGTON NORTHERN SANTA FE RAILROAD, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH SAID RAILROAD TRACKS; THENCE NORTH 80 DEGREES 17 MINUTES 53 SECONDS WEST ALONG SAID LINE 50.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID RAILROAD TRACKS FOR A DISTANCE OF 262.72 FEET TO AN IRON MONUMENT; THENCE CONTINUING NORTHWESTERLY ALONG SAID LINE 50.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID RAILROAD TRACKS, ON A TANGENTIAL CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 2914.93 FEET AND A CENTRAL ANGLE OF 02 DEGREES 41 MINUTES 28 SECONDS FOR AN ARC DISTANCE OF 136.91 FEET TO AN IRON MONUMENT ON THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 9, SAID BLOCK 6; THENCE SOUTH 02 DEGREES 21 MINUTES 15 SECONDS EAST ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 9, THE WEST LINE OF SAID LOT 9 AND THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 9 FOR A DISTANCE OF 201.30 FEET TO AN IRON MONUMENT ON THE CENTERLINE OF THE VACATED ALLEY IN SAID BLOCK 6; THENCE NORTH 87 DEGREES 39 MINUTES 03 SECONDS EAST ALONG THE CENTERLINE OF SAID VACATED ALLEY FOR A DISTANCE OF 150.23 FEET TO AN IRON MONUMENT ON THE WEST LINE OF A CERTAIN TRACT OF LAND AS DESCRIBED IN QUIT CLAIM DEED DOCUMENT NUMBER 964352, RECORDED SEPTEMBER 6, 2000, ON FILE AND OF RECORD IN THE OFFICE OF SAID RECORDER; THENCE SOUTH 02 DEGREES 22 MINUTES 43 SECONDS EAST ALONG THE WEST LINE OF SAID TRACT OF LAND FOR A DISTANCE OF 150.00 FEET TO AN IRON MONUMENT AT THE SOUTHWEST CORNER OF SAID TRACT OF LAND, SAID SOUTHWEST CORNER LYING ON THE SOUTH LINE OF SAID BLOCK 6; THENCE NORTH 87 DEGREES 39 MINUTES 03 SECONDS EAST ALONG THE SOUTH LINE OF SAID BLOCK 6 FOR A DISTANCE OF 300.59 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 2.53 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.

STEVEN W. HOLM
REGISTERED LAND SURVEYOR
REG. NO. LS-6571

REGISTERED LAND SURVEYOR
STEVEN W. HOLM
LS-6571
NORTH DAKOTA

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS 13th DAY OF November 2018, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED STEVEN W. HOLM, REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

Brenda Jo Koski
NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

BRENDA JO KOSKI
Notary Public
State of North Dakota
My Commission Expires May 5, 2022

FARGO PLANNING COMMISSION APPROVAL

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS ________ DAY OF ____________________, 2018.

SHARA FISCHER, CHAIR

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS ________ DAY OF ____________________ 2018, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHARA FISCHER, CHAIR OF THE FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE NAME OF THE FARGO PLANNING COMMISSION.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

FARGO CITY COMMISSION APPROVAL

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS ________ DAY OF ____________________, 2018

TIMOTHY J. MAHONEY, MAYOR

STEVEN SPRAGUE, CITY AUDITOR

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS ________ DAY OF ____________________ 2018, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TIMOTHY J. MAHONEY, MAYOR AND STEVEN SPRAGUE, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF THE CITY OF FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

moore engineering, inc. SHEET 1 OF 1 PROJ. NO. 20095

THE CITY OF Fargo FAR MORE

PUBLIC WORKS OPERATIONS

52

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1465
FAX: (701) 241-8100

October 7, 2019

Honorable Board of City Commissioners
City Hall, 225 4th St N
Fargo, ND 58102

Commissioners:

Enclave Development is proposing the construction of a 5-story, 92 unit, "The Mosaic" apartment complex, at 312 11th St N.

There are three publicly owned mature trees associated with this proposed site/project:

- The two public street trees along 11th St. are American elm. 36" and 34" diameter respectively; both in need of minor pruning, but otherwise in good condition.
- The one tree on the 3rd Ave side is an American elm. Its condition is lower due to utility pruning practices, therefore a good candidate for replacement with a more site appropriate species.

The City Forester does not support removal of the two elm along 11th St. However if the trees were allowed to be removed as part of this private project, the developer would be responsible for compensation to the city for the appraised values. This would be reflected in the Right-Of-Way Use Agreement.

Address, Species, Diameter, Appraised Value:

- 306/312 11th St N, American elm, 34, $8650
- 306/312 11th St N, American elm, 36, $5980
- 1111 3rd Ave N, American elm, 27, $1970

TOTAL $16,600

At their September 30, 2019 meeting, the PWPEC supported preservation (ROA attached).

Recommendation:
In partnership with the city, preserve the two 11th St. elm trees by requiring changes to the current design, allow minor pruning if needed, and incorporation of tree preservation and protection techniques.

Your approval of this request is appreciated.

Sincerely,

Scott Liudahl, City Forester

Cc: Ben Dow
Bruce Grubb
Kent Costin

Commission 2019 mosaic apartment.doc

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Tree Preservation

Location: 312 11th Street North

Date of Hearing: 9/30/2019

Routing	Date
City Commission	10/7/2019
PWPEC File	X
Project File	Scott Liudahl
	Kristy Schmidt

The Committee reviewed communication from City Forester, Scott Liudahl, regarding the proposed construction of a 5-story, 92 unit, apartment complex at 312 11th Street North. Scott has been working with the Developer who was represented at the meeting by Brian Pattengale, Houston Engineering.

There are three publicly owned mature trees associated with this proposed site/project:

- The two public street trees along 11th Street are American Elm and are in good condition.
- The one tree on the 3rd Avenue side is an American Elm and is a good candidate for replacement with a more site appropriate species.

The City Forester is not supportive of removing the two elm along 11th Street, however, if the trees were allowed to be removed as part of this private project, the developer would be responsible for compensation to the City for the appraised values:

Address, Species, Diameter, Appraised Value:

- 306/312 11th Street North, American Elm, 34, $8,650
- 306/312 11th Street North, American Elm, 36, $5,980
- 1111 3rd Avenue North, American Elm, 27, $1,970

Total $16,600

*This would be reflected in Developer's/Right of Way Use Agreement.

The Committee discussed the following issues with the Developer's Representative and Scott Liudahl.

- If more than 25-30% of the tree is pruned to support the construction of the building it should be removed, which is a reality with the proximity of the building.
- In DMU zoning, the buildings are allowed to be built at the property line (Zero Setback). With the building proximity and the raise in elevation needed to meet the Floodproof Construction Requirements this will not allow the large trees to remain if there is a new building constructed.
- The Developer's Representative stated that the plans are complete and the project has been submitted for site plan review. The Developer's/Right of Way Use Agreement is the last item needed for the building permit.
- The Developer's Representative stated that they are trying to get building construction started ahead of the roadway project scheduled for 2020.

Suggested motion options:

1) In partnership with the City, preserve the two 11th Street elm trees by requiring changes to the current design, allow minor pruning if needed, and the incorporation of tree preservation and protection techniques.
2) Allow the apartment complex to be constructed as presented, remove the trees, and require payment to the City for their appraised values.

On a motion by Nicole Crutchfield, seconded by Ben Dow, the Committee voted to recommend approval of motion 1 as described above.

RECOMMENDED MOTION

Concur with the PWPEC recommendation and preserve the two 11th Street elm trees by requiring changes to the current design, allowing minor pruning if needed, and incorporating tree preservation and protection techniques.

PWPEC ROA
9/30/2019 -- Page 2
Tree Preservation – 312 11th Street North

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: N/A

	Yes	No
Developer meets City policy for payment of delinquent specials	N/A	
Agreement for payment of specials required of developer	N/A	
Letter of Credit required (per policy approved 5-28-13)	N/A	

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	Craig Nelson
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☐	☐	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☑	☑	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo FAR MORE

PUBLIC WORKS OPERATIONS

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1465
FAX: (701) 241-8100

To: Brenda Derrig, City Engineer; PWPEC
From: Scott Liudahl, City Forester
Re: Tree preservation – 312 11th St N
Date: 9/30/19

Enclave Development is proposing the construction of a 5-story, 92 unit, "The Mosaic" apartment complex, at 312 11th St N.

There are three publicly owned mature trees associated with this proposed site/project. (See attached map: Green = preserve/protect):

- The two public street trees along 11th St. are American elm. 36" and 34" diameter respectively; both in need of minor pruning, but otherwise in good condition.
- The one tree on the 3rd Ave side is an American elm. Its condition is lower due to utility pruning practices, therefore a good candidate for replacement with a more site appropriate species.

The City Forester does not support removal of the two elm along 11th St. However if the trees were allowed to be removed as part of this private project, the developer would be responsible for compensation to the city for the appraised values. This would be reflected in the Right-Of-Way Use Agreement.

Address, Species, Diameter, Appraised Value:

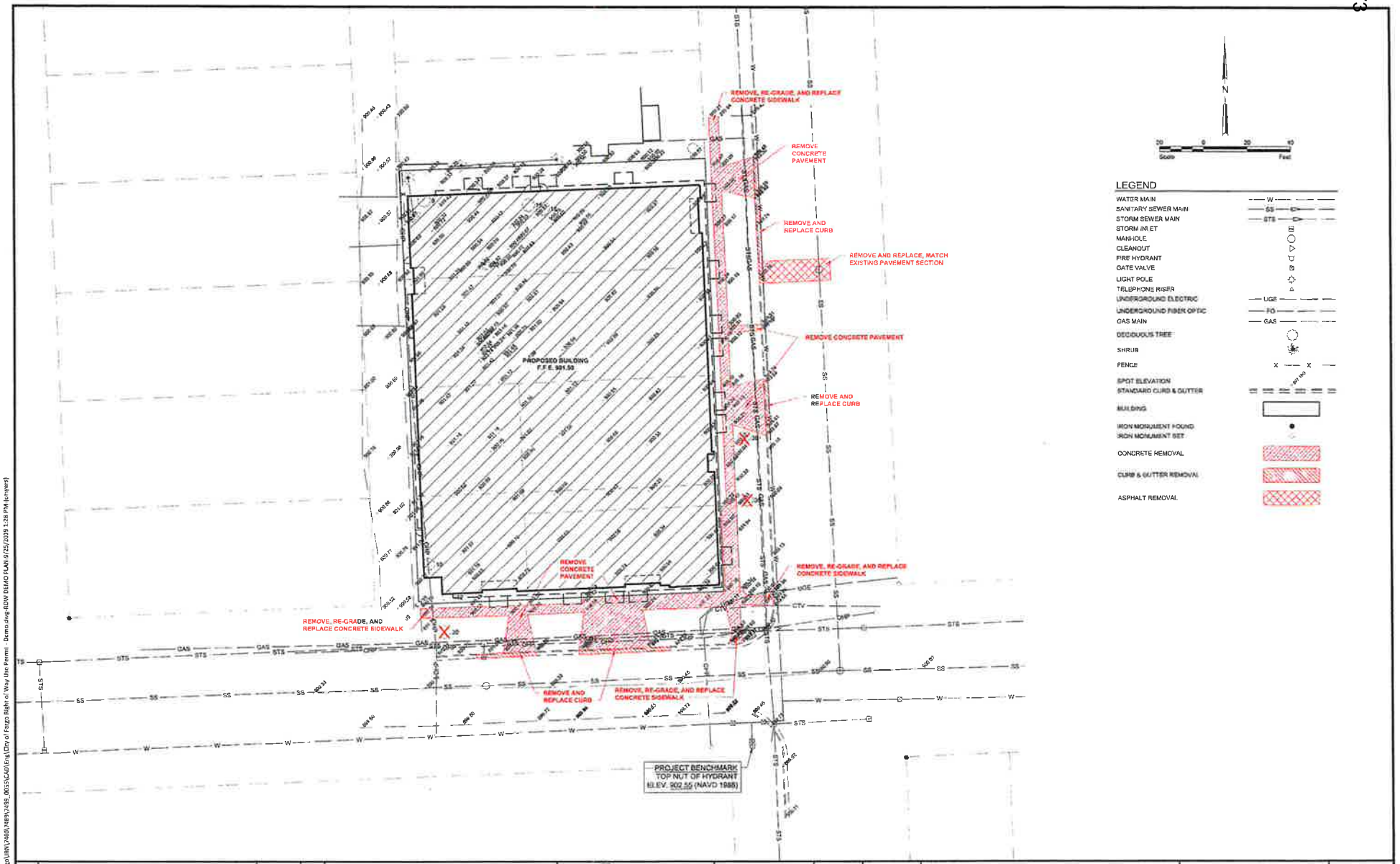
- 306/312 11th St N, American elm, 34, $8650
- 306/312 11th St N, American elm, 36, $5980
- 1111 3rd Ave N, American elm, 27, $1970

TOTAL $16,600

Suggested motion options:

1) **In partnership with the city, preserve the two 11th St. elm trees by requiring changes to the current design, allow minor pruning if needed, and incorporation of tree preservation and protection techniques.**
2) **Allow the apartment complex to be constructed as presented, remove the trees, and require payment to the city for their appraised values.**

Thank you.



No.	Revision	Date	By

PRELIMINARY
Not for Construction

HOUSTON ENGINEERING INC.

Fargo
P: 701.237.5065
F: 701-237-5101

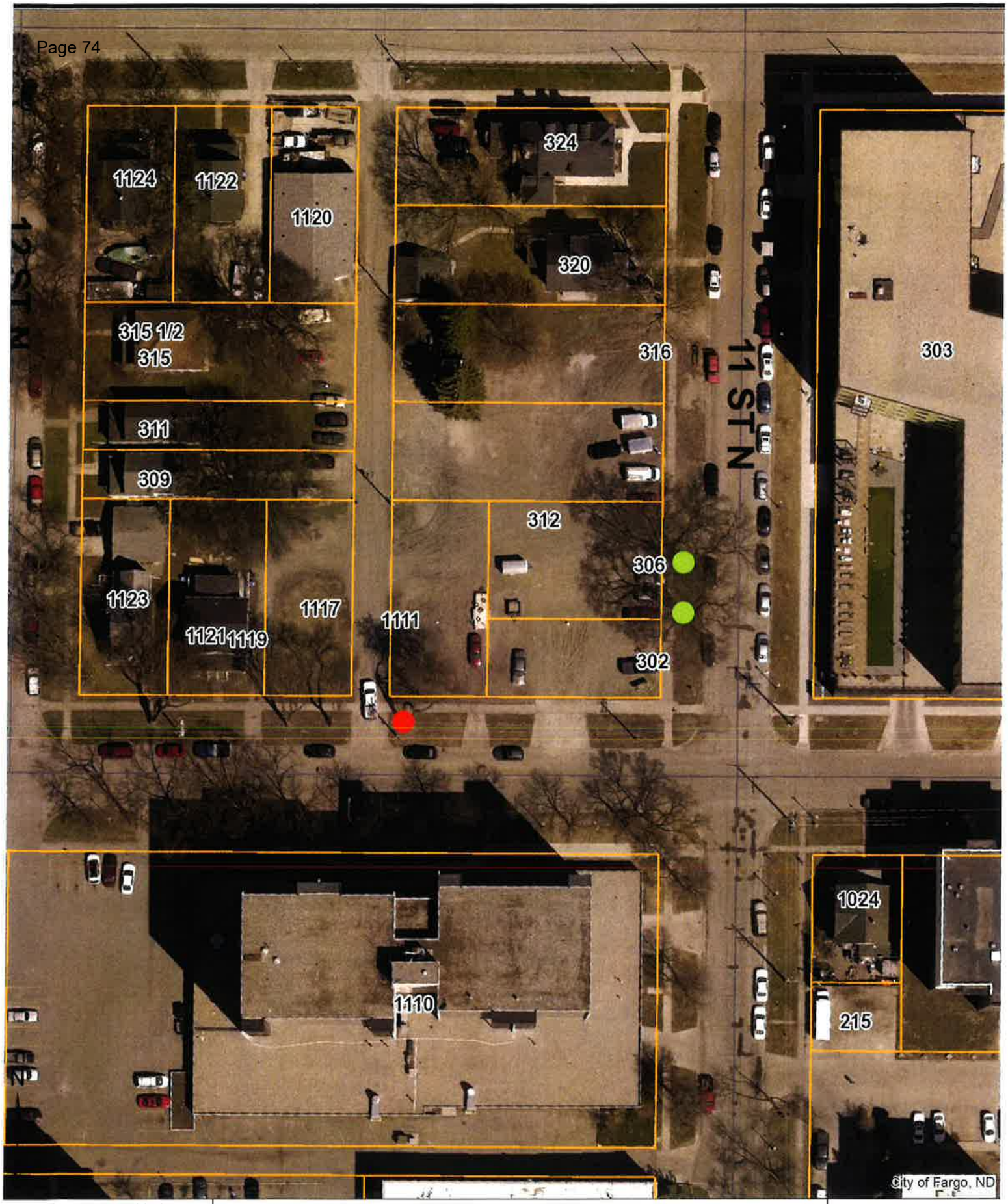
Drawn by	Date
RLA	9-13-19
Checked by	Scale
BTP	AS SHOWN

MOSAIC APARTMENTS
312 11TH STREET N
FARGO, NORTH DAKOTA

ROW DEMO PLAN
PROJECT NO. 7489-0055

SHEET
1 of 5

\\houston\fs\Fargo\JOBS\7400\7489\7489-0055\CAD\Eng\City of Fargo Right of Way Use Permit - Demo.dwg-RDW DEMO PLAN 9/25/2019 1:28 PM (cmyers)



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Mosaic - mature street trees

1:1,128	9/12/2019 7:13:59 AM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

THE CITY OF Fargo FAR MORE

312 11th Street N

11th Street North (3rd to 4th Ave.)

CITY OF Fargo

ASSESSMENT DEPARTMENT

53a

September 25, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 907 35 Ave. S as submitted by Norman D. & Jodi J. Robinson. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2020, 2021, & 2022.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $105 with the City of Fargo's share being $20.

Sincerely,

Ben Hushka
City Assessor

hah
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Norman & Jodi Robinson Phone No. 701-238-4698
2. Address of Property 907 35 Ave S

   City FARGO State ND Zip Code 58104
3. Legal description of the property for which the exemption is being claimed. Lot 6, Block 1 Harwood Groves
4. Parcel Number 01-1143-00060-000 Residential ☑ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner Same

   City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). New siding, All NEW WINDOWS, PAVER patio & fire pit
7. Building Permit No. 19050437 8. Year Built 1988
9. Date of Commencement of making the improvement May 2019
10. Estimated market value of property before improvement $ 321,800
11. Cost of making the improvement (all labor, material and overhead) $ 24,156, 18,800, 13,479 = 56,435
12. Estimated market value of property after improvement $ 330,000

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

    Applicant's Signature _____ Date 9/19/19

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☐ has not ☐ met the qualifications for exemption for the following reason(s): _____

    Assessor's Signature _____ Date _____

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied ☐ Approved ☐

    Approval subject to the following conditions: _____

    Chairman of Governing Body _____ Date _____

CITY OF Fargo

ASSESSMENT DEPARTMENT

536

September 25, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1014 20 St. S as submitted by Chad A. Mertz T/O/D. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2018, 2019, 2020, 2021, & 2022.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $30 with the City of Fargo's share being $5.

Sincerely,

Ben Hushka
City Assessor

hah
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner CHAD MERTZ Phone No. 701-371-2969
2. Address of Property 1014 20TH ST S

   City FARGO State ND Zip Code 58103
3. Legal description of the property for which the exemption is being claimed. LOT 17, BLOCK 7, HILLEBO TERRACE
4. Parcel Number 01-1270-01650-000 Residential ☒ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner SAME AS PROPERTY

   City ____ State ____ Zip Code ____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). REMODELING BASEMENT TO ADD FINISHED BATHROOM
7. Building Permit No. 20171839 8. Year Built ~~1918~~ 1953
9. Date of Commencement of making the improvement 9-25-17; COMPLETED 5-14/19
10. Estimated market value of property before improvement $ 141,000.00
11. Cost of making the improvement (all labor, material and overhead) $ 9,000.00
12. Estimated market value of property after improvement $ 150,000.00

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

    Applicant's Signature [signature] Date 7/11/19

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☒ has not ☐ met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK

    Assessor's Signature [signature] Date 9/24/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied ☐ Approved ☐

    Approval subject to the following conditions: ____

    Chairman of Governing Body ____ Date ____

CITY OF Fargo

ASSESSMENT DEPARTMENT

530

September 25, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1353 3 St. N as submitted by Lesley P. & Marsha L. Wilke. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2019, 2020, 2021, 2022, & 2023.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $155 with the City of Fargo's share being $25.

Sincerely,

Ben Hushka

Ben Hushka
City Assessor

hah
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Lesley & Marsha Wilke Phone No. N/A
2. Address of Property 1353 3 St N

   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed. Lot 14, Block 6 Holes 1st
4. Parcel Number 01-1360-01680-000 Residential ☑ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner Same

   City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). New siding
7. Building Permit No. 181401 8. Year Built 1939
9. Date of Commencement of making the improvement August 2018
10. Estimated market value of property before improvement $ 228,000
11. Cost of making the improvement (all labor, material and overhead) $ 30,000
12. Estimated market value of property after improvement $ 240,100

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

    Applicant's Signature J W [illegible] Date 9-23-19

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☒ has not ☐ met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK

    Assessor's Signature [illegible] Date 9/26/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied ☐ Approved ☐

    Approval subject to the following conditions: _____

    Chairman of Governing Body _____ Date _____

CITY OF Fargo

ASSESSMENT DEPARTMENT

530

September 25, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2951 Southgate Dr. S as submitted by Todd J. & Kimberly J. Kramer. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2020, 2021, 2022, 2023, & 2024.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $110 with the City of Fargo's share being $20.

Sincerely,

Ben Hushka
City Assessor

hah
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Todd & Kimberly Kramer Phone No. 701-388-4686
2. Address of Property 2951 Southgate Dr S

   City FARGO State ND Zip Code 58103
3. Legal description of the property for which the exemption is being claimed. Lt 14, Blk 10

   Westgate Village
4. Parcel Number 01-4000-01500-000 Residential ☑ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner Same

   City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). New siding
7. Building Permit No. 190332 8. Year Built 1976
9. Date of Commencement of making the improvement April 2019
10. Estimated market value of property before improvement $199,900
11. Cost of making the improvement (all labor, material and overhead) $7000
12. Estimated market value of property after improvement $208,500

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

    Applicant's Signature Todd K Date 9-20-2019

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☑ has not ☐ met the qualifications for exemption for the following reason(s) 5 YEARS FOR QUALIFYING WORK

    Assessor's Signature [signature] Date 9/26/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied ☐ Approved ☐

    Approval subject to the following conditions: _____

    Chairman of Governing Body _____ Date _____

CITY OF Fargo

ASSESSMENT DEPARTMENT

530

September 25, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1601 5 St. S as submitted by Derald C. & Pamala R. Brunette. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2020, 2021, 2022, 2023, & 2024.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $95 with the City of Fargo's share being $15.

Sincerely,

Ben Hushka
City Assessor

hah
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Derald & Pamala Brunette Phone No 238-8834
2. Address of Property 1601 5 St S

   City FARGO State ND Zip Code 58103
3. Legal description of the property for which the exemption is being claimed. Lt 1, Blk 7, Lewis
4. Parcel Number 01-1720-00640-000 Residential ☑ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner Same

   City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). New siding
7. Building Permit No. 190292 8. Year Built 1950
9. Date of Commencement of making the improvement April 2019
10. Estimated market value of property before improvement $141,200
11. Cost of making the improvement (all labor, material and overhead) $16800
12. Estimated market value of property after improvement $148,400

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

    Applicant's Signature Derald Brunette Date 9/26/19

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☑ has not ☐ met the qualifications for exemption for the following reason(s) 5 YEARS FOR QUALIFYING WORK

    Assessor's Signature Jen Dunkirk Date 9/26/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied ☐ Approved ☐

    Approval subject to the following conditions: _____

    Chairman of Governing Body _____ Date _____

54

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-19-A1 Type: Reconstruction Incentive

Location: Main Ave, Broadway to University Dr Date of Hearing: 8/19/2019

Routing	Date
City Commission	10/7/2019
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed communication from Division Engineer, Jeremy Gorden, regarding Main Avenue incentive options.

It is proposed to offer two incentives on the project with a maximum incentive of $500,000. Incentive 1 would be for Phase 2, the portion between Broadway and 8th Street. The contract documents allow for 100 days to complete this phase. We suggest an incentive of $5,000/day for a maximum of 20 days ($100k) for this area. Incentive 2 would be for the overall completion of all phases associated with the project. We would like to propose an incentive of $10,000/day for 40 days with a maximum incentive of $400,000.

Staff is recommending to make a request to the NDDOT to include an incentive on the Main Avenue project and present the incentive options above for consideration. Incentive would be funded through City of Fargo Infrastructure Sales Tax.

On a motion by Tim Mahoney, seconded by Ben Dow, the Committee voted to move the request forward to the NDDOT for approval to include the above incentive on the Main Avenue project.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the incentive upon concurrence from NDDOT.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Infrastructure Sales Tax Funds

	Yes	No
Developer meets City policy for payment of delinquent specials	N/A	
Agreement for payment of specials required of developer	N/A	
Letter of Credit required (per policy approved 5-28-13)	N/A	

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☑	☑	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	Mark Williams
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	Tom Knakmuhs
Kent Costin, Finance Director	☑	☑	☐	

ATTEST:

Tom Knakmuhs, P.E.
Assistant City Engineer

THE CITY OF Fargo FAR MORE

Engineering Department
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

Memorandum

To: Members of PWPEC

From: Jeremy M. Gorden, PE, PTOE
Division Engineer

Date: August 15, 2019

Subject: Main Avenue Reconstruction Incentive Discussion – Broadway to University Drive
City of Fargo Improvement District No. BR-19-A1

The current plans for Main Avenue reconstruction between Broadway and University Drive do not include any provisions for incentive. The preliminary engineer's estimate for the project is $11.5M.

Final plans are nearly complete and the work on the project indicates a full summer of construction. Assuming a mid-April start date, the preliminary schedule is estimating a completion date of October 16, 2020. This is based on a 5-day work week with Saturdays used to catch up for rain delays.

It is proposed to offer two incentives on the project with a maximum incentive of $500,000. Incentive 1 would be for Phase 2, the portion between Broadway and 8th Street. The contract documents allow for 100 days to complete this phase. We suggest an incentive of $5,000/day for a maximum of 20 days ($100k) for this area. Incentive 2 would be for the overall completion of all phases associated with the project. We would like to propose an incentive of $10,000/day for 40 days with a maximum incentive of $400,000.

The maximum incentive that a contractor could receive would be $500,000. We believe that this amount, equivalent to 4.3% of the preliminary engineer's estimate, is a fair amount for a contractor to achieve. We recommend all project incentives to be paid for with Fargo Infrastructure Sales Tax funds.

Recommended Motion
Make a request to the NDDOT to include an incentive on the Main Avenue project and present the incentive options above for consideration.

Attachments

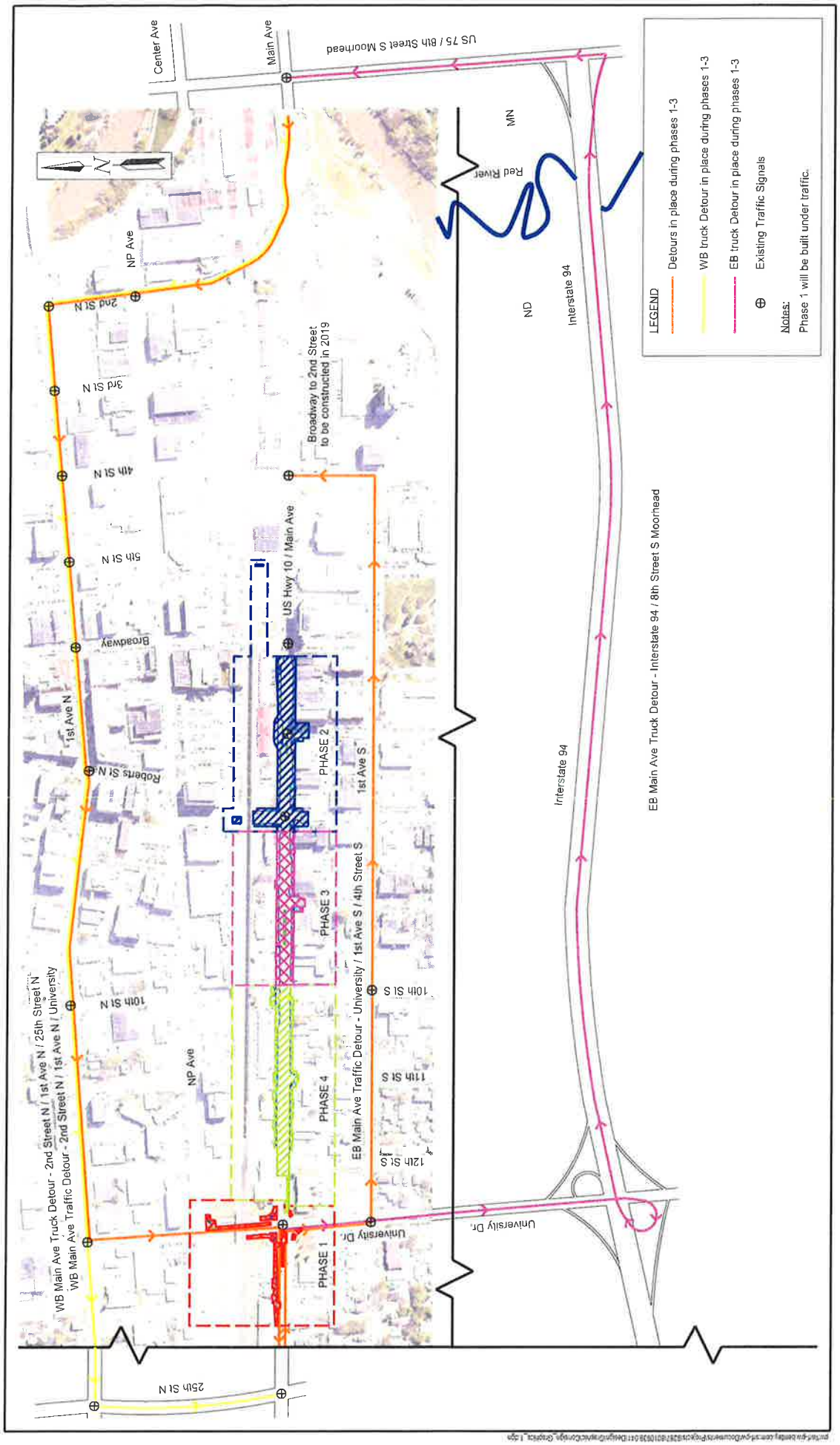


Figure 1

Detours and Phasing Overview

Main Avenue Reconstruction
Fargo, ND

Job # 9287
8/5/19

THE CITY OF Fargo
FAR MORE

OFFICE OF THE MAYOR
DR. TIM MAHONEY
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.241.1310 | Fax: 701.476.4136
www.FargoND.gov

55

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: SEPTEMBER 30, 2019

SUBJECT: APPOINTMENTS TO THE PARKING COMMISSION

The terms of Margie Bailly and Brian Hayer on the Parking Commission expired on June 30, 2019. Mr. Hayer is willing to continue his service on the Board; however, Ms. Bailly does not wish to be reappointed.

Austin Morris has submitted an application indicating interest in serving on the Board and I am recommending his appointment. I have attached a copy of his application for your information.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: Approve the reappointment of Brian Hayer and the appointment of Austin Morris to the Parking Commission for three-year terms ending June 30, 2022.

mmappt19pc

Kember Anderson

From: noreply@cityoffargo.com
Sent: Monday, July 09, 2018 9:57 PM
To: Commissions Applications
Subject: New Form Submission: Getting involved in government

Name:
[Austin J. Morris]
Mailing Address:
[3717 Grandwood Drive N.]
City:
[Fargo]
State:
[North Dakota]
Zip:
[58102]
Work Phone:
[701-478-4300]
Home Phone:
[701-361-4840]
E-mail:
[austin@enclavecompanies.com]
Which boards or commissions would you like to be considered for?
[Parking Commission,Planning Commission]
Briefly state why you would like to be on this panel:
[I'm passionate about Fargo, its built environment, the community it impacts, and development focused on enhancing the lives of people of all ages and backgrounds. As an avid real estate, development, and urban environment creative, I believe my background, expertise, knowledge, and sociological approach to the way people live amongst the neighborhoods and buildings we interact with is vital to creating a city worth knowing. My practical, pragmatic, and creative approach to problem solving would lend itself well to either committee. At Enclave, our approach to development has been creating distinct communities within our community. As we continue to develop, we will continue to collaborate with others to ensure our work adds value to Fargo and those who call Fargo home.]
How many hours per month could you volunteer as a panel member?
[2-3]
Please list any past experience you have with city government here or in other cities:
[I've had the opportunity to collaborate with City officials and neighbors on a variety of projects across North Dakota, South Dakota, Minnesota, and Nebraska. It brings me great joy to foster a strong reputation built on mutual respect, sensibility, and authenticity with whomever I work with.]
Please describe any professional experience you have related to the responsibilities of the panel you are interested in:
[As an owner and leader at Enclave Development, I've had the privilege to work with a fantastic team, consultants, and City leaders to move projects forward over the past seven years. Additionally, my experience working on projects downtown and across Fargo lends itself a unique perspective that includes both infill and suburban development challenges. I understand the planning, aesthetic, investment, and parking needs of a variety of project typologies.]

We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.

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THE CITY OF Fargo
FAR MORE

56

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR

DATE: OCTOBER 3, 2019

SUBJECT: MERCANTILE PARKING GARAGE DEVELOPMENT AGREEMENT, POLICE SUBSTATION AND FINANCING PLAN

In April 2019, the Fargo City Commission directed staff to draft a Development Agreement and financing plan for a parking garage on the Mercantile site located on the northeast corner of Broadway and Fourth Avenue North. This plan now includes a police substation.

We have worked with Kilbourne Group on a development agreement to implement a Public Private Partnership that includes new private development and City-owned parking on the block. The development would include a City-owned parking garage of about 369 parking spaces, 15,000 square feet of main floor commercial space on Broadway and 4th Avenue, a police substation and parking office, public restrooms, approximately 100 apartments and about 9 owner-occupied housing units. Tom Smith will develop the owner-occupied housing. Great Plains Mercantile Holdings will develop the rest of the private development including space for lease to the City for police, parking offices and restrooms.

The description of the Mercantile project is attached. It includes a project description, costs, information on the parking needs, the financing plan and illustrations of the project.

There is a need for two development agreements. A proposed development agreement with Great Plains Mercantile Holdings for the development of their portion of the project is attached for your consideration. Also attached is a description of the terms for an agreement with Tom Smith.

Actions needed to approve the project are as follows:

- Approve an agreement with Walker Consulting to monitor the project for the City.
- Authorize the Mayor to sign the development agreement with Great Plains Mercantile Holdings after approval of the construction plans by Walker Consulting.
- Direct staff to prepare a development agreement with Tom Smith for the owner-occupied housing units.
- Approve a resolution on project financing.

It is very important to remember that with the approval of the development agreement, these future actions are going to be required to implement the financing plan and to pay for costs of the parking facility. They are:

- Approval of the sale of $11 million in bonds.
- Approval of a loan for $2 million with Research Park Ventures.
- Increase parking rates in existing parking facilities by about $243,000 a year.
- Sale of the Main Avenue parking lot at Broadway and Main Avenue.

The Finance Committee is recommending the following motions at this time.

- Approve the agreement with Walker Consulting for consulting services.
- Authorize the Mayor to sign the development agreement with Great Plains Mercantile Holdings for a parking garage and police substation, after approval of the construction plans by Walker Consulting.
- Direct staff to prepare a development agreement with Tom Smith for housing on the north side of the parking garage.
- Approve a resolution on project financing.

Mercantile Parking Garage

Project Description – The Mercantile Development will be a Public Private Partnership with Great Plains Mercantile Holdings (GPMH). GPMH will build the parking garage for the actual cost, up to a maximum project cost as outlined below.

- Minimum of 360 parking spaces (369 in current plan).
- Project cost is guaranteed to not exceed $12,251,253.43. This includes $1,022,000 for the land value.
- There will be a "City Contingency" of $235,000 that can only be used for additional costs for debris/soil removal or additional costs related to unforeseen weather conditions.
- The City will pay additional for 5th Street street/sidewalk changes needed for the project. This is estimated at $115,000 but could be higher.
- City will have costs to contract with Walker Consulting to review plans and monitor the project.
- City will have costs for Information Services.
- City will have costs of taxes and special assessments during construction and at closing.
- Total project cost is estimated at $12,719,753.43. See below.

Scope	Agreement	City Determined	TOTAL
P3 Agreement - Maximum	$ 11,229,253.43		$ 11,229,253.43
Land Cost - Fixed	$ 1,022,000.00		$ 1,022,000.00
Contingency - Weather/Soils (Max)		$ 235,000.00	$ 235,000.00
5th Street Costs		$ 115,000.00	$ 115,000.00
Share of Property Taxes/Specials		$ 50,000.00	$ 50,000.00
Walker Consultants		$ 53,500.00	$ 53,500.00
Information Services Costs		$ 15,000.00	$ 15,000.00
TOTAL	$ 12,251,253.43	$ 468,500.00	$ 12,719,753.43

Developer will include in the Project

- The developer will lease space to the City of Fargo for a Police Substation and Parking Office.
- Approximately 95,000 square feet of residential space.
- Approximately 15,000 square feet of commercial space.

Parking

- Developer is guaranteed 100 parking spaces available for lease to Mercantile tenants.
- Developer has waiting list priority for 75 parking spaces for Black Building.

Parking Need – In 2015, the City of Fargo identified two locations for future parking facilities in downtown Fargo. One is the site of the Roberts Commons Garage. The other is this Mercantile site on the northeast corner of Broadway and 4th Avenue North.

The Roberts Commons Garage has been a success. It is filled to capacity, additional development has occurred to the north and it is popular with downtown visitors.

There is already very high interest in the use of the parking garage.

This is a list of organizations that expressed an interest in using the Mercantile Garage.

Mercantile Parking Users
Short Term Parking
New Housing - Mercantile (100 units)
Bell Insurance
Housing Authority
Zerr - Berg - Gehrtz
Existing Surface Lot Users
Black Building
Bison Apartments (16 units)
Mercantile Condos
Radisson
Sanford - Annex Building
Prairie Public TV
US Bank

The Block 9 Parking Ramp is open. That ramp is making parking temporarily available to renters until next summer. About 300 RD Offutt employees, hotel employees and hotel guests will move in next summer and displace the 155 users listed below.

Block 9 Temporary Users	Number
US Bank Employees	20
Gate City Bank	15
Bell Insurance	40
Bobcat	30
Zerr Berg Gehrtz	16
McCormick Place	6
Starion Bank	5
No Coast Tattoo	5
Atomic Coffee	3
Individual downtown residents	15
TOTAL	155

Interstate Parking waiting lists for parking at Roberts Commons, or the Civic Center Ramp include 97 individuals. See below.

Waiting Lists	Number
Roberts Commons Garage	45
Civic Center Ramp	52
Total	97

This is the projected use of the Mercantile Garage based on interest, parking availability, and the location of the facility.

Mercantile Parking Projected Usage	Parking Demand
Short Term Parking	**50**
New Housing - Mercantile (100 units)	**50**
Bell Insurance	**30**
Housing Authority	**22**
Zerr - Berg - Gehrtz	**15**
Other (Existing Surface Lot)	**10**
Black Building	**75**
Bison Apartments (16 units)	**16**
Mercantile Condos	**10**
Radisson	**24**
Sanford - Annex	**74**
Prairie Public TV	**25**
US Bank	**25**
Parking Usage	**426**
Parking Available	**369**

Financing Plan – The City would need to borrow $13 million for the project. There is a $2 million loan available from Research Park Ventures, and the other $11 million would be from selling bonds. The $2 million loan from Research Park Ventures would be 10 year, 0% interest, with one $2 million payment at the end of the term. Gate City Bank is investing $2 million in Research Park Ventures to allow for this loan. Investors in Research Park Ventures receive state tax credits for 50% of their investment. Baker Tilly has developed an option for repayment of $11 million in bonds over a 25-year term.

Current and future revenue to make bond payments would include:

- $332,000 net operating annual revenue from the Mercantile Parking Garage
- $243,000 a year in parking fee increases on other parking facilities
- $500,000 to $900,000 from the sale of the Main Avenue Parking lot
- $268,000 from the bond sale for capitalized interest
- $145,000 a year in TIF revenue from the Mercantile TIF District
- $499,000 a year in TIF revenue from the Roberts Commons TIF District

TIF Revenue does not start immediately. The projected revenue is listed below by the name of the building and year TIF revenue will begin.

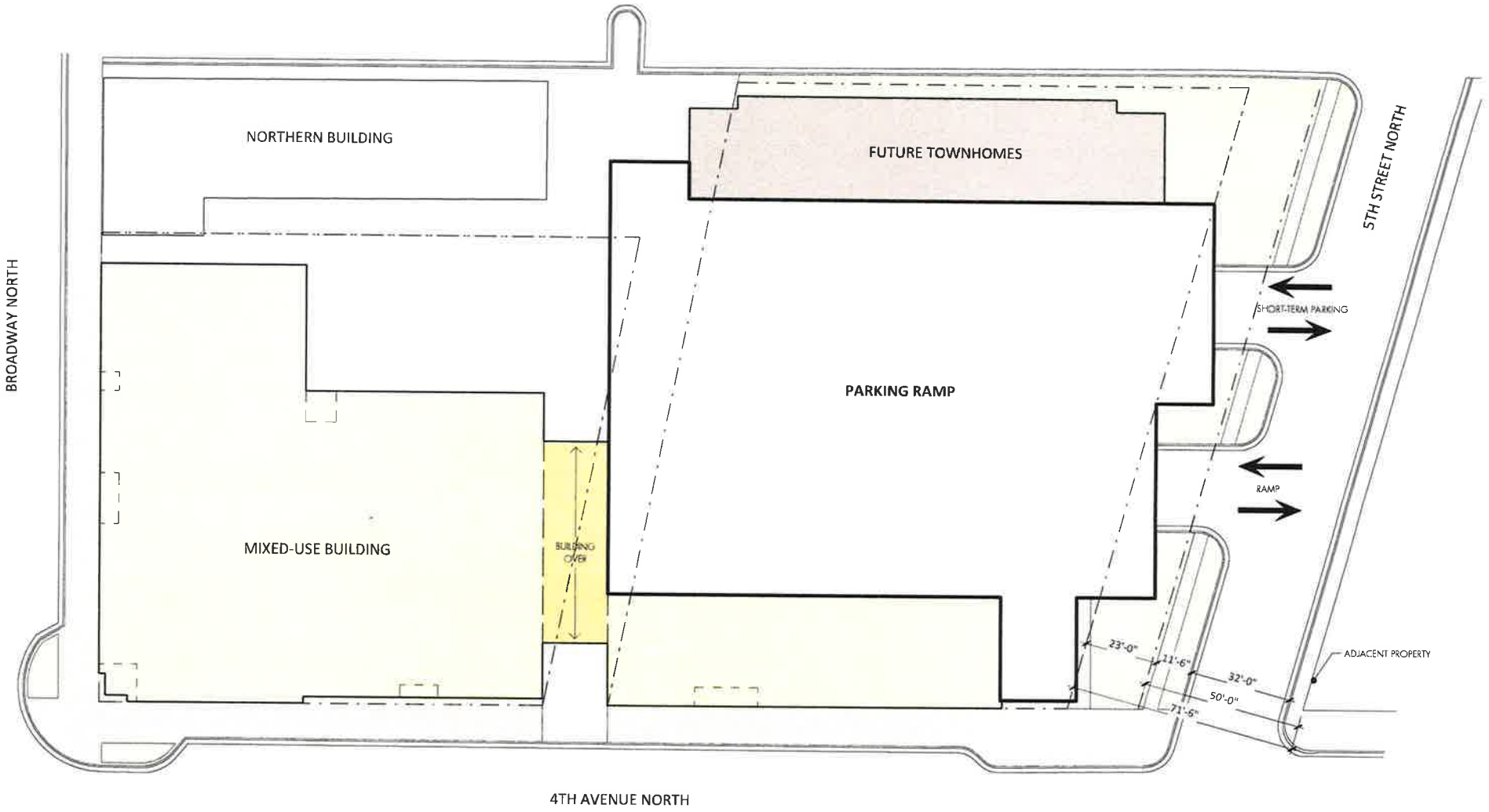
Future TIF Revenue	Amount	Year	TIF
Roberts Building	$ 141,000	2022	Roberts
Dillard Building	$ 223,000	2026	Roberts
Kesler Building	$ 135,000	2027	Roberts
Mercantile	$ 145,000	2028	Mercantile
Total	$ 644,000		

KILBOURNE MERCANTILE SITE

MATERIAL STUDY - OPTION 1

APRIL 26, 2019 | JLG 19052 | © 2019 JLG ARCHITECTS

JLG
DESIGN FOR LIFE



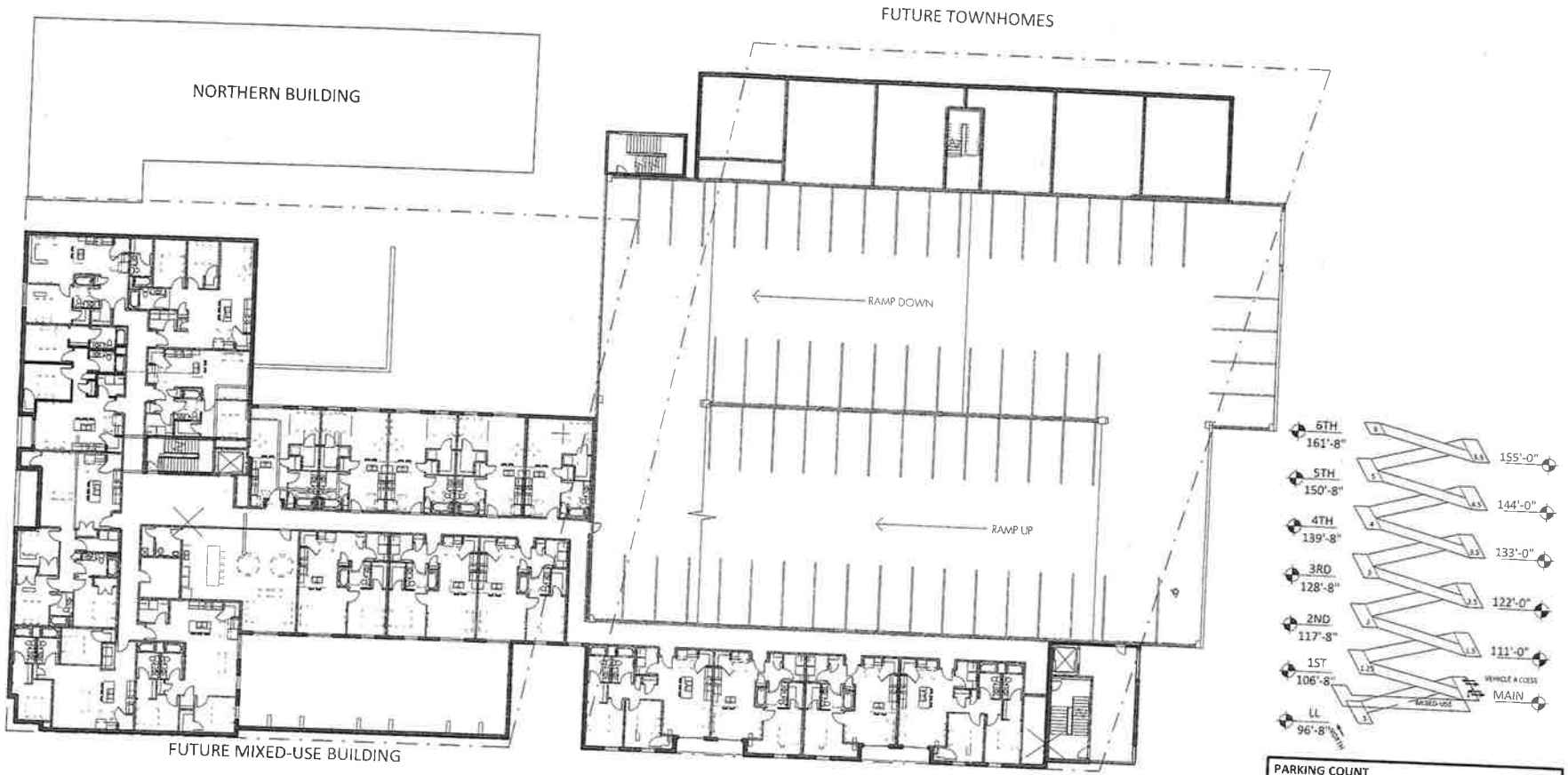
MERCANTILE MIXED-USE: RAMP

SITE PLAN

05/17/19 | JLG 19052 | © 2019 JLG ARCHITECTS

0 15 30 60

JLG architects



PARKING COUNT				
LEVEL	PARKING TYPE	STANDARD	ADA	TOTAL
MAIN	SHORT TERM	35	1-1	37
MAIN	RAMP	28	2	30
2ND	RAMP	60	2	62
3RD	RAMP	60	2	62
4TH	RAMP	60	2	62
5TH	RAMP	60	2	62
6TH	RAMP	62	2	64
		358	13	371

0 15 30 60

MERCANTILE MIXED-USE: RAMP

SECOND LEVEL PLAN

05/17/19 | JLG 19052 | © 2019 JLG ARCHITECTS

Mercantile Housing

Tom Smith, Developer

Developer will build about 8 to 10 owner occupied housing units, plus some unused garage space for storage.

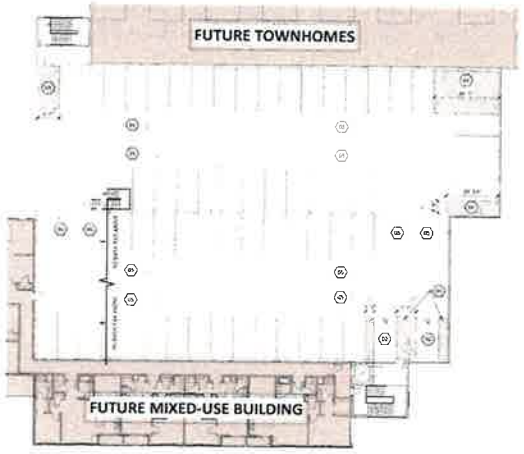
City will lease 10 parking spaces to the condo association for $150 a month. The amount will increase with inflation.

Developer will be allowed to enclose the parking spaces, with the developer paying those costs.

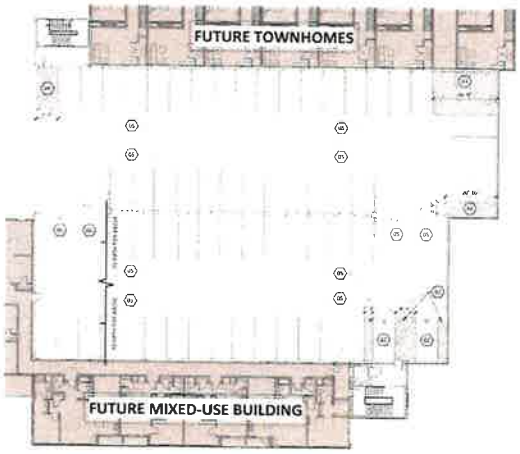
City will grant easements between the housing and the parking garage.

All plans must have the approval of the City prior to construction.

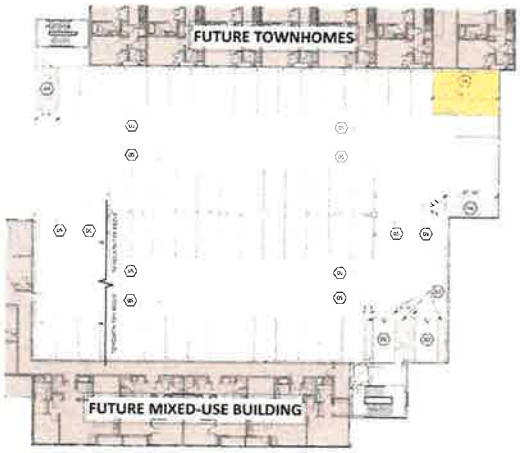
7E A206 SIXTH TIER STRIPING PLAN



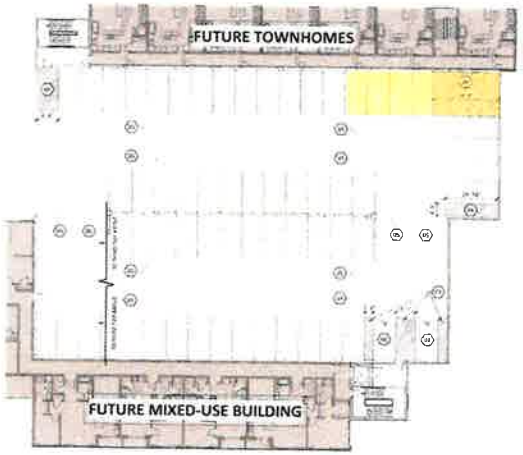
7C A206 FIFTH TIER STRIPING PLAN



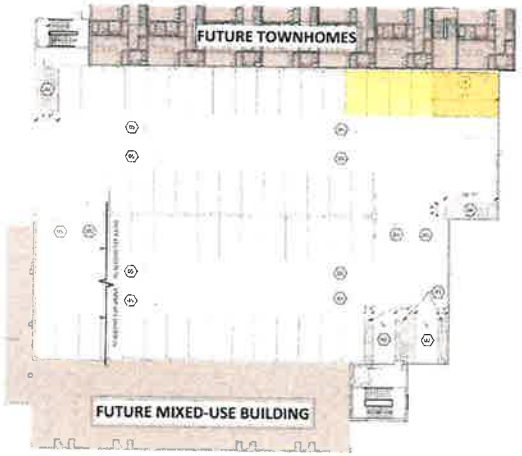
5C A206 FOURTH TIER STRIPING PLAN



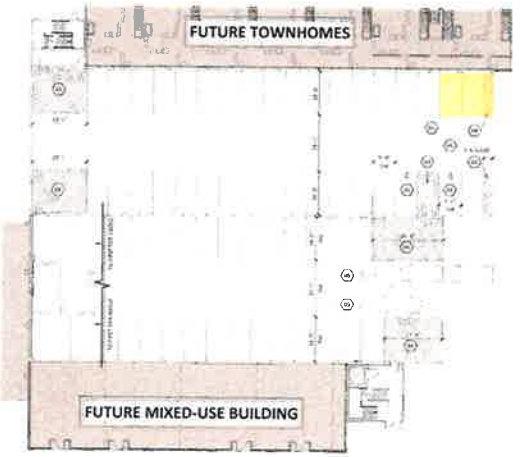
3C A206 THIRD TIER STRIPING PLAN



7A A206 SECOND TIER STRIPING PLAN



5A A206 FIRST TIER STRIPING PLAN



3A A206 MAIN LEVEL TIER STRIPING PLAN

SHEET MATERIAL ID LIST

STRIPING PLAN KEYNOTES

JLG architects

PRELIMINARY: NOT FOR CONSTRUCTION

REVISION SCHEDULE

KILBOURNE GROUP
MERCANTILE MIXED-USE: RAMP
FARGO, ND

06/19/19
DESIGN DEVELOPMENT
19052

A208
STRIPING PLANS

WALKER CONSULTANTS

1660 South Highway 100, Suite 545
Minneapolis, MN 55416

952.595.9116
walkerconsultants.com

June 25, 2019
Revised October 3, 2019

Mr. James Gilmour
City of Fargo
Director of Strategic Planning
225 4th Street North
Fargo, ND 58102

Re: Proposal for Parking Consulting Services
Mercantile Downtown Parking Facility
Fargo, North Dakota

Dear Mr. Gilmour:

We are pleased to submit this proposal to provide professional consulting services to the City of Fargo (City) for the parking facility portion of the proposed Mercantile Mixed-use project. This proposal includes our understanding of the project, the proposed scope of services to be provided by Walker Consultants (Walker), a schedule for the work, and establishes professional fees for services.

PROJECT UNDERSTANDING

The project is a mixed-use development including parking facility, retail, and residential spaces as developed by the Kilbourne Group. The site is bounded by Broadway north, 4th Avenue North and 5th Street North and 5th Avenue North in downtown Fargo. The parking facility is anticipated to be 6 levels (5 supported) and provide parking for approximately 375 vehicles. Parking areas may be separated between different user groups including monthly permits, residential, office, and public/transient parkers. Other uses in the project will be approximately 11,000 square feet of retail space to be located at the grade level adjacent to Broadway and 4th Avenue North, five levels of apartments above the retail space, and walkup townhomes on the north facade of the parking facility.

We understand that the City would own the parking facility and a private developer will own the retail, apartment, and walkup townhome residential spaces. Collectively these two entities will form the Ownership Group for the project. Walker will provide professional parking consulting services to the City and serve as Owner's representative as it relates to parking. We understand that the Developer driven design group will perform as the lead design professional of record for the project and we will provide consulting to them on behalf of the City.

SCOPE OF SERVICES

This proposal includes Owner's parking functional design review services and future, as authorized Owner's representative services. Schematic level parking functional review services shall provide for items including parking functional design, striping, accessibility, and construction materials selection. Additional subsequent

services may include Construction document review that may include structural durability, operations, PARCS, building code and limited field representative services as required to perform Construction administration oversight of pay applications.

As Owner's Representative for the project, Walker's role will focus on design and technical parking items as well as design and construction quality reviews including administrative review of pay applications. In general terms, Walker's role on this assignment will be to review the proposed construction documents to assure the City will receive a well-functioning , high value parking facility meeting typical standards for the building type. We understand others will be contracted to focus on the development agreement, legal matters, project financial strategy, and assure the City's interests are represented within the project's Ownership Group.

GENERAL

1. Walker will serve as the City's representative with a focus on protecting the City's interests for design and construction of the parking facility.
2. Provide project oversight for garage design and procurement, coordinating with the City of Fargo departments (Planning & Development, Facilities Management and Building Department) as required.
3. Walker will attend Owner meetings as required to communicate project findings. Include (3) meetings provided during course of project duration, typically coordinated with site observation. Start-up, mid construction and punchlist meeting.

The Scope of Services to be provided by Walker are described as follows:

I. SCHEMATIC DESIGN REVIEW

1. Meet with representatives of the City and other appropriate parties to confirm the project requirements, budget, and overall schedule.
2. Working with Owner and Architect, confirm project programmatic requirements of the parking facility.
3. Review the parking functional design for the parking structure identifying the following:

    a. Internal vehicular circulation efficiency (square feet per car)
    b. Overall footprint dimensions
    c. Location of entrances and exits
    d. Gating and parking equipment requirements
    e. Provisions for pedestrian walkway connections

4. Suggest preliminary allocation of parking user groups (public, permit, residential, office, etc.)
5. Assist with code review to determine parking facility requirements.
6. Review preliminary striping for the parking facility, in accordance with Federal, City of Fargo, and State of North Dakota requirements.
7. Assist with determining the floor elevation, number and location of stairs and elevators.
8. Review active and passive security features, and in conjunction with the City, review the desired level of security to be included in the parking facility.
9. Describe minimum standards, acceptable materials, and acceptable manufacturers for critical structural and waterproofing components.

10. Suggest drainage requirements and floor drain locations. Walker to assist establishment of floor drainage strategies within parking facility as requested.
11. Suggest lighting design criteria (illuminance and uniformity) for parking areas, entry/exit areas, and pedestrian areas for safety/security and operational requirements.
12. Review the code-required fire protection system(s) for the parking structure.
13. Participate in design review meetings with Developer's architects and in presentation of the schematic design documents.
14. Review schematic drawings providing a letter report of our functional design review comments with suggested corrective actions.
15. Review construction cost estimate for the parking facility portion of the project.

II. CONSTRUCTION DOCUMENT REVIEW

1. Attend design meetings as requested by the City and Developer's Architects, providing advice as to issues of importance to City, including but not limited to, parking facility design and functionality issues and structural issues pertaining to the parking facility and to the entire project including the other uses as they affect the City property and parking facility.
2. Review updated parking functional plans for the selected option illustrating:

    a. Updated vehicular and pedestrian circulation in the parking areas.
    b. Updated parking layout including bay sizes, parking stall size, turning radii, and ramp slopes.
    c. Building service access.
    d. Parking entry/exit lane layouts.
    e. Review internal parking signage.

3. Advise Developer's Architects on parking design issues as they affect the private development.
4. Review Construction Documents for functional and vehicular signage/ wayfinding components of the parking facility, and stair towers prepared by Developer's architects.
5. Review Architect's parking drainage design to confirm positive drainage and review patron comfort.
6. Review technical specifications for Divisions 03 (concrete), 07 (waterproofing systems) 09 (paint), 10 (signage), & 11 (parking equipment) related to structural durability and parking functional design.
7. Review final design drawings and specifications at 90% completion for conformance with design development documents and project goals.
8. Assist with parking accessible design layouts and signage.
9. Assist with electric vehicle charging program development, charger system specification and design implementation.
10. Design review respond with written letter report of project review comments.
11. Review cost alternatives with Developer's architects and the City.

III. CONSTRUCTION ADMINISTRATION

We have budgeted time commensurate with expected observation and review of the project during construction as follows:

1. Field questions, assess project schedule, and respond to questions of City staff
2. Provide job site observations to observe the quality of work and conformance with construction documents. Job site visits will be at intervals appropriate to the stage of construction, anticipated to be monthly during construction activity for pay application verification.

3. Garage site observation shall begin during foundation construction and be complete at substantial completion. Garage site observations (11) thus total including owner meetings and punchlist review shall be provided.
4. Provide Garage and site observation written summary reports. Reports to identify project work completion percentage estimate, notation of work in progress, work completed, and work not in general conformance with plans and specifications.
5. Review Architect/Engineer's punchlist at substantial completion and provide recommendations to City staff for additional corrective action as appropriate.
6. Conduct a final punch list at substantial completion of parking related project work and prepare a final statement of review completion and note any warranty items requiring remedy not listed by design team or contractor.

WORK NOT IN SCOPE

1. Review of shop drawings is not provided. This service may be contracted as an additional service as requested by City.
2. Services to perform QC testing, or to provide any construction administration services for the mixed-use building.

SCHEDULE

We understand that project will be designed in summer 2019 for a fall 2019 construction start. Accordingly, we will work to a mutually agreed schedule accommodating project development as design progresses.

PROFESSIONAL FEE

We propose providing these services as follows. The Schematic, Construction Documents and Construction Administration services will be provided including expense on a lump sum basis per individual Phase/Task authorizations. Any Additional services requested by the City for Design and Construction Administration phases will be performed on an hourly basis at our standard hourly rates plus project-related expenses, as directed by the City. Fees and expenses for each Phase/Task are suggested in the below table:

PHASE/TASK	PROPOSED FEE	CLIENT AUTHORIZATION
Schematic Design	$5,000.00	07 15 2019 City of Fargo
Construction Documents	$6,500.00	
Construction Administration	$42,000.00	
Standard of Care Insurance	$1,000.00	
Expenses (included)		
TOTAL FEE PROPOSED	$54,500.00	

Reimbursable expenses outside of those proposed will be billed at 1.15 times the cost of travel and living expenses, purchase or rental of specialized equipment, photographs and renderings, document reproduction, postage and delivery costs, long distance telephone and facsimile charges, additional service consultants, and other project related expenses.

TERMS AND CONDITIONS

The fees quoted herein shall remain firm for 90 days from receipt of this proposal. All services will be performed according to the terms and conditions of the attached General Conditions of Agreement for Design Services.

WALKER'S QUALITY POLICY

Walker Consultants is committed to fully understanding your requirements for this project and meeting those requirements on time and within budget. We will provide responsive, cooperative, and high quality professional services. If this proposal does not meet your requirements, please let us know and we will gladly modify it.

We thank you for the opportunity to serve as Owner's Representative on parking matters for this most important project and look forward to providing the City of Fargo with the high level of responsiveness and professionalism expected from Walker. Please review this proposal and let me know if you have any questions or need any changes.

Sincerely,

WALKER CONSULTANTS

Scott R. Froemming, PE
Vice President

Enclosures General Conditions of Agreement for Design Services
Standard Billing Rates for Basic Services

AUTHORIZATION

Trusting that this meets with your approval, we ask that you sign in the space below to acknowledge your acceptance of the terms contained herein, and to confirm your authorization for us to proceed. Please return one signed original of this agreement for our records.

CITY OF FARGO

Accepted by (Signature) _____

Printed Name _____

Title _____

Date _____

SERVICES

Walker Consultants ("Walker") will provide the CLIENT professional services that are limited to the work described in the attached letter ("the services"). Any additional services requested will be provided at our standard hourly rates or for a mutually agreed lump sum fee. The services are provided solely in accordance with written information and documents supplied by the CLIENT, and are limited to and furnished solely for the specific use disclosed to us in writing by the CLIENT. No third-party beneficiary is contemplated. All documents prepared or provided by Walker are its instruments of service, and any use for modifications or extensions of this work, for new projects, or for completion of this project by others without Walker's specific written consent will be at CLIENT's sole risk.

PAYMENT FOR SERVICES

Walker will submit monthly invoices based on work completed including reimbursable expenses. Reimbursable expenses for additional services will be billed at 1.15 times the cost of travel and living expenses, purchase or rental of specialized equipment, photographs and renderings, document reproduction, postage and delivery costs, long distance telephone and facsimile charges, additional service consultants, and other project related expenses. Payment is due upon receipt of invoice. If for any reason the CLIENT does not pay Walker within thirty (30) days of date of invoice, Walker may, at its option, suspend or withhold services. The CLIENT agrees to pay WALKER a monthly late charge of one and one-half percent (1.5%) per month of any unpaid balance of the invoice.

STANDARD OF CARE

Walker will perform the services in accordance with generally accepted standards of the profession using applicable building codes in effect at time of execution of this Agreement. Walker's liability caused by its acts, errors or omissions shall be limited to $1,000,000.

PERIOD OF SERVICE

In the event that no contract administration phase services are to be provided by Walker, services shall be completed the earlier of (1) the date when final documents are accepted by the CLIENT or (2) thirty days after final documents are delivered to the CLIENT. If contract administration phase services are provided by Walker, services shall be complete upon the earlier of (1) the time of approval by Walker of final payment to the contractor or (2) thirty (30) days after completion of the work designed by Walker.

WALKER CONSULTANTS

STANDARD BILLING RATES
FOR BASIC SERVICES

PRINCIPALS

Senior Principal	$305.00
Principal	$255.00

PROJECT MANAGEMENT

Senior Project Manager	$245.00
Project Manager	$210.00
Assistant Project Manager	$170.00

CONSULTANTS

Senior Consultant	$245.00
Consultant	$210.00
Analyst / Planner	$170.00

RESTORATION CONSULTANTS

Senior Restoration Consultant	$245.00
Restoration Consultant	$210.00
Assistant Restoration Consultant	$175.00
Restoration Specialist	$170.00

DESIGN

Senior Engineer / Senior Architect	$205.00
Engineer / Architect	$180.00
Designer	$170.00

TECHNICAL

Senior Technician	$155.00
Technician	$140.00

SUPPORT

Senior Administrative Assistant / Business Manager	$115.00
Administrative Assistant	$95.00

Subject to annual adjustment on January 1 each year.

PRELIMINARY RESOLUTION APPROVING THE FINANCING OF THE MERCANTILE PROJECT, THE ISSUANCE OF BONDS, AND THE MERCANTILE DEVELOPMENT AGREEMENT

WHEREAS, the City of Fargo, North Dakota (the "City"), was approached by Great Plains Mercantile Holdings, LLC, a North Dakota limited liability company ("GPMH"), with a proposal to develop a mixed-use project that will include a parking garage, multi-family housing, and retail/office space (the "Project");

WHEREAS, the City and GPMH have negotiated a Development Agreement (the "Development Agreement") for the development of the Project;

WHEREAS, pursuant to Sections 4(d) and 4(m) of the Development Agreement, the City has agreed to provide certain funding for the garage portion of the Project (the "City's Contribution"), subject to the terms of the Development Agreement;

WHEREAS, the City desires to enter into the Development Agreement and may issue its bonds (the "Bonds") to finance all or a portion of (i) the City's Contribution and (ii) costs of issuance for the Bonds (together, the "Project"), recognizing that the City may obtain financing of a portion of the total sum to be financed from a separate source to be approved by the City Commission at a later date, said portion expected to total $2,000,000 more or less;

BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota, as follows:

1. The City hereby approves the Development Agreement in substantially the form submitted, and the Mayor and the City Auditor are hereby authorized and directed to execute the Development Agreement on behalf of the City.

2. The approval hereby given to the Development Agreement includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the City officials authorized by this resolution to execute the Development Agreement. The execution of the Development Agreement by the appropriate officer or officers of the City shall be conclusive evidence of the approval of the Development Agreement in accordance with the terms hereof.

3. The City hereby gives preliminary approval to the borrowing of funds to finance the Project in a principal amount currently estimated to be approximately $11,535,000 and not to exceed $13,600,000. The staff and officers of the City are hereby authorized and directed to take all necessary or appropriate action to arrange for the sale of the Bonds and to prepare all necessary documentation for such financing, including, without limitation, preliminary and final official statements and a final authorizing resolution to be considered by this City Commission.

4. The issuance of such Bonds is expressly conditioned on the adoption of a final bond resolution by this City Commission before the issuance of the Bonds.

5. This resolution shall take effect immediately upon adoption.

_____
Mayor

Attest:

_____
City Auditor

Date: _____, 2019

COMMISSIONER _____ introduced the foregoing resolution and moved its adoption. The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS _____.

The following were absent and not voting: _____,

and the following voted against the same: _____,

whereupon the resolution was declared duly passed and adopted.

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that the preceding resolution attached hereto is a full, true, and correct copy of the PRELIMINARY RESOLUTION APPROVING THE FINANCING OF THE MERCANTILE PROJECT, THE ISSUANCE OF BONDS, AND THE MERCANTILE DEVELOPMENT AGREEMENT adopted by the governing body of the City of Fargo at the meeting held on _____, 2019, and that such resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this _____ day of _____, 2019.

_____
City Auditor

(S E A L)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF FARGO, NORTH DAKOTA

AND

GREAT PLAINS MERCANTILE HOLDINGS, LLC

DATED AS OF OCTOBER ____, 2019

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EXHIBIT E	GPC Proposal
EXHIBIT F	Parking Agreement
EXHIBIT G	Guaranty
EXHIBIT H	Project Summary
EXHIBIT I	Mortgage
EXHIBIT J	Form of Certificate of Completion
EXHIBIT K	Disbursing Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the _____ day of _____, 2019 (the "Effective Date"), by and among the City of Fargo, a North Dakota municipal corporation (the "City") and Great Plains Mercantile Holdings, LLC, a North Dakota limited liability company ("GPMH").

RECITALS:

WHEREAS, GPMH approached the City with a proposal to develop the Project Parcel as mixed-use project that will include a parking garage, multi-family housing and commercial space;

WHEREAS, the proposal includes the construction and operation of a parking garage (the "Garage") as a fee-based facility pursuant to the Infrastructure Development Act, which parking garage and other general features of the Mercantile Project are described and depicted on the Project Summary.

WHEREAS, GPMH constitutes a "private operator" under the Infrastructure Development Act.

WHEREAS, upon completion of the Garage, GPMH has agreed to transfer ownership of the Garage to the City and to operate the Garage as more particularly described in this Agreement;

WHEREAS, the City has agreed to provide certain funding for the Garage, subject to the terms of this Agreement;

WHEREAS, this Agreement is executed to provide for the planning, design, financing, acquisition, development, and construction of the Mercantile Project.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Agreement, and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the City and GPMH covenant and agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Defined Terms.

In addition to other terms defined herein, the following terms used in this Agreement shall have the meaning set forth below:

"5th ROW Work" shall have the meaning set forth in Section 4.1(k) hereof.

"Agreement" shall mean this Development Agreement by and among the City and GPMH, as the same may be amended, modified or supplemented from time to time.

"Assemblage Closing Date" shall have the meaning set forth in Section 10.3 hereof.

"Assignment of Construction Contracts" shall mean an Assignment of Construction Contracts, Plans and Related Agreements by and among the City and GPMH in the form attached hereto as Exhibit D.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Fargo, North Dakota.

"Certificate of Completion" means a certificate in substantially the form of Exhibit J attached hereto.

"Change Order" means a written change order executed by both the City and GPMH which must state agreement upon all of the following: (i) the change in the Garage Work; (ii) the amount of the adjustment to the Guaranteed Project Cost, if any; and (iii) the adjustment in the Master Project Schedule, if any.

"City" shall mean the City of Fargo, a North Dakota municipal corporation.

"City Representative" shall mean Jim Gilmour, his designee, or any successor to the foregoing Person designated by the City by written notice to GPMH.

"City Contingency" shall mean the sum of $235,000.00, and available when and for the purposes set out in this Agreement.

"Claim" shall mean any claim, demand or dispute between or among the Parties relating to this Agreement or the Project.

"Commitment" shall have the meaning assigned to such term in Section 6.2(a) below.

"Condominium Documents" shall have the meaning assigned to such term in Section 5.1 below.

"Construction Contract" shall have the meaning assigned to such term in Section 4.1(f)(i) below.

"Construction Manager" shall mean Kilbourne Construction Management, LLC, a North Dakota limited liability company.

"Contamination" shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Project Parcel, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

"Contingencies Deadline" shall have the meaning set forth in Section 10.1 hereof.

"County" shall mean Cass County, North Dakota.

"Day" or "days" shall have the meaning set forth in Section 14.10 hereof.

"Defaulting Party" shall have the meaning set forth in Section 13.1 hereof.

"Disbursing Agreement" shall mean that Disbursing Agreement by and between the City, GPMH and the Title Company in substantially the form attached hereto as Exhibit K.

"Environmental Laws" shall mean all Laws, including any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; or (e) the protection of endangered or threatened species.

"Event of Default" shall have the meaning set forth in Section 13.1 hereof.

"Final Total Project Cost" is the actual, total project costs incurred or earned by GPMH in completing Garage Work.

"Force Majeure" shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the grant or withholding of any governmental approvals or permits needed for construction, commissioning, or other matters affecting this Agreement), material shortages, strikes, boycotts, lockouts or labor disputes, any other similar or like event or occurrence, or any other event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds, alone, shall not constitute Force Majeure.

"Garage" shall have the meaning assigned to such term in the second WHEREAS clause set forth above.

"Garage Closing" shall have the meaning assigned to such term in Section 6.1(b) below.

"Garage Parcel" shall mean the real property described on attached Exhibit B.

"Garage Plans" shall mean those certain construction ready documents for the Garage Work entitled "Mercantile Mixed-Use: Ramp", prepared by JLG Architects and stamped by Nicole Washburn with a stamp date of August 28, 2019.

"Garage Unit" shall have the meaning set forth in Section 5.1 hereof.

"Garage Work" shall have the meaning assigned to such term in Section 4.1(a).

"Guaranteed Project Cost" is the sum of all costs, except Change Orders and City's Contingency, estimated to complete the Garage Work set forth in the budget included in the GPC Proposal, which sum is $12,251,253.43.

"Governmental Authority" shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof having jurisdiction over the portion or characteristic of the Project being referenced.

"GPC Proposal" shall mean that certain proposal prepared by GPMH and approved by City, a copy of which is attached hereto as Exhibit E.

"GPMH" shall mean Great Plains Mercantile Holdings, LLC, a North Dakota limited liability company.

"GPMH Contingency" shall have the meaning set forth in Section 4.1(i) hereof.

"GPMH Fee" shall mean a sum of money equal to 3% of the sum of Total Project Hard Costs and Development Costs Subtotal (as such items are identified and categorized in the GPC Proposal) within the Guaranteed Project Cost or Final Total Project Cost, as the case may be. Unless affected by a Change Order or the Final Total Project Cost is less than the Guaranteed Project Cost, the GMPH Fee shall be $327,065.63.

"GPMH Representative" shall mean Mike Allmendinger, his/her designee, or any successor to the foregoing Person designated by GPMH by written notice to the City.

"Guarantor" shall mean Great Plains Opportunity Zone Fund, LLC, a Delaware limited liability company, or such other person or entity reasonably acceptable to City.

"Guaranty" shall mean that certain Guaranty in the form attached hereto as Exhibit G executed by Guarantor in favor of City.

"Infrastructure Development Act" shall mean North Dakota Century Code Chapter 48-02.1, as amended.

"Law" or "Laws" shall mean any law, statute, code, ordinance, rule, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

"Legal Requirements" shall mean present and future Laws (including Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Project.

"Master Project Schedule" shall mean the schedule attached hereto as Exhibit C and updated in accordance with this Agreement.

"Mercantile Project" shall have the meaning given to such term in Section 2.1(b) below.

"Mortgage" shall mean that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement granted by GPMH in favor of the City, in the form attached hereto as Exhibit I, encumbering the Garage Parcel.

"Non-defaulting Party" shall have the meaning set forth in Section 13.1(a) hereof.

"Parking Agreement" shall have the meaning set forth in Section 4.2 hereof.

"Party" or "Parties" shall mean one (1) or more of the City or GPMH.

"Permits" shall mean any permit, license or approval to be issued by any Person, including Required Environmental Permits, required for demolition, construction, installation, alteration or repair of any improvements related in any manner to the Project.

"Person" shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

"Pre-Approved Title Matters" shall have the meaning assigned to such term in Section 6.2 below.

"Primary Subcontract" shall have the meaning set forth in Section 4.1(f) hereof.

"Project" shall mean, collectively, the Mercantile Project, and all activities relating to the planning, acquisition, design, financing, development, and construction thereof.

"Project Agreements" shall mean the Parking Agreement, the Mortgage, the Disbursing Agreement, Assignment of Construction Contracts, and the Guaranty, as the same may be amended from time to time.

"Project Parcel" shall mean the real estate upon which the Garage and the Wrap shall be constructed and more-specifically the real estate comprising the Garage Parcel and the Wrap Parcel.

"Project Summary" shall mean the broad, general description and depiction of the Mercantile Project attached hereto as Exhibit H.

"Regulated Substances" shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a "hazardous substance," "hazardous waste," "toxic substance," "extremely hazardous substance," "toxic chemical," "toxic waste," "solid waste," "industrial waste," "residual waste," "municipal waste," "special handling waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste," "regulated substance," "pollutant" or "contaminant" or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws.

"Representative" or "Representatives" shall mean one (1) or more of the City Representative or the GPMH Representative.

"Required Environmental Permits" shall mean Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction of the Project.

"Response Action" shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Project Parcel, including the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

"State" shall mean the State of North Dakota.

"Statement of Costs" shall have the meaning set forth in Section 4.1(l) hereof.

"Soils Work" shall have the meaning set forth in Section 4.1(d) hereof.

"Survey" shall have the meaning given to such term in Section 6.2(b) below.

"Title Company" shall mean The Title Company, which will be the title company and disbursing agent in connection with the Project.

"Wrap" shall have the meaning given to such term in Section 2.1(b)(ii) below.

"Wrap Parcel" shall mean the real property described on attached Exhibit A.

"Wrap Plans" shall have the meaning assigned to such term in Section 8.1 below.

"Wrap Unit" shall have the meaning set forth in Section 5.1 hereof.

Section 1.2 Construction of Terms.

As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof is used herein, it shall mean "including, without limitation" and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or."

ARTICLE 2
PROJECT

Section 2.1 Project.

(a) In General. GPMH shall develop, design and construct the Project as set forth in this Agreement and the Project Agreements, as applicable. GPMH agrees to meet, confer, and consult with the City throughout any design modification and construction process as required in this Agreement and in the Project Agreements, or upon request of the City following reasonable notice.

(b) Project Components. GPMH shall own, develop, design and construct the Project to include: (i) the Garage consisting of at least 360 parking spaces, and (ii) a residential and commercial development on two (2) sides of the Garage including approximately 95,000 square feet of residential space and approximately 15,000 square feet of commercial space (the "Wrap"; collectively with the Garage, the "Mercantile Project").

Section 2.2 Project Representatives.

(a) GPMH Representative. GPMH has designated the GPMH Representative as its agent and representative authorized to act on behalf of GPMH with respect to the Project. The GPMH Representative is GPMH's exclusive representative insofar as this Agreement is concerned. All instructions from GPMH to the City relating to this Agreement shall be issued or made in writing (or as otherwise agreed to by the Parties) through the GPMH Representative. All communications and submittals from the City to GPMH with respect to matters covered by this Agreement shall be issued or made through the GPMH Representative, unless GPMH or the GPMH Representative shall otherwise direct in writing.

(b) City Representative. The City has designated the City Representative as its agent and representative authorized to act on the City's behalf with respect to the Project. The City Representative is the City's exclusive representative insofar as this Agreement is concerned. All instructions from the City to GPMH relating to this Agreement shall be issued or made in writing (or as otherwise agreed to by the Parties) through the City Representative. All communications and submittals from GPMH to the City with respect to matters covered by this Agreement shall be issued or made through the City Representative, unless the City or the City Representative shall otherwise direct in writing. GPMH recognizes that the City may have additional representatives involved in the Project; however, official determinations by the City must be made through the City Representative.

Section 2.3 City Process.

The Project is subject to normal City comprehensive plan, zoning, subdivision, environmental and historic approval processes, including traffic management plans, planned unit development, site plan and design reviews, conditional use permits, variances, and other applicable zoning and land use approvals.

ARTICLE 3
INTENTIONALLY OMITTED

ARTICLE 4
GARAGE CONSTRUCTION AND OPERATION

Section 4.1 Garage Construction.

(a) Garage Work. GPMH is responsible for performing, or causing others to perform, all work (collectively, the "Garage Work") required to design, develop and construct the Garage upon the Garage Parcel and pursuant to the Garage Plans and in accordance with all Laws and all requirements of this Agreement.

(b) Garage Plans. GPMH has delivered to City, and City has approved, the Garage Plans and the GPC Proposal. City may request changes to the Garage Plans, pursuant to the Change Order process set out herein.

(c) Change Orders. All Changes Orders must be accepted and executed by both GPMH and the City. GPMH's approval to any City-requested Change Order shall not be unreasonably withheld, conditioned or delayed and City's approval to any GPMH-requested Change Order shall not be unreasonably withheld, conditioned or delayed provided such GPMH-requested Change Order does not increase the Guaranteed Project Cost and/or delay the Master Project Schedule. GPMH or the City, as the case may be, shall respond to a requested Change Order within ten (10) days of receipt. No changes may be made to the Garage Plans or the Guaranteed Project Cost except through a mutually accepted and executed Change Order.

(d) City Contingency. City and GPMH acknowledge that GPMH has conducted soils tests over parts, but not all, of the Project Parcel, the Guaranteed Project Cost does not include any amount for Soils Work and GPMH has agreed to pay the first $100,000 of Soils Work necessary throughout the Project Parcel. City and GPMH also acknowledge the Garage Work will commence on or about November 1, 2019, and proceed throughout the winter months and the Guaranteed Project Cost is calculated based upon typical winter conditions. City shall make the City Contingency (limited to the amount set forth in Article 1, and no more) available to GPMH for ("Special Conditions"): (i) 40% of the costs of Soils Work occurring throughout the Mercantile Project (whether under the Garage Parcel or the Wrap Parcel) that exceeds $100,000.00; and/or (ii) increased costs of Garage Work resulting from harsher than typical winter conditions. Access to the City Contingency shall be subject to the approval of City, which approval City shall not unreasonably withhold or delay. GPMH shall segregate and specifically identify any City Contingency requested in draw requests and shall provide reasonable supporting information documenting the Special Condition encountered and the amount requested. If approved, City shall pay directly to GPMH, or provide to the Title Company to disburse to GPMH, the City Contingency requested. From and after all draw requests for Garage Work completed after May 1, 2020 have been processed and paid, City may, subject to the normal Change Order process, utilize all remaining City Contingency for items other than Special Conditions. For purposes of this Section, "Soils Work" shall mean the costs of assessing, removing, transporting, disposing of and replacing contaminated soils and/or undocumented fill. GPMH shall be under no obligation to first utilize the GPMH Contingency for Special Conditions, the Parties acknowledging that the City Contingency is intended as the primary resource for funding Special Conditions; provided, however, GPMH may utilize the GPMH Contingency for Special Conditions if and when the City Contingency is exhausted.

(e) Selection of Contractors and Subcontractors. GPMH shall be responsible for competitively bidding all aspects of the Garage Work. GPMH has submitted to City, and City has approved, the bidders list of each trade or portion of Garage Work. If any contractors or subcontractors are replaced, City shall have the right to actively participate in the solicitation and selection of proposed contractors and subcontractors and the review of all bids. Notwithstanding any participation by the City, GPMH shall be solely responsible to the City for the performance of all contractors and subcontractors.

(f) Construction Contract.

(i) All contracts entered into by GPMH with design professionals and all contractors shall not conflict with GPMH's obligations under this Agreement. GPMH shall deliver a copy of all such contracts to the City upon request and in any event prior to commencing construction. The general construction contract for the Garage Work (the "Construction Contract") with the Construction Manager and the subcontracts entered into by the Construction Manager (the "Primary Subcontracts") at a minimum must:

(A) be an AIA form construction contract with a guaranteed maximum price;

(B) with respect to the Construction Contract, identify a Construction Manager's fee (to be paid to Kilbourne Construction Management, LLC, the Construction Manager) of 3% of the Base Construction Cost amount within the Total Project Hard Costs Subtotal (as such items are identified and categorized in the GPC Proposal) which, in turn, are within the Guaranteed Project Cost or Final Total Project Cost, as the case may be. The Construction Manager's fee under the GPC Proposal is identified as being $292,464, which is 3% of the Base Construction Cost described in the GPC Proposal as $9,748,785;

(C) identify the City as an express, intended third-party beneficiary;

(D) state that the City has the right to enforce all warranties and material and equipment guarantees as described herein;

(E) with respect to the Construction Contract, require payment and performance bonds in a form reasonably acceptable to the City, with a dual obligee rider in favor of both GPMH and the City; and

(F) be reasonably acceptable to the City.

(ii) GPMH shall not do any one or more of the following without the City's prior written consent: execute a letter of intent, or similar document, with respect to the Construction Contract or a Primary Subcontract or execute a Construction Contract or Primary Subcontract that is inconsistent with either the Master Project Schedule or the GPC Proposal; assign its rights under the Construction Contract; or execute either or both any change orders or any construction change directives.

(iii) Prior to the Contingencies Deadline, GPMH shall deliver to the City an Assignment of Construction Contracts in the form attached hereto as Exhibit D and prior to commencing any construction on the Garage, GPMH shall deliver a consent to the Assignment of Construction Contracts from the Construction Manager in the form attached as Exhibit D.

(g) Warranties. GPMH warrants to the City that: (a) materials and equipment used in connection with the Garage Work will be of good quality and new and (b) that the Garage Work will conform to the requirements of this Agreement, the Garage Plans and the Construction Contract. Prior to the Garage Closing, GPMH shall require its contractors to promptly correct any of the Garage Work which fails to conform to the requirements of the Garage Plans and this

Agreement, whether or not fabricated, installed or completed. At the Garage Closing, GPMH shall assign all warranties for the Garage Work to City, and thereafter, GPMH shall cooperate and take all necessary steps with City to require the contractors to promptly correct any of the Garage Work which fails to conform to the requirements of this Agreement, the Garage Plans or the Construction Contract, whether discovered before or after substantial completion (but only until and subject to required notices so as to be covered under a warranty in the Construction Contract) and whether or not fabricated, installed or completed.

(h) Design Cost Reimbursement. If City does not approve the Construction Contract or the Primary subcontracts, then the City may elect to terminate this Agreement and, provided further that GPMH is not in default hereunder, City shall reimburse GPMH for the reasonable design costs allocable to the Garage and incurred by GPMH prior to the date the City notifies GPMH of its election to terminate.

(i) GPMH Contingency Use. GPMH must report in writing and on a monthly basis to the City (a) the then-current amount of the contingency, including all credits to, and deductions from, the 5% contingency shown in the GPC Proposal (the "GPMH Contingency"), and (b) the changes anticipated in the following month in the amount of the GPMH Contingency, including all credits to, and deductions from.

(j) GPMH Fee. GPMH shall receive the GPMH Fee, an amount defined in Section 1.1 herein, as set forth in the Disbursing Agreement.

(k) Adjacent Infrastructure. The Parties acknowledge that certain work in and to the 5th Street right of way adjacent to the Garage is necessary to make the Garage useable for its intended purpose (the "5th ROW Work") and the 5th ROW Work is not part of the Garage Work or the Guaranteed Project Cost. On or prior to February 15, 2020, GPMH will design, bid and prepare a total cost proposal for the 5th ROW Work and share the results thereof with City. Thereafter, City and GPMH will determine whether the 5th ROW Work will be added to the Garage Work through the Change Order process, will be subject to a separate agreement between City and GPMH for GPMH to undertake the 5th ROW Work or whether City will contract directly for the 5th ROW Work. If the Parties don't agree on any course of action prior to March 31, 2020, then City will then City will contract directly for the 5th ROW Work and City shall reimburse GPMH for any out of pocket expenses incurred by GPMH prior thereto with respect designing and bidding the 5th ROW Work.

(l) Statement of Costs. Within fifteen (15) days following the substantial completion of the Garage Work, GPMH shall submit to the City a statement (the "Statement of Costs"), prepared and certified by GPMH, or an authorized agent thereof, setting forth GPMH's calculation of the actual Final Total Project Cost. The Statement of Costs shall include reasonable supporting documentation of amounts paid (or to be paid) to various project vendors, and the nature of each item comprising of GPMH's calculation of the Final Total Project Cost. The City shall have a period of thirty (30) days after receipt of the Statement of Costs to review the same and provide written objections, if any, to GPMH together with an explanation and computation of the alleged discrepancies. The City may, upon reasonable prior written notice, audit GPMH's books and records with respect to Final Total Project Cost and Garage Work at any time prior to the expiration of such thirty (30) day period.

(m) City Funding. The City's payment of the lesser of the Final Total Project Cost and the Guaranteed Project Cost shall be pursuant to the Disbursing Agreement; provided, however, if City and GPMH have both waived all of their respective contingencies in Article 10, City shall, on the Assemblage Closing Date, make its first payment to GPMH of Guaranteed Project Cost in the sum of $1,022,000.00, representing the Total Land Costs category of Guaranteed Project Cost set out on the GPC Proposal.

(n) City Inspection Rights. The City shall have the right to supervise and inspect all aspects of the Garage Work and GPMH shall cooperate with any representative or agent of the City undertaking such supervision or inspection.

(o) Compliance. No approval by the City shall relieve GPMH of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to properly construct the Garage. No approval by the City shall constitute a waiver of an Event of Default. In accordance with the Infrastructure Development Act, the construction of the Garage must satisfy the City's standards of construction for infrastructure of the same functional classification.

Section 4.2 Garage Operations.

The City and GPMH will enter into a parking operations, maintenance and use agreement (the "Parking Agreement") in substantially the form attached hereto as Exhibit F on or before the Garage Closing which sets forth the terms of the management and operation of the Garage as a fee-based facility consistent with the Infrastructure Development Act.

Section 4.3 Application of Other Law.

In accordance with the Infrastructure Development Act, GPMH is not excused from the necessity of obtaining environmental, navigational, design or safety approvals that would be required if the Garage were constructed or operated by a public body. In accordance with the Infrastructure Development Act, to the extent the Garage will be incorporated into the existing infrastructure of the City, any applicable City department or other public authority may review and approve the Garage to the same extent as it would for a similar public constructed facility.

ARTICLE 5
CONDOMINIUM

Section 5.1 Creation of Condominium.

GPMH shall be responsible for all property division and condominium creation necessary to divide the Project Parcel into separate units with separate parcel identification numbers, one such unit consisting of the Garage (the "Garage Unit") and one or more such units consisting of the Wrap (the "Wrap Unit"). All property division documents (including, without limitation, plats, surveys, easements, association documents, etc.) are subject to the City's prior approval. Within 120 days after the execution of this Agreement, GPMH shall deliver to the City, for its review and approval, property division and condominium documentation, including a proposed survey map depicting the proposed units, condominium declaration, condominium association by laws and formation documentation, a declaration of covenants, conditions and restrictions and

any other documentation required by applicable law for the property division and condominium creation (collectively, such documents, as approved by the City are the "Condominium Documents"). The Condominium Documents must include mutual easements or other rights relating to use and administration of common areas mutually benefiting each parcel, must provide that the condominium association shall consist of only two (2) voting members, one member for the Garage Unit and one member, collectively, for any/all Wrap Units, and must provide that each of the Garage Unit and the Wrap Unit(s) include air rights above the respective units. The City will not unreasonably withhold or delay approval of the Condominium Documents. The Condominium Documents may provide that GPMH can, at any time, create one or more sub-condominiums for the Wrap unit(s), but as pertains to the condominium created by the Condominium Documents, any/all units within the Wrap shall be entitled to only one vote, provided such sub-condominiums do not reduce or alter the City's rights or obligations under the Condominium Documents. Further, the Parties anticipate some type of physical connectivity between the Garage and another contemplated project North of and adjacent to the Garage – in particular, north of the Garage Parcel - and they will reasonably cooperate to make adequate provision therefore in the Condominium Documents, if advisable, otherwise pursuant to separate agreements between City and the developer of such other project. The Parties acknowledge and recognize that, pursuant to the Condominium and/or such other agreements that may be advisable the following so-called "24/7/365" "market rate" parking rights in and to the Garage shall be established: (a) for tenants of the Wrap, 100 Full Time parking spaces shall be made available to Eligible Occupants. "Full Time Parking Spaces" shall mean parking spaces located in the Garage Unit that are rented per monthly "market rate" parking contracts that do not have restrictions as to days or hours of use. "Eligible Occupants" shall mean tenants or owners (in the event the Wrap Unit is later sub-condominiumized) of residential spaces within the Wrap Unit. If at any time there are less than 100 Full Time Parking Spaces issued to Eligible Occupants and one or more Eligible Occupants wish to obtain a Full Time Parking Space, the Owner of the Garage Unit shall promptly reduce the number of Full Time Parking Spaces issued to others, reduce the number of short term parking spaces within the Garage Unit and/or undertake other actions as are necessary to provide up to 100 Full Time Parking Spaces to Eligible Occupants; and (b) for tenants of certain real property commonly known as the "Black Building" and located at 110 and 114 North Broadway, Fargo, ND, (hereinafter "Black Building Tenants") up to 75 spaces that if not currently available from time to time shall be placed at the top of a waiting list as described herein. If at any time there are less than 75 Full Time Parking Spaces issued to Black Building Tenants, all parking spaces in the Garage Unit programmed as Full Time Parking Spaces are then contracted for and one or more Black Building Tenants wish to obtain a Full Time Parking Space, the Black Building Tenant(s) wishing to obtain a Full time Parking Space shall be placed onto a waiting list for Full Time Parking Spaces and given priority over all other persons or entities other than Black Building Tenants wishing to obtain a Full Time Parking Space and having priority among Black Building Tenants wishing to obtain a Full Time Parking Space based upon the date and time of the request to be placed on the waiting list. If the owners of the Black Building agree and submit a written statement to the owner of the Garage Unit, they may agree to additional rules and directions among those properties as to waiting list priorities for such 75 Full Time Parking Spaces.

Section 5.2 City and County Process.

All property division and condominium creation is subject to normal City and County comprehensive plan, zoning, and subdivision approval processes.

ARTICLE 6
PURCHASE AND SALE OF GARAGE

Section 6.1 Sale and Purchase.

(a) Property. GPMH will sell and convey to the City, and the City will purchase and accept from GPMH, the Garage Unit. Prior to the Garage Closing, the Garage Unit must be a separate, legal condominium unit with its own parcel identification number.

(b) Closing. The closing of the sale and purchase of the Garage Unit (the "Garage Closing") will occur on or before the first business day which is thirty (30) days after the date a Certificate of Occupancy is issued for the Garage or the date the Garage is fully operational (including all parking control equipment,), whichever occurs later.

(c) Purchase Price. The purchase price for the Garage Unit is $10.00, which is payable by the City to GPMH in cash at the Garage Closing. This purchase price has been determined by the City to be appropriate under the Infrastructure Development Act.

Section 6.2 Title and Survey.

(a) Title. Title to the Garage Unit shall only be subject to those easements, restrictions, and other matters of record, the Condominium Documents approved by the City and the Mortgage (the "Pre-Approved Title Matters"). GPMH shall furnish to the City at the City's request either a commitment for an owner's policy of title insurance or an updated abstract of title covering the Garage Unit (the "Commitment"), issued by the Title Company. The City shall be responsible for the cost of the Commitment and the premium for any policy issued pursuant to the Commitment and any desired endorsements thereto.

(b) Survey. The City shall have the right to obtain an ALTA as-built survey of the Garage Unit in form reasonably acceptable to the City (the "Survey"). GPMH shall promptly deliver to the City all documents in its possession which will assist the City in having the Survey created (including constructions documents, plans, etc.).

(c) Corrections to Title. If any objections to Commitment or Survey are made (other than to the Pre-Approved Title Matters), GPMH will correct such objections prior to the Garage Closing.

Section 6.3 Garage Closing Documents.

(a) City Closing Documents. The City will deliver to GPMH at the Garage Closing:

(i) the purchase price specified in Section 6.1(c);

(ii) Parking Agreement executed by the City; and

(iii) any other items required by this Agreement for the Garage Closing.

(b) GPMH Closing Documents. GPMH will deliver to the City at the Garage Closing:

(i) a warranty deed duly executed by GPMH conveying the Garage Unit to the City;

(ii) an assignment of permits and warranties in form reasonably acceptable to the City;

(iii) Parking Agreement executed by GPMH;

(iv) an affidavit satisfactory to the City that GPMH is not a foreign person under Section 1445 of the United States Internal Revenue Code;

(v) an affidavit satisfactory to the City and the Title Company that at the Garage Closing there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against GPMH, no labor, services, materials, or machinery furnished to the Garage Unit for which construction liens could be filed, and no unrecorded interests in the Garage Unit which have not been fully disclosed to the City;

(vi) a resolution of the manager of GPMH authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of GPMH; and

(vii) any other items required by this Agreement or reasonably required by the Title Company for the Garage Closing.

Section 6.4 Garage Closing Costs and Prorations.

(a) Closing Costs. The City and GPMH will each be responsible for its legal, accounting and other expenses associated with the Garage Unit transaction contemplated by this Article 6 up to and including the date final adjustments are made pursuant hereto. GPMH will be responsible for correction of title and any document recording fees required for correction of title. City will be responsible for document recording fees. City will pay the closing fee and any escrow fees imposed by the Title Company in connection with this transaction.

(b) Taxes and Assessments. Real estate taxes and installments of special assessments for the Garage Unit shall be prorated by the Parties to the Assemblage Closing Date, GPMH responsible for those for the period of time prior to the Assemblage Closing Date and City responsible for those from and after the Assemblage Closing Date.

(c) Income and Expenses. All income and operating expenses relating to the Garage Unit will be prorated as of the close of business of the day before the Garage Closing. GPMH will be responsible for the expenses and entitled to the revenues accrued or applicable to the period prior to the Garage Closing. The City will be responsible for the expenses and entitled to the revenues accrued or applicable to the day of the Garage Closing and thereafter, subject to the Parking Agreement.

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

ARTICLE 7
INTENTIONALLY OMITTED

ARTICLE 8
MIXED-USE CONSTRUCTION

Section 8.1 In General.

GPMH will initially own, privately finance, develop, design and construct the Wrap. GPMH shall develop plans and specifications, including site plans (the "Wrap Plans"), for each component of the Wrap. The Wrap Plans shall provide for construction of the Wrap generally consistent with material elements of the Project Summary and in conformity with this Agreement and all applicable state and local laws and regulations, and any deviation thereof shall require the written approval of City Representative.

Section 8.2 Interference.

GPMH acknowledges that portions of the construction of the Wrap will occur after the Garage Closing. GPMH will use commercially reasonable and diligent efforts to minimize any interference, to the extent practicable, in the operation of the Garage in connection with its construction of the Wrap.

Section 8.3 Renaissance Program.

GPMH will seek approval for the Wrap to be part of the Renaissance Zone Program, but shall not seek a payment in lieu of tax incentive. Any determination by the City with respect to the Renaissance Zone Program shall be subject to the City's standard application, review and approval process.

Section 8.4 Tax Increment Financing.

GPMH shall not seek any Tax Increment Financing benefits with respect to the Wrap.

Section 8.5 Public Infrastructure.

GPMH acknowledges that the City may perform work on the streets, sidewalks, alleys, electrical distribution systems, and other public infrastructure and utilities surrounding, or

serving, the Project and may, in the City's discretion, finance such work in accordance with applicable Law and City policy using tax increment financing, special assessments or any other financing method available to the City, to which the Project would be subject. Notwithstanding anything in the forgoing to the contrary: (a) No portion of any cost of the 5th ROW Work shall be charged to GPMH or assessed against the Wrap; and (b) it shall be the responsibility of GPMH, at its cost, to demolish and reconstruct so much of the Fourth Avenue and Broadway Street sidewalks as is necessary to construct the Wrap.

Section 8.6 Lease to City.

GPMH will lease to City, and City will rent from GPMH, a portion of the Wrap whereby City (or its designees for policing and parking staff functions) will occupy approximately 2,000 rentable square feet of space on the first floor of the Southeast portion of the Wrap (East of vacated alley) with the following general parameters and otherwise on terms and conditions acceptable to both Parties: base rent is $22/sf per year; "triple net" – City shall pay CAM; 10 year term; and $25/sf fit-up allowance. Failure of the Parties to execute and deliver to one another a final and binding lease agreement on or beforeSeptember 30, 2020, shall be conclusive evidence that the Parties were unsuccessful in reaching final terms and conditions of such leasing arrangement and thereafter neither Party shall have any further rights or obligations to one another with respect to such potential leasing arrangement.

ARTICLE 9
SCHEDULE

Section 9.1 Master Project Schedule.

The Master Project Schedule attached as Exhibit C to this Agreement sets forth the anticipated start, completion and duration dates for the various components of the Project and related facilities as set forth herein and GPMH shall develop, design and construct the Project in accordance with such Master Project Schedule. In addition, the Parties agree as follows:

(a) The anticipated date of substantial completion for the Garage is December 31, 2020.

(b) The anticipated date of substantial completion of the Wrap is June 30, 2022.

Section 9.2 Progress Notifications.

(a) GPMH will periodically provide the City with written notification related to meeting the agreed upon construction benchmarks and the then current timing of delivery of the Project. The written notification shall be provided to the City on the following schedule:

(i) At the start of construction of the Garage, GPMH will provide notification to the City that construction has begun.

(ii) GPMH will provide an update of construction progress and confirmation of the ability of GPMH to meet the anticipated dates of substantial completion set forth in Exhibit C, every month, thereafter.

(b) Subject to Section 13.5 below, if at any time written notification or observation of the City reasonably indicates any one or more of the Garage or the Wrap will not be completed by the anticipated dates of substantial completion set forth in Exhibit C, respectively, unless GPMH is able to appropriately satisfy the City, within forty-five (45) days of written notice from the City with respect to the Garage and within ninety (90) days with respect to the Wrap, that construction will be completed by the applicable delivery date, or the Parties agree upon a later delivery date, the City will have the right to take over construction of the Garage or the Wrap (subject to the rights of any mortgagees of the Wrap, but with such rights shall come the obligations of such mortgagees to perform the obligations of GPMH under this Agreement as to the Wrap), as applicable, to ensure the timely completion of the Garage or the Wrap, without any increased cost to the City and GPMH will reimburse the City for all costs incurred in connection therewith.

ARTICLE 10
CONTINGENCIES

Section 10.1 City Contingencies.

The City's obligations under this Agreement are subject to satisfaction or waiver by the City of the following contingencies on or before November 15, 2019 (the "Contingencies Deadline"):

(a) execution by the applicable parties of the following Project Agreements:

(i) Mortgage;

(ii) Disbursing Agreement;

(iii) Assignment of Construction Contracts; and

(iv) Guaranty.

(b) City's receipt of reasonable financial information for the Guarantor in form reasonably satisfactory to the City;

(c) no pending or threatened litigation or Legal Requirements, injunction or other order that prohibits the consummation of this Agreement; and

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

The contingencies set forth in this Section 10.1 are intended for the sole benefit of City and may be insisted upon or waived, in whole or in part, by the City in its sole discretion.

Section 10.2 Unsatisfied Contingencies.

If any contingency set out in Section 10.1 is unsatisfied as of the Contingencies Deadline, the City may at its option:

(a) waive the contingency and proceed to perform under this Agreement; or

(b) terminate this Agreement.

If this Agreement is so terminated, no Party shall have the right to specific performance or damages for default of this Agreement. Notwithstanding anything herein to the contrary, waiver by the City of any contingencies in its favor shall not be deemed a waiver of any obligations of GPMH expressly set forth in this Agreement.

Section 10.3 GPMH Contingencies.

GPMH's obligations under this Agreement are subject to, on or before the Contingencies Deadline, GPMH acquiring from certain landowners adjacent to the Project Parcel certain fee title and easement interests integral to the Mercantile Project and approval from City that the Wrap has been accepted into the Renaissance Zone Program. The date on which GPMH acquires the last of all such interests shall be deemed the "Assemblage Closing Date". The contingencies set forth in this Section 10.3 are intended for the sole benefit of GPMH and may be insisted upon or waived, in whole or in part, by the GPMH in its sole discretion. If any contingency set out in Section 10.3 is unsatisfied as of the Contingencies Deadline, GPMH may at its option waive the contingency and proceed to perform under this Agreement; or terminate this Agreement. Notwithstanding anything herein to the contrary, waiver by GPMH of any contingencies in its favor shall not be deemed a waiver of any obligations of the City expressly set forth in this Agreement. If this Agreement is so terminated, no Party shall have the right to specific performance or damages for default of this Agreement.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES OF THE CITY

The City hereby represents and warrants to GPMH that, as of the date of execution of this Agreement:

Section 11.1 Organization.

The City is a municipal corporation, duly organized, validly existing, and in good standing under the Laws of the State.

Section 11.2 Authorization, Validity, and Enforceability.

The City has all requisite power and authority to enter into this Agreement and the Project Agreements to which it is a party and to carry out the actions contemplated hereby and thereby. The execution, delivery, and performance by the City of this Agreement and the Project Agreements to which it is a party have been duly authorized and approved by all necessary City action. This Agreement and the Project Agreements to which it is a party, when executed, shall constitute the valid and legally binding obligations of the City, enforceable against the City in accordance with their respective terms.

Section 11.3 No Conflicts.

The execution, delivery, and performance of this Agreement and the Project Agreements to which it is a party shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which the City is a party or by which the City or its assets may be bound or affected.

Section 11.4 No Violation of Laws.

The City has complied in all material respects with all Legal Requirements and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement or the Project Agreements to which it is a party.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES OF GPMH

GPMH hereby represents and warrants to the City that, as of the date of execution of this Agreement:

Section 12.1 Organization.

GPMH is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State. This Agreement and all Project Agreements to which GPMH is a party shall be binding upon and enforceable against GPMH.

Section 12.2 Authorization, Validity and Enforceability.

GPMH has all requisite power and authority to enter into this Agreement and the Project Agreements to which it is a party and to carry out the actions contemplated hereby and thereby. The execution, delivery, and performance by GPMH of this Agreement and the Project Agreements to which it is a party have been duly authorized and approved by all necessary GPMH company action. This Agreement and the Project Agreements to which it is a party, when executed, shall constitute the valid and legally binding obligations of GPMH, enforceable against GPMH in accordance with their respective terms.

Section 12.3 No Conflicts.

The execution, delivery, and performance of this Agreement and the Project Agreements to which it is a party shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which GPMH is a party or by which GPMH or its assets may be bound or affected.

Section 12.4 No Violations of Laws.

GPMH has complied in all material respects with all Legal Requirements and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement or the Project Agreements to which it is a party.

Section 12.5 Litigation.

To the actual knowledge of GPMH, there is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against GPMH seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution of this Agreement or the Project Agreements to which it is a party and the performance of the transactions contemplated herein or therein or the performance of GPMH hereunder or thereunder.

ARTICLE 13
DEFAULT AND REMEDIES

Section 13.1 Events of Default.

Each of the following shall constitute a default by any Party (the "Defaulting Party") under this Agreement ("Event of Default"), but further subject to Section 13.5 below:

(a) the failure to make any payment of any sums payable under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the Defaulting Party by either of the other Parties (the "Non-defaulting Party");

(b) the Defaulting Party's violation or failure to perform or observe any covenant or condition of this Agreement (other than as provided in (a) above), which failure or violation shall continue for thirty (30) days after receipt of written notice to the Defaulting Party by the Non-defaulting Party identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure within a period of time that does not unreasonably cause risk to achieving the milestones contemplated by the Master Project Schedule, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Defaulting Party promptly advise the Non-defaulting Party of the Defaulting Party's intention to duly institute all steps necessary to cure such default and the Defaulting Party promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion, but such additional time for cure shall not exceed ninety (90) days after receipt of the initial written notice to the Defaulting Party by the Non-defaulting Party;

(c) the Defaulting Party's violation or failure to perform or observe any covenant or condition of any other Project Agreement beyond any applicable notice and cure period set forth in such Agreement, provided if no such notice and cure is set forth in such Project Agreement, then if such violation or failure shall continue for thirty (30) days after receipt of written notice to the Defaulting Party by the Non-defaulting Party identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure within a period of time that does not unreasonably cause risk to achieving the milestones contemplated by the Master Project Schedule, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Defaulting Party promptly advise the Non-defaulting Party of the Defaulting Party's intention to duly institute all steps necessary to cure such default and the Defaulting Party promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such

cure to completion, but such additional time for cure shall not exceed ninety (90) days after receipt of the initial written notice to the Defaulting Party by the Non-defaulting Party;

(d) (i) the Defaulting Party shall institute voluntary proceedings in bankruptcy, (ii) involuntary proceedings in bankruptcy shall be instituted against the Defaulting Party that are not discharged within sixty (60) days thereafter, (iii) any proceedings shall be instituted by or against the Defaulting Party under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within sixty (60) days after filing, (iv) a trustee or receiver shall be appointed for the Defaulting Party by any court of competent jurisdiction, or (v) the Defaulting Party shall make a general assignment for the benefit of its creditors; or

(e) any representation or warranty made by the Defaulting Party herein shall prove to have been incorrect when made, in any material respect.

Section 13.2 Remedies Upon Event of Default.

Upon the occurrence of an Event of Default, each Non-defaulting Party will have the right to exercise any of the following remedies:

(a) exercise any remedy afforded hereunder;

(b) seek specific performance or other equitable relief; or

(c) sue for money damages.

Except as set forth in Article 10, no Party shall be entitled to terminate this Agreement.

Section 13.3 Injunctive Relief; Specific Performance.

The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature, and that a breach or violation of this Agreement shall result in immediate and irreparable harm. In the event of any such actual or threatened breach or violation of this Agreement caused by a Party, the Party or Parties so harmed shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. The Parties waive the right to assert the defense that a breach of this Agreement can be compensated adequately in damages in an action at law.

Section 13.4 Remedies Cumulative; Limitation on Remedies; Waiver.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives

in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder, nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party or Parties may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

Section 13.5 Risk of Certain Losses; Force Majeure.

The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure event and without the fault of the Party claiming an extension of time to perform or excuse from performance. Without limitation of and in addition to the foregoing, if a Party hereto shall be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of a Force Majeure event, then the performance of such obligation shall be excused for the period of delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. The Party claiming a Force Majeure event shall remedy the Force Majeure event with all reasonable dispatch, and shall make commercially reasonable efforts to avoid the adverse impacts thereof and to resolve the event or occurrence once it has occurred in order to resume performance. As soon as the Party claiming a Force Majeure event is able to resume performance of all or a portion of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Parties. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.

Section 13.6 Limited Recourse Obligations; Members and Officers Not Liable.

(a) All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any member, director, officer, employee, or agent of the City in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the City in such capacity.

(b) All covenants, stipulations, promises, agreements, and obligations of GPMH contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of GPMH and not of any shareholder, member, partner, owner, manager, officer, employee, or agent of GPMH in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any shareholder, member, partner, owner, manager, officer, employee, or agent of GPMH in such capacity.

ARTICLE 14
MISCELLANEOUS

Section 14.1 Certificate of Completion.

GPMH will notify the City when it has fully completed construction of each of the Garage and the Wrap. The City will promptly inspect the Garage or the Wrap, as the case may be, to determine whether the Garage or the Wrap has been constructed in substantial conformity with the approved plans. If the City determines that either the Garage or the Wrap have not been constructed in conformity with the approved plans, the City shall, within ten (10) days of its inspection, deliver a written statement to the GPMH Representative indicating in adequate detail the specific respects in which the Garage or the Wrap have not been constructed in substantial conformity with the approved plans. At such time as the City determines that either the Garage or the Wrap have been fully completed in conformity with the approved plans, the City shall promptly deliver a Certificate of Completion to the GPMH Representative. Delivery of a Certificate of Completion by the City does not constitute a representation or warranty by the City that the Wrap Plans or either the Garage or the Wrap comply with any applicable building code, health or safety regulation, zoning regulation, or other law or regulation, or that either the Garage or the Wrap will meet the qualifications for issuance of a certificate of occupancy, or that either the Garage or the Wrap will meet the requirements of users of the Garage, or the Wrap. The Certificate of Completion shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments. It will be the responsibility of GPMH to provide for the prompt recording of the Certificate of Completion and the payment of any costs for such recording.

Section 14.2 Hazardous Materials.

Except as set forth in Section 4.1(d), GPMH agrees that the City will bear no responsibility or liability to GPMH for any Regulated Substances, any Contamination or any violation of Environmental Laws in, on, under or around the Project Parcel, and GPMH will indemnify and hold harmless the City against all claims, costs, judgments, liabilities and damages (including reasonable attorneys' fees) arising out of the presence or release of any Regulated Substances, any Contamination or any violation of Environmental Laws.

Section 14.3 Insurance.

(a) GPMH Required Insurance. GPMH, and any successor in interest to GPMH, shall obtain and continuously maintain on the portions of the Project so owned by such party the insurance coverages set forth below until the a Certificate of Completion has been issued for the Garage and the Wrap, and, from time to time at the request of the City, furnish a certificate of insurance to the City evidencing that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that GPMH must obtain and continuously maintain, provided that GPMH shall obtain, or require its general contractor to obtain and provide, the insurance described in clause (i) below prior to the commencement of construction of any portion of the Project:

(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 applicable portion of the Project at the date of completion. The Builder's risk insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for contractor and architectural services and expenses required as a result of such insured loss.

(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 naming the City as an additional insured, with limits against bodily injury and property damage of not less than $5,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis. GPMH's policies shall be primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of GPMH's performance under this Agreement.

(iii) To the extent required by law, workers compensation insurance, with statutory coverage, and if available without additional costs, such policy shall include a waiver of subrogation clause or endorsement in favor of the City.

(iv) Business Automobile Liability Insurance with a minimum limit of $2,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage (to accomplish the above-required limits, an umbrella excess liability policy may be used). In addition, the following coverages should be included: Owned (if GPMH in fact owns any vehicles), Hired, and Non-owned Automobiles.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies authorized under the laws of the State of North Dakota to assume the risks covered by such policies.

Section 14.4 Survival of Covenants, Agreements, Representations, and Warranties.

No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, or agreement in this Agreement.

Section 14.5 Additional Documents and Approval.

The Parties, whenever and as often as any shall be reasonably requested to do so, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement. The Mayor of City is, on behalf of City, authorized to: (a) evaluate and confirm the satisfaction or waiver of City's contingencies set out in Article 10 and to execute any document, agreement or

the like evidencing same; and (b) to extend the Contingencies Deadline to a date not later than January 31, 2020, and execute an amendment to this Agreement with GPMH limited to such purpose.

Section 14.6 Good Faith.

In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties acknowledges that the other Parties have acted to date in good faith and each Party agrees to continue to act in good faith. Each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent, or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent, or other similar efforts does not constitute a warranty, representation, or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

Section 14.7 Assignment; Property Transfers.

Prior to the issuance of a Certificate of Completion for the entirety of the Project, except as otherwise contemplated in Article 6 above (with respect to transferring the Garage Unit to the City), GPMH shall not make, or suffer to be made, any total or partial sale, assignment, conveyance, lease, or other transfer, with respect to this Agreement, the Project or the Project Parcel, or any part thereof or any interest therein, or enter into any contract or agreement to do any of the same, without the prior written approval of the City, which may be withheld in the City's sole discretion. No transfer of, or change with respect to, ownership in the Project, the Project Parcel 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 Project Parcel and the completion of the Project that the City would have had, had there been no such transfer or change. No sale, assignment, conveyance, lease, or other transfer or approval by the City of the same shall be deemed to relieve GPMH, or any other party bound in any way by this Agreement or otherwise with respect to the completion of the Project, from any of its obligations with respect thereto.

Notwithstanding the foregoing, GPMH shall have the right to (without the consent of the City under this Section 14.7): (i) sell or transfer the Wrap to any entity controlling, controlled by or under common control with GPMH; or (ii) after the Garage Closing, sell or transfer portions of the Wrap for which a certificate of occupancy has been issued or which has been completed to a "vanilla shell" level, ready for installation of electrical and mechanical distribution services and other interior finishes; provided in any such case GPMH shall not be relieved of its obligations under this Agreement, including with respect to the completion of the Project.

Section 14.8 Notice of Matters.

In the event that any Party receives knowledge about any matter that may constitute a breach of any of its warranties or covenants set forth in this Agreement that arises after the date of this Agreement, it shall promptly notify the other Party of the same in writing.

Section 14.9 Form of Notices; Addresses.

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

To GPMH:	Great Plains Mercantile Holdings, LLC, ATTN: Mike Allmendinger, President 210 Broadway N., Suite 300 Fargo, ND 58102
with a copy to:	Dan Bueide Bueide Law Firm 1 2nd St. N, Suite 100 Fargo, ND 58102
To the City:	City Auditor Fargo City Hall 200 N. 3rd Street Fargo, ND 58102
and to:	Director of Strategic Planning and Development ATTN: James Gilmour Fargo City Hall 200 N. 3rd Street Fargo, ND 58102
with copy to:	Office of the Fargo City Attorney Attn: Erik R. Johnson 505 Broadway, Suite 206 Fargo, ND 58102

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

Section 14.10 Calculation of Time.

Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

Section 14.11 Time is of the Essence.

Time is of the essence of this Agreement. The Parties shall use good faith, diligent efforts to cause the work contemplated by this Agreement to meet the Master Project Schedule.

Section 14.12 Incorporation by Reference.

All exhibits, schedules, or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

Section 14.13 Entire Agreement.

Except as otherwise provided in this Agreement and the other written agreements contemplated hereby, this Agreement contains the sole and entire agreement among the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements among them with respect to such subject matter.

Section 14.14 Amendment.

No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

Section 14.15 Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties.

Section 14.16 Headings.

The headings contained in this Agreement are for convenience of reference only and shall not limit, extend, or otherwise affect the meaning hereof.

Section 14.17 No Presumption Against Drafter.

This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

Section 14.18 Severability.

If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid, or unenforceable under any Laws or Legal Requirements, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by any Laws or Legal Requirements.

Section 14.19 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise, except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

Section 14.20 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the Laws of the State, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the Laws of the State, and the Parties agree that all legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State, Cass County, District Court and shall not be removed therefrom to any other federal or state court.

Section 14.21 Counterparts.

This Agreement may be executed and delivered in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

Section 14.22 Relationship of Parties.

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

Section 14.23 Approval by Parties.

In each instance where the approval or consent of any Party may be sought or is required, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

Section 14.24 Run with the Land.

The covenants and restrictions set forth in this Agreement shall run with the title to the Project Parcel and shall be binding upon all present and future owners and occupants of the Property; provided, however, that the covenants and restrictions set forth in the Agreement shall inure only to the benefit of the City and may be released or waived in whole or in part at any

time, and from time to time, by the sole act of the City, and variances may be granted to the covenants and restrictions herein contained by the sole act of the City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GPMH:

GREAT PLAINS MERCANTILE HOLDINGS, LLC, a North Dakota limited liability company

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

CITY:

CITY OF FARGO,
a North Dakota municipal corporation

By: _____

Name: _____

Title: Mayor

ATTEST:

By: _____

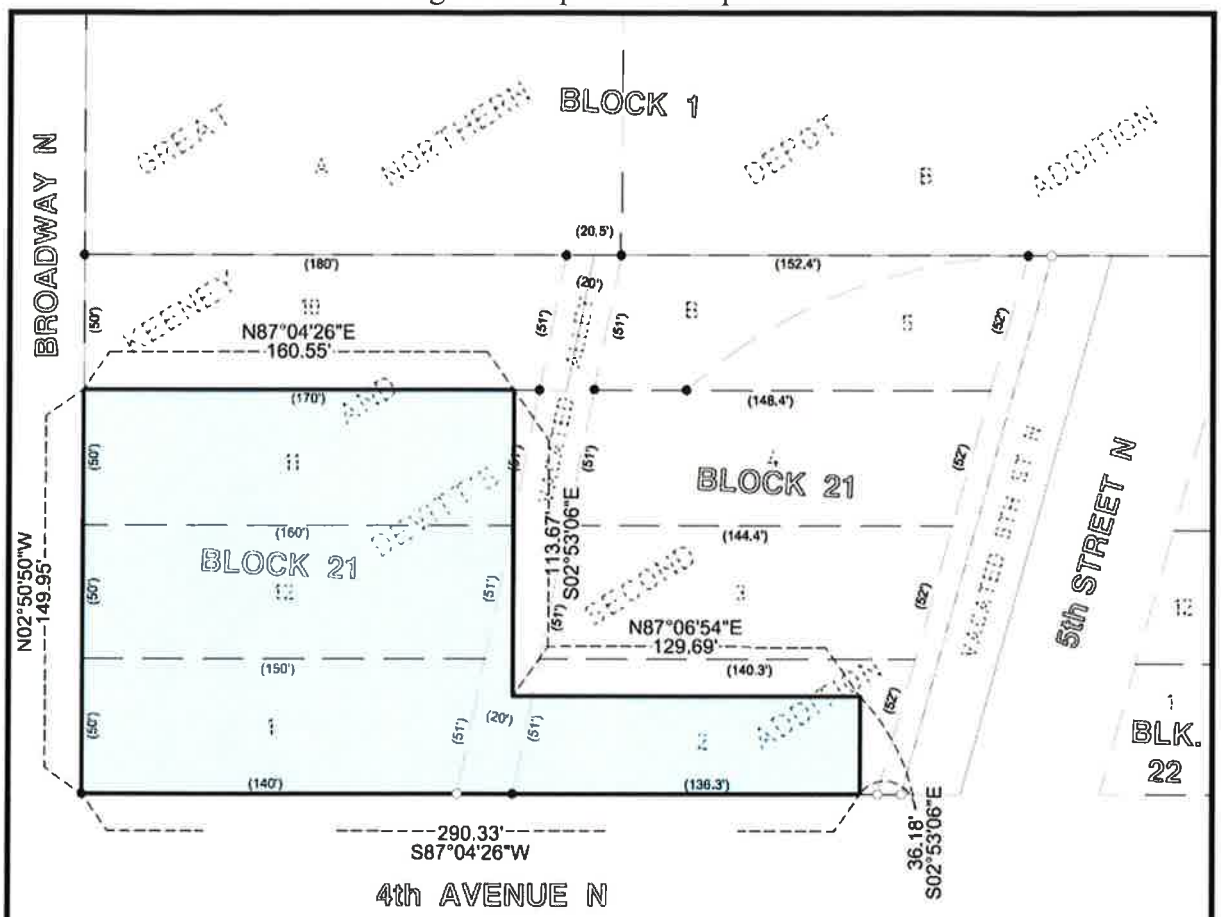
Name: _____

Title: City Auditor

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

EXHIBIT A

Legal Description of Wrap Parcel



Scale: 1"= 60'

FEE PARCEL - EXHIBIT A

Houston Engineering Inc	Fargo P 701.237.5065 F 701.237.5101	Drawn by KNS	Date 9-11-19	KILBOURNE GROUP BLOCK 21, KEENEY & DEVITT'S SECOND ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0008	SHEET 1 of 2
		Checked by CAS	Scale AS SHOWN		

DESCRIPTION - FEE PARCEL EXHIBIT A:

THAT PART OF LOTS 1, 2, 11, 12, AND THE ADJACENT VACATED ALLEY, BLOCK 21, KEENEY AND DEVITT'S SECOND ADDITION, CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID BLOCK 21; THENCE NORTH 02°50'50" WEST (ASSUMED BEARING), ALONG THE WEST LINE OF SAID BLOCK 21, FOR A DISTANCE OF 149.95 FEET TO THE NORTHWEST CORNER OF SAID LOT 11; THENCE NORTH 87°04'26" EAST, ALONG THE NORTH LINE OF SAID LOT 11, FOR A DISTANCE OF 160.55 FEET; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 113.67 FEET; THENCE NORTH 87°06'54" EAST FOR A DISTANCE OF 129.69 FEET; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 36.18 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID BLOCK 21; THENCE SOUTH 87°04'26" WEST FOR A DISTANCE OF 290.33 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 28,778 SQUARE FEET, MORE OR LESS.

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Curtis A. Skarphol, hereby certify that this survey, plan, or report was prepared by me or under my direct supervisor, and that I am a duly registered land surveyor under the laws of the state of North Dakota.

Dated this _____day of _____, 20_____.

_____
Curtis A. Skarphol
Registered Land Surveyor No. 4723

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 20_____, before me, a notary public, personally appeared Curtis A. Skarphol, registered land surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

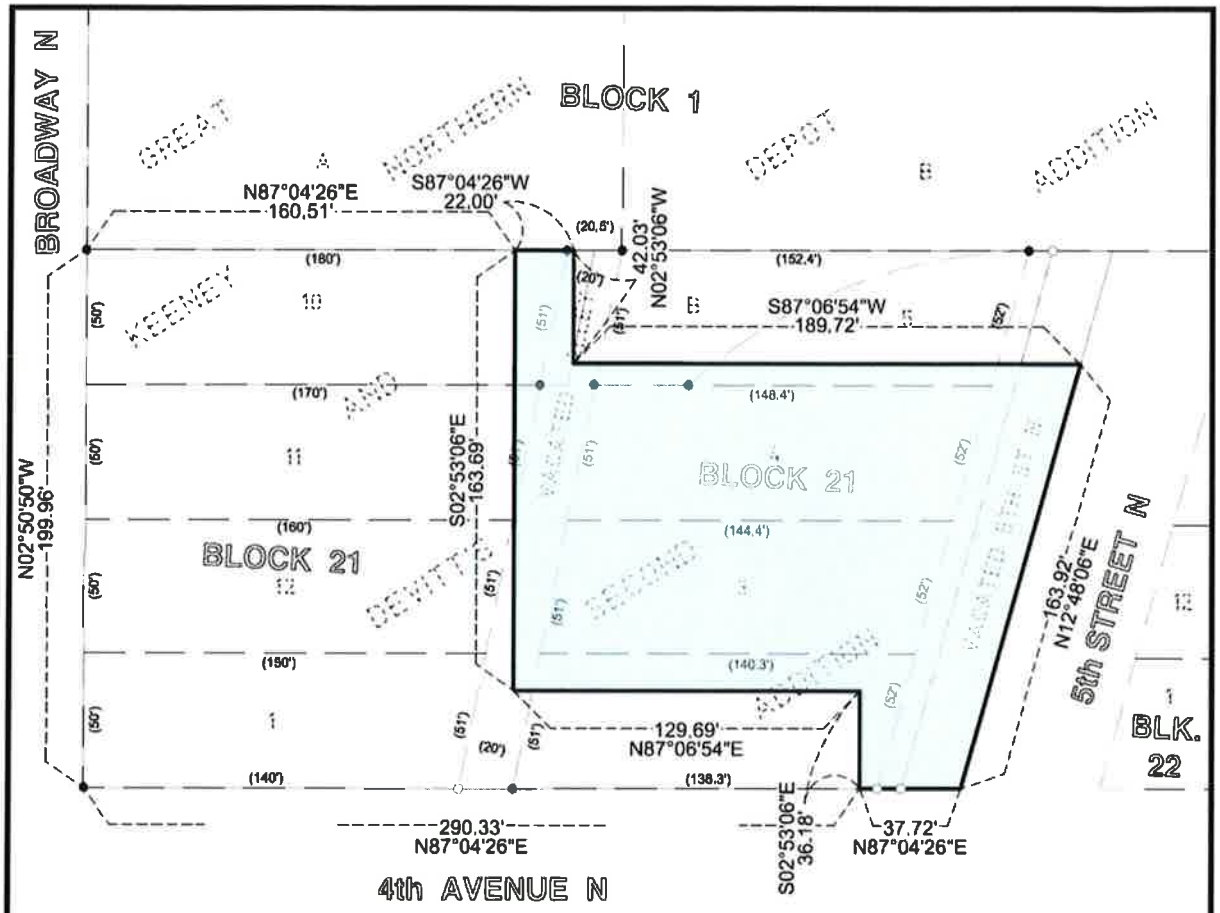
Notary Public: _____

FEE PARCEL - EXHIBIT A

Houston Engineering Inc.	Fargo P: 701.237.5065 F: 701.237.5101	Drawn by: KNS	Date: 9-11-19	KILBOURNE GROUP BLOCK 21, KEENEY & DEVITT'S SECOND ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0008	SHEET 2 of 2
		Checked by: CAS	Scale: AS SHOWN		

EXHIBIT B

Legal Description of Garage Parcel



N

Scale: 1"= 60'

FEE PARCEL - EXHIBIT B

Houston Engineering Inc	Fargo P: 701.237.5065 F: 701.237.5101	Drawn by: KNS	Date: 9-11-19	KILBOURNE GROUP BLOCK 21, KEENEY & DEVITT'S SECOND ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0008	SHEET 1 of 2
		Checked by: CAS	Scale: AS SHOWN		

DESCRIPTION - FEE PARCEL EXHIBIT B:

THAT PART OF LOTS 2, 3, 4, 5, 10, 11, AND THE ADJACENT VACATED ALLEY, BLOCK 21, KEENEY AND DEVITT'S SECOND ADDITION, AND THAT PART OF LOT B, BLOCK 1, GREAT NORTHERN DEPOT ADDITION, ALL IN THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, AND ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID BLOCK 21; THENCE NORTH 02°50'50" WEST (ASSUMED BEARING), ALONG THE WEST LINE OF SAID BLOCK 21, FOR A DISTANCE OF 199.96 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; THENCE NORTH 87°04'26" EAST, ALONG THE NORTH LINE OF SAID LOT 10, FOR A DISTANCE OF 160.51 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 163.69 FEET; THENCE NORTH 87°06'54" EAST FOR A DISTANCE OF 129.69 FEET; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 36.18 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID BLOCK 21; THENCE NORTH 87°04'26" EAST, ALONG THE SOUTH LINE AND SOUTH LINE AS EXTENDED EAST OF SAID BLOCK 21 FOR A DISTANCE OF 37.72 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY LINE OF VACATED 5TH STREET NORTH AS DEPICTED ON DOCUMENT NO.???, ON FILE AND OF RECORD AT THE CASS COUNTY RECORDER'S OFFICE; THENCE NORTH 12°48'06" EAST, ALONG THE EASTERLY LINE OF SAID VACATED 5TH STREET NORTH, FOR A DISTANCE OF 163.92 FEET; THENCE SOUTH 87°06'54" WEST FOR A DISTANCE OF 189.72 FEET; THENCE NORTH 02°53'06" WEST FOR A DISTANCE OF 42.03 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 10 AS EXTENDED EAST; THENCE SOUTH 87°04'26" WEST, ALONG THE NORTH LINE AS EXTENDED EAST AND ALONG THE NORTH LINE OF SAID LOT 10, FOR A DISTANCE OF 22.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 26,153 SQUARE FEET, MORE OR LESS.

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Curtis A. Skarphol, hereby certify that this survey, plan, or report was prepared by me or under my direct supervisor, and that I am a duly registered land surveyor under the laws of the state of North Dakota.

Dated this _____day of _____, 20_____.

_____
Curtis A. Skarphol
Registered Land Surveyor No. 4723

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 20_____, before me, a notary public, personally appeared Curtis A. Skarphol, registered land surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

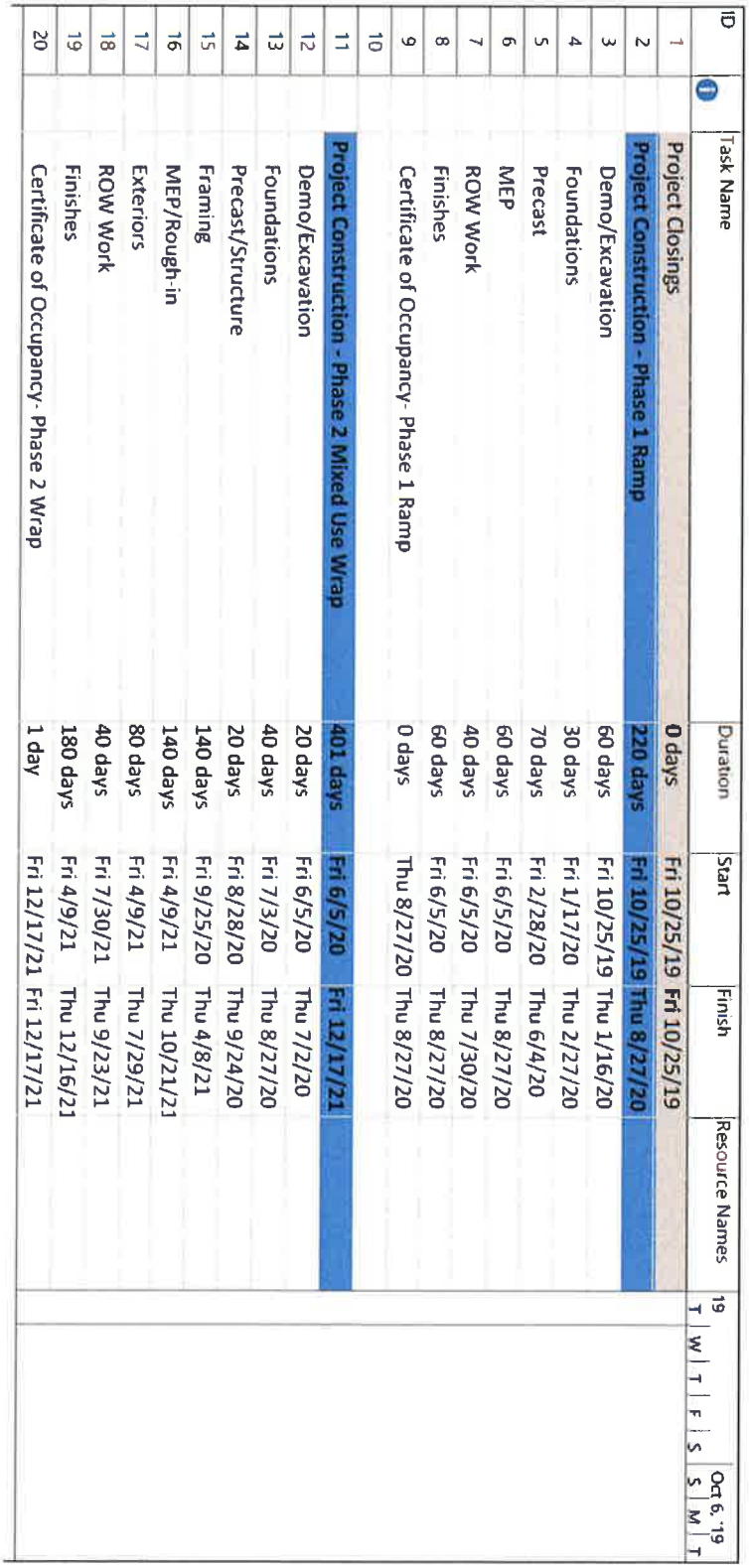
Notary Public: _____

FEE PARCEL - EXHIBIT B

Houston Engineering Inc.	Fargo P: 701.237.5065 F: 701.237.5101	Drawn by KNS	Date 9-11-19	KILBOURNE GROUP BLOCK 21, KEENEY & DEVITT'S SECOND ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA	SHEET 2 of 2
		Checked by CAS	Scale AS SHOWN	PROJECT NO. 7862-0008	

EXHIBIT C

Master Project Schedule



ID	Task Name	Duration	Start	Finish	Resource Names
1	Project Closings	0 days	Fri 10/25/19	Fri 10/25/19	
2	Project Construction - Phase 1 Ramp	220 days	Fri 10/25/19	Thu 8/27/20	
3	Demo/Excavation	60 days	Fri 10/25/19	Thu 1/16/20	
4	Foundations	30 days	Fri 1/17/20	Thu 2/27/20	
5	Precast	70 days	Fri 2/28/20	Thu 6/4/20	
6	MEP	60 days	Fri 6/5/20	Thu 8/27/20	
7	ROW Work	40 days	Fri 6/5/20	Thu 7/30/20	
8	Finishes	60 days	Fri 6/5/20	Thu 8/27/20	
9	Certificate of Occupancy- Phase 1 Ramp	0 days	Thu 8/27/20	Thu 8/27/20	
10					
11	Project Construction - Phase 2 Mixed Use Wrap	401 days	Fri 6/5/20	Fri 12/17/21	
12	Demo/Excavation	20 days	Fri 6/5/20	Thu 7/2/20	
13	Foundations	40 days	Fri 7/3/20	Thu 8/27/20	
14	Precast/Structure	20 days	Fri 8/28/20	Thu 9/24/20	
15	Framing	140 days	Fri 9/25/20	Thu 4/8/21	
16	MEP/Rough-in	140 days	Fri 4/9/21	Thu 10/21/21	
17	Exteriors	80 days	Fri 4/9/21	Thu 7/29/21	
18	ROW Work	40 days	Fri 7/30/21	Thu 9/23/21	
19	Finishes	180 days	Fri 4/9/21	Thu 12/16/21	
20	Certificate of Occupancy- Phase 2 Wrap	1 day	Fri 12/17/21	Fri 12/17/21	

EXHIBIT D

Assignment of Construction Contracts, Plans and Related Agreements

THIS ASSIGNMENT OF CONTRACTS, PLANS AND RELATED AGREEMENTS is made and executed by GREAT PLAINS MERCANTILE HOLDINGS, LLC, a North Dakota limited liability company (hereinafter referred to as the "GPMH") to and for the benefit of the CITY OF FARGO, a North Dakota municipal corporation (hereinafter referred to as the "City"), as of the _____ day of _____, 2019. Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Loan Agreement (hereinafter defined).

W I T N E S S E T H:

WHEREAS, GPMH and the City have entered into a Development Agreement dated _____, 2019 ("Development Agreement"); and

WHEREAS, GPMH has or will enter into and execute certain contracts and agreements relating to the Garage (as defined in the Development Agreement) and/or the improvements to be constructed and installed thereon and therein, and receive certain plans relating to the Garage Work, as may be more particularly described on Exhibit A attached hereto and hereby made a part hereof (all collectively "Contracts" and each a "Contract"); and

WHEREAS, GPMH desires to execute this Assignment, in accordance with the terms and provisions hereof, in order to induce the City to perform in accordance with the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by GPMH, GPMH hereby agrees that the foregoing recitals are true and correct and are by this reference hereby made a part hereof as if fully set forth below, and further covenants and agrees as follows:

1. GPMH hereby assigns its rights, title and interests in, under and pursuant to the Contracts to the City, it being understood and agreed that, if an Event of Default (as that term is defined in the Development Agreement) does not occur, and the Garage is completed in accordance therewith, and all other obligations of GPMH thereunder are fully performed, then this Assignment shall terminate. If the consent of any other party to any Contract is required to said assignment, GPMH agrees to promptly obtain the same and to deliver the same to the City substantially in the form of consent attached to this Assignment.

2. If such an Event of Default does occur, without same being cured within applicable cure periods, then the City may, at its option, take over GPMH's position under the Contracts, or any of them which the City may elect. In such event, the City shall have all of the rights of GPMH under said Contract(s). If the City does not expressly assume a Contract, in writing, the City shall have no obligation to perform any of GPMH's obligations thereunder.

3. The City's taking over of GPMH's position under any Contract shall be preceded by at least three (3) business prior written notice to GPMH, such notice to persons and otherwise in accordance with the notice provisions of the Development Agreement.

4. In addition, GPMH hereby grants to the City a security interest in GPMH's rights, title and interests in, to and under each Contract, if and to the extent that a security interest may be granted therein under the North Dakota Uniform Commercial Code, and GPMH acknowledges that the City shall have all of the rights and remedies with respect thereto provided for by the North Dakota Uniform Commercial Code, in addition to the other rights and remedies herein granted to the City, in the event of the occurrence of an Event of Default under the Development Agreement.

5. GPMH hereby represents and warrants to the City no Contract constitutes or creates a lien, charge or encumbrance on the title of the Garage Parcel.

6. Subject to the provisions hereof, this Assignment shall be binding upon GPMH and its successors and assigns, and shall inure to the benefit of the City and its successors and assigns. The City may assign its rights under this Assignment, without the consent of GPMH, but GPMH may not assign its rights or obligations under any of the Contracts or under this Assignment without the prior written consent of the City.

[*Remainder of page intentionally blank.*]

IN WITNESS WHEREOF, GPMH has caused this instrument to be executed as of the day and year first above written.

GREAT PLAINS MERCANTILE HOLDINGS, LLC, a North Dakota limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

CONTRACTS

[Construction Contract]

[Garage Plans]

[Form of Third Party Consent]

CONSENT

The undersigned hereby consents to the foregoing Assignment, authorizes the City to rely upon and to utilize the Contract(s), without any payment by the City to the undersigned therefor, and agrees to cooperate with the City regarding the completion of construction of the Garage or the rights and obligations set forth in the Contract after any Event of Default under the above–mentioned Development Agreement; provided, however, that, if the City requires the undersigned to perform any work or obligations for which the undersigned has not already been paid, the City shall pay the undersigned for said work or obligation, but the City shall have no obligation to pay for any work or obligations already performed for which the City has paid GPMH and for which GPMH has failed to pay the undersigned.

Dated as of the _____ day of _____, 2019.

_____

By: _____

Printed Name: _____

EXHIBIT E

Hard Costs		
PARKING RAMP - Construction Costs		**Phase I Garage Allocation**
	Base Construction Costs	$ 9,748,785
	Construction Contingency (5% of construction costs)	$ 487,439
	Construction Management Fee (3% of construction costs)	$ 292,464
TOTAL PROJECT HARD COSTS		**$ 10,528,688**

Soft Costs		
PARKING RAMP - Development Costs		**Phase I Garage Allocation**
	Phase II Environmental Site Assessment	$ 5,500
	Architect, Structural, Mechanical & Electrical Design, Civil	$ 300,000
	Architectural reimbursable expenses	$ 20,000
	Topographic Survey, ATLA Survey	$ 5,000
	Geotechnical Exploration	$ 3,000
	Architecture & Engineering Drawings for Condos Docs	$ 10,000
	Condo Association Agreement/Legal	$ 20,000
	Landscape Design	$ 10,000
Development Costs subtotal		**$ 373,500**
	GPMH Development Fee (3% of development and construction costs)	$ 327,066
TOTAL PROJECT SOFT COSTS		**$ 700,566**

Land Costs		
Purchase of Land		
	Land Purchase at $45/sf	$ 1,012,000
	Adjacent Property Purchase	$ 10,000
TOTAL LAND COSTS		**$ 1,022,000**

TOTAL PROJECT COST	**$ 12,251,254**

EXHIBIT F
PARKING AGREEMENT

THIS PARKING AGREEMENT, dated _____, 20___ (this "Agreement"), is entered into by and between the City of Fargo, North Dakota, a municipal corporation (together with its successors and assigns, the "City") and the GREAT PLAINS MERCANTILE HOLDINGS, LLC, a North Dakota limited liability company (together with its successors and assigns, "GPMH").

RECITALS:

WHEREAS, the City and GPMH have entered into that certain Development Agreement, dated October [___], 2019 (the "Development Agreement") regarding the design, construction and ownership of certain improvements, including the Mercantile Garage.

WHEREAS, the City owns, or will own, the Mercantile Garage;

WHEREAS, the City desires GPMH to operate the Mercantile Garage for the period set forth herein, subject to the terms set forth in this Agreement;

WHEREAS, GPMH desires to operate the Mercantile Garage for the City for the period set forth herein, subject to the terms set forth in this Agreement; and

WHEREAS, GPMH constitutes a "private operator" under the Infrastructure Development Act.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as set forth below.

AGREEMENT

SECTION 1. DEFINED TERMS. In addition to other terms defined herein, the following terms used in this Agreement shall have the meanings set forth below:

"Accessible Spaces" shall mean parking spaces made available to eligible users and which comply with the requirements of the Americans with Disabilities Act (ADA), U.S. Department of Justice guidelines and applicable state and local accessibility requirements.

"Agreement" shall mean this Parking Agreement by and among the City and GPMH, as the same may be amended, modified or supplemented from time to time.

"Annual Report" shall have the meaning set forth in Section 3.3 hereof.

"Applicable Law" shall mean any and all laws (including all statutory enactments and

common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, permits, requirements and Orders that (i) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Authority or arbitrator having jurisdiction over a specified Person (or the properties or assets of such Person) and are (ii) applicable to this Agreement or the performance of the obligations of the Parties under this Agreement.

"Approved Budget" shall have the meaning set forth in Section 3.5 hereof.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Fargo, North Dakota.

"Calendar Year" shall mean a period of twelve (12) months commencing on January 1 and ending on December 31.

"Capital Expenditures" shall mean expenditures capitalized under GAAP, consistent with the City of Fargo capitalization policy.

"Casualty" shall have the meaning set forth in Section 6.2 hereof.

"City" shall have the meaning set forth in the first clause of this Agreement.

"Claims" shall have the meaning set forth in Section 7.4 hereof.

"Contamination" shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Mercantile Garage, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

"Defaulting Party" shall have the meaning set forth in Section 27.1 hereof.

"Early Termination Date" shall have the meaning assigned to such term in Section 2.5 hereof.

"Effective Date" shall mean the date of this Agreement as set forth in the introductory paragraph of this Agreement.

"Environmental Laws" shall mean all Laws, including any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; or (e) the protection of endangered or threatened species.

"Event of Default" shall have the meaning set forth in Section 27.1 hereof.

"Expiration Date" shall mean the earlier of (i) the Early Termination Date and (ii) the day immediately prior to the fifth (5th) anniversary of the date of the Mercantile Garage Closing, unless extended pursuant to Section 2.4 below or earlier terminated in accordance with the terms of this Agreement.

"Force Majeure" shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the grant or withholding of any governmental approvals or permits needed for construction, commissioning, or other matters affecting this Agreement), material shortages, strikes, boycotts, lockouts or labor disputes, or any other similar or like event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds, alone, shall not constitute Force Majeure.

"GAAP" shall mean Generally Accepted Accounting Principles.

"Garage Management Company Agreement" is the written agreement between GPMH and the Garage Management Company.

"Governmental Authority" shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof having jurisdiction over a specified Person (or the properties or assets of such Person) as pertains to the subject matter of this Agreement.

"Infrastructure Development Act" shall mean North Dakota Century Code Chapter 48-02.1, as amended.

"Law" or "Laws" shall mean any law, statute, code, ordinance, rule, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

"Legal Requirements" shall mean present and future Laws (including Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Mercantile Garage.

"Management Company" is a reputable third party parking garage management company retained by GPMH to manage the Mercantile Garage on behalf of GPMH during the Term.

"Mercantile Garage" shall mean that certain parking facility, and the condominium unit for same, as described in the Development Agreement to be located on a portion of the real property legally described on **Exhibit A** attached hereto.

"Mercantile Garage Closing" shall mean the date the City acquires fee title to the Mercantile Garage.

"NOI" shall mean, for any period, the difference between Parking Revenues and Parking Expenses.

"Non-Defaulting Party" shall have the meaning set forth in Section 27.1 hereof.

"Parking Expenses" shall mean all expenses reasonably necessary to manage, maintain, operate, repair and restore the Mercantile Garage, including, without limitation, the expenses set forth on attached **Exhibit B**.

"Parking Revenue" shall mean, for any period, revenues or other consideration generated from short-term or long-term parking, including, without limitation, parking contracts, daily transient parking and event parking,

"Party" or "Parties" shall mean one (1) or more of the City or GPMH.

"Permits" shall mean any permit, license or approval to be issued by any Person, including Required Environmental Permits, required for demolition, construction, installation, alteration or repair of any improvements related in any manner to the Mercantile Garage.

"Person" shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

"Proposed Budget" shall have the meaning set forth in Section 3.5 hereof.

"Qualified Capital Work" is any repair or replacement to the Mercantile Garage required during the Term that meets all of the following:

(i) is for any repair or replacement of the structural elements, footings, foundations, and the like;

(ii) is not a routine or ordinary repair or replacement;

(iii) is a Capital Expenditure;

(iv) is not required because GPMH has failed to otherwise satisfy its maintenance, repair and replacement obligations under this Agreement;

(v) is not required because GPMH has breached or defaulted under any of its obligations under the Development Agreement;

(vi) is not required because of either or both a casualty or a condemnation; and

(vii) is not subject to, or covered by, any warranty relating to the Mercantile Garage.

"Qualified Capital Work Request" has the meaning set forth in Section 6.1(e) hereof.

"Regulated Substances" shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a "hazardous substance," "hazardous waste," "toxic substance," "extremely hazardous substance," "toxic chemical," "toxic waste,"

"solid waste," "industrial waste," "residual waste," "municipal waste," "special handling waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste," "regulated substance," "pollutant" or "contaminant" or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws.

"Required Environmental Permits" shall mean Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction and or operation of the Mercantile Garage.

"Response Action" shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Mercantile Garage, including the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

"State" shall mean the State of North Dakota.

"Taking" shall have the meaning set forth in Section 6.3 hereof.

"Term" shall mean the term of this Agreement which commences on the date of the Mercantile Garage Closing and expires on the Expiration Date.

SECTION 2. OWNERSHIP AND MANAGEMENT OF MERCANTILE GARAGE; RETENTION OF GARAGE MANAGEMENT COMPANY; TERM.

2.01. The City shall own the Mercantile Garage from and after the Mercantile Garage Closing.

2.02. GPMH shall manage the Mercantile Garage during the Term, subject to the terms and conditions of this Agreement. GPMH shall manage the Mercantile Garage in a commercially reasonable manner consistent with parking garages in downtown Fargo and in a manner, subject to the foregoing commercially reasonable management standard, that will maximize NOI of the Mercantile Garage. GPMH shall manage the Mercantile Garage prior to the Term, as described herein, during the period between completion of construction of the Mercantile Garage and issuance of a certificate of occupancy and the commencement of the Term herein—the period prior to the City's acquiring of fee title to the Mercantile Garage. The parking fees for the Mercantile Garage shall be determined by GPMH, subject to the prior approval of the City, which approval shall not be unreasonably withheld. Furthermore, with respect to the management of the Mercantile Garage, GPMH will be responsible for establishing priorities for hourly parking, parking for downtown residents and it shall establish a method for creating a waiting list for customers who desire to lease one or more spaces within the Mercantile Garage, said matters being subject to the approval of the City, which approval shall not be unreasonably withheld.

2.03. GPMH may, from time-to-time, retain the services of a Garage Management Company to perform some or all of the management duties of the Mercantile Garage. The Garage Management Company, and the Garage Management

Company Agreement, are both subject to the prior written approval of the City, which approval must not be unreasonably withheld, conditioned or delayed. The term of the Garage Management Company Agreement executed by GPMH must not extend beyond the Term. GPMH may, during the Term and upon notice to the City, terminate or replace the Garage Management Company from time-to-time; provided, however, that any replacement Garage Management Company must be approved in writing by the City in accordance with the terms of this Section 2.3. GPMH is solely responsible for compensating the Garage Management Company pursuant to the terms of the Garage Management Company Agreement.

2.04. The City and GPMH may agree to extend the Term for two (2) additional periods of five (5) years each. Any such extension shall only be effective upon the execution of an appropriate extension amendment to this Agreement executed by both the City and GPMH.

2.05. The City shall have the right to terminate this Agreement in its sole discretion by giving written notice to GPMH setting forth an early termination date (the "Early Termination Date"), which Early Termination Date cannot be less than thirty (30) days after the date of such notice. If such notice is given, then the Term shall terminate on the Early Termination Date.

SECTION 3. COMPENSATION, REPORTS AND BUDGET.

3.01. All NOI generated during the Term belongs, and shall be paid, to the City, subject to the terms of this Agreement. GPMH shall collect, or cause to be collected, all Parking Revenue from the operation and use of the Mercantile Garage during the Term and shall deliver such Parking Revenue less the Parking Expenses to the City on a monthly basis, provided that in no event shall the City be responsible for any amount by which the Parking Expenses exceed the Parking Revenue. GPMH shall timely pay all Parking Expenses during the Term. In accordance with the Infrastructure Development Act, GPMH agrees that the anticipated fees, rental income and revenues from the operation of the Mercantile Garage will be sufficient to pay the maintenance and operation costs for the Mercantile Garage. Notwithstanding anything herein to the contrary, if NOI is a negative sum for any month, GPMH may in subsequent months deduct from NOI otherwise payable to the City amounts sufficient to offset and compensate GPMH for all cumulative prior-incurred negative NOI.

3.02. GPMH shall utilize an appropriate and consistent accounting system to record all Parking Revenue and Parking Expenses. Upon the expiration or earlier termination of the Term, GPMH must deliver to the City all records pertaining to Parking Revenue and Parking Expenses for the previous five (5) Calendar Years, including, without limitation, parking tickets, monthly parking records, coupon and validation stamp sales, redemption records, cashier reports, daily reports and deposit slips. Prior to the expiration or earlier termination of the Term, such information must be available for examination and audit by the City and their authorized representatives upon fifteen (15) Business Days' prior written notice to GPMH.

3.03. By March 15 of each Calendar Year during the Term, GPMH will provide an Annual Report to the City. An "Annual Report" is a written report, in form and substance reasonably acceptable to the City and submitted to the City that includes at least the following information:

(a) an annual certified statement of operations (which must include maintenance activities) for the Mercantile Garage that documents the annual NOI, each on a cash basis for the immediately preceding Calendar Year;

(b) detail of expenditures categorized as operating expenses in accordance with GAAP and Capital Expenditures;

(c) a detailed calculation of Parking Revenues for the previous Calendar Year broken down by the following categories: monthly parking, charge accounts, cash parking and such other reports as requested by the City;

(d) cumulative vendor payment disbursement, detailing payments on a "by vendor by month" basis; and

(e) such other information as is reasonably requested in writing by the City.

3.04. The City has the right to audit the Annual Reports, which audit will be performed at the City's cost unless a material deviation is identified, in which case GPMH shall pay for the cost of the audit. For purposes of this Section 3.4, a "material deviation" is a deviation of five percent (5%) or more in overall underpaid NOI.

3.05. Not later than July 1 of each year, GPMH shall provide to the City a proposed operating budget for the Mercantile Garage for the following year (the "Proposed Budget"); provided, however, that the first Proposed Budget shall be prepared and submitted to the City prior to the commencement of the Term. The Proposed Budget shall include projected Parking Revenue (including, without limitation, detailed parking rates and usage assumptions) and all projected Parking Expenses to be paid in the operation of the Mercantile Garage. Upon the approval of such Proposed Budget by the City (which approval may not be unreasonably withheld, conditioned or delayed), the same shall be the approved budget for such Calendar Year (once so approved, the "Approved Budget"). After the first budget is approved, in subsequent Calendar Years, until a new budget is approved, GPMH shall be authorized to continue operations consistent with the previous Approved Budget.

SECTION 4. STAFF.

4.01. GPMH must employ or cause the Garage Management Company to employ at the Mercantile Garage a sufficient number of personnel capable of managing and operating the Mercantile Garage in accordance with the terms and conditions hereof such that the Mercantile Garage shall be operated in a professional, businesslike and efficient manner, and in a manner comparable to other parking facilities of similar type in the Fargo metropolitan area. GPMH must provide or cause the Garage Management

Company to provide all necessary executive and supervisory personnel that are required for the proper management of the Mercantile Garage, but such personnel are not required to work on location at the Mercantile Garage. All Persons so employed shall have no authority to act as the agent of the City.

4.02. The Mercantile Garage shall be open to the public for parking purposes 24 hours per day, 365 days per year, except for any periods of closure beyond GPMH's reasonable control, or as agreed to in writing by the City.

SECTION 5. COMPLIANCE WITH LAWS.

5.01. During the Term, GPMH must comply or cause the Garage Management Company to comply with all Laws and Legal Requirements pertaining to GPMH's or the Garage Management Company's management and operation of the Mercantile Garage and the business conducted therein by GPMH or the Garage Management Company, including, without limitation, Laws relating to equal opportunity employment and federal, state and municipal tax withholding with respect to GPMH or the Garage Management Company's employees and the provision of an appropriate number of Accessible Spaces.

5.02. During the Term, GPMH must prepare and file or cause the Garage Management Company to prepare and file all necessary returns, reports and forms required by law in connection with unemployment insurance, social security taxes, workers' compensation insurance, disability benefits, federal and state income tax withholding and other similar taxes and all other returns and reports required by any federal, state or municipal authority and pay or make all deposits required for such taxes.

5.03. In accordance with the Infrastructure Development Act, neither GPMH, nor its Garage Management Company, is excused from the necessity of obtaining any environmental, navigational, design or safety approvals that would be required if the Mercantile Garage were constructed or operated by a public body.

SECTION 6. MAINTENANCE; CASUALTY; CONDEMNATION; EXPIRATION OF TERM.

6.01. Maintenance.

(a) During the Term, GPMH must, or cause the Garage Management Company to, maintain the Mercantile Garage in a commercially reasonable condition, which maintenance includes performing all repairs and replacements, and in a manner comparable to other public parking facilities of similar type in the downtown Fargo area. All costs reasonably incurred by GPMH and the Garage Management Company in complying with the preceding sentence shall be Parking Expenses, subject to subparagraph (e) below. GPMH's obligations under this Section 6.1 include, but are not limited to, maintaining the Mercantile Garage in a clean, neat and orderly condition, and in a manner comparable to other public parking facilities of similar type in the downtown Fargo area. GPMH's obligations in connection with the management, operation and promotion of the

Mercantile Garage, and employment of Persons in connection therewith, include the rendition of, or the contracting for the rendition of, service, supervision, or furnishing of personnel in connection with the personal safety and security of employees, tenants, customers, or other Persons within and about the Mercantile Garage.

(b) GPMH shall, or cause the Garage Management Company to, advise and cooperate with the City in the development and implementation of rules and regulations applicable to the Mercantile Garage, and shall enforce such rules and regulations as the City shall adopt, and GPMH and the Garage Management Company shall advise and consult with the City with respect to matters of potential changes to traffic control systems, safety and security matters, signage and/or any other matter that may substantially alter the use and operation of the Mercantile Garage, the implementation of any of which shall require the City's written consent, which consent will not be unreasonably withheld, conditioned or delayed. Rules promulgated under this Agreement must be commercially reasonable and substantially similar to rules promulgated by other public parking facilities in downtown Fargo.

(c) The City shall have monthly inspection rights and an inspection right upon the expiration of the Term. If any such inspection indicates that the Mercantile Garage is not being maintained in a commercially reasonable condition, GPMH shall have an obligation to create a restoration plan, which restoration plan is subject to the prior approval of the City.

(d) During the Term, except as set forth in subparagraph (e) below regarding payments to GPMH, the City shall not have any obligations whatsoever with respect to maintenance, repairs, alterations, restorations or replacements relating to the Mercantile Garage. However, during Term, no alterations or modifications shall be made to the Mercantile Garage without the City's prior written consent.

(e) In the event during the Term GPMH reasonably believes the Mercantile Garage requires the performance of Qualified Capital Work, GPMH shall submit a request in writing to the City specifying the Qualified Capital Work and the proposed cost of the Qualified Capital Work (the "Qualified Capital Work Request"). Within twenty (20) days after the City's receipt of the Qualified Capital Work Request, the City shall notify GPMH whether it accepts the Qualified Capital Work Request or objects thereto. If the City accepts the Qualified Capital Work Request, (i) GPMH shall promptly and in accordance with the terms of this Agreement perform, or cause to be performed, the Qualified Capital Work and upon completion of the Qualified Capital Work, submit to the City paid invoices and appropriate lien waivers from all contractors, suppliers and materialmen with a lienable interest in the Mercantile Garage and (ii) the City shall reimburse GPMH for the cost of the Qualified Capital Work as evidenced by the submitted invoices and lien waivers (which costs shall not be treated as Parking Expenses hereunder) and shall pay GPMH a construction/supervision fee

equal to 3% of the actual cost of the Qualified Capital Work. If the City objects to the Qualified Capital Work Request, the City and GPMH shall meet and negotiate in good faith to come to resolution thereon.

6.02. Casualty. If the Mercantile Garage is damaged by casualty, including, without limitation, fire (a "Casualty"), at the City's election, this Agreement will terminate. If this Agreement is not so terminated, then at the election of the City either (i) the City will repair and restore the Mercantile Garage or (ii) GPMH shall proceed, as soon as reasonably possible, to repair all damage, and shall diligently pursue such repairs to completion, subject to GPMH's receipt of adequate insurance proceeds or other funds from the City for the cost of such repair and restoration (GPMH will not be required to expend any amounts in excess of the amount of insurance proceeds or other funds received by GPMH from any source), plus a construction/supervision fee equal to 3% of the actual cost of such repair and restoration. In the event the City elects to proceed under (ii) above, the Parties shall enter into a commercially reasonable disbursement agreement of the type typically used for the disbursement of proceeds for commercial construction projects. In the event of any Casualty loss, GPMH shall give the City prompt written notice thereof.

6.03. Eminent Domain. If the Mercantile Garage is taken by eminent domain or condemnation (a "Taking"), the Parties may terminate this Agreement upon mutual agreement. If this Agreement is not terminated, all damages awarded to any Party shall be turned over to GPMH, and GPMH shall proceed with due diligence to make all necessary repairs to restore the Mercantile Garage to substantially the same condition that it was in prior to the partial Taking; provided, however, that GPMH will not be required to repair any damage in excess of the amount of condemnation proceeds received by GPMH. Damages awarded for any Taking shall be payable to the City.

6.04. Expiration of Term. On the Expiration Date, GPMH shall return the Mercantile Garage to the City in the same condition as existing at the commencement of the Term, reasonable wear and tear, the effects of casualty (subject to Section 6.2 above) and eminent domain excepted, and with all GPMH's repair, maintenance and replacement obligations under this Agreement fully performed.

SECTION 7. INSURANCE.

7.01. During the Term, GPMH must obtain and maintain the following types of insurance for the Mercantile Garage with companies authorized to do business in the State of North Dakota, and reasonably acceptable to the City:

(a) to the extent required by law, workers compensation insurance, with statutory coverage;

(b) Employers Liability Insurance with coverage limits of $100,000 for bodily injury per accident limit, $500,000 for bodily injury by disease policy limit and $100,000 for bodily injury by disease per employee limit;

(c) commercial general liability (including bodily injury and property damage and contractual tort liability) insurance, Personal Injury Insurance with

liability limits of $1,000,000 per occurrence and $2,000,000 in aggregate that names the City as an additional insured;

(d) garage keeper's legal liability insurance with minimum liability limits of $500,000 and Automobile Liability insurance with minimum liability limits of $1,000,000;

(e) umbrella coverage in the amount of not less than $10,000,000 providing excess coverage over the following underlying liability policies: General Liability, Commercial Business Automobile and Employers Liability;

(f) fidelity (crime) insurance with respect to its employees who handle or are responsible for funds with liability limits of $500,000, subject to availability of such limits, and, to the extent available, a Co-Obligee endorsement in favor of the City;

(g) twelve (12) months of Business Interruption Insurance insuring GPMH (or the Garage Management Company) against an interruption in GPMH (or the Garage Management Company's) business under this Agreement;

(h) "all-risk of direct physical loss" commercial property insurance for personal property and contents owned by GPMH (or its agents or the Garage Management Company) in the amount of the full replacement values thereof (as reasonably determined by GPMH);

(i) Waiver of Subrogation in favor of the City on Workers Compensation Liability, Garage Keepers Legal Liability, Automobile Liability and "all-risk of direct physical loss" policies, to the extent available without material additional cost;

(j) Naming the City as Additional Insured on the Automobile Liability Insurance and Commercial General Liability Insurance policies.

7.02. Certificates evidencing such insurance shall be furnished by GPMH to the City upon request and such certificates shall contain an endorsement requiring the insurance carrier to endeavor to provide thirty (30) days' written notice in the event of cancellation. Premiums with respect to the policies which GPMH must obtain shall be paid by GPMH and shall constitute Parking Expenses. Such policies shall be subject to the reasonable approval of the City.

7.03. During the Term, the City must obtain and maintain the following types of insurance for the Mercantile Garage with companies authorized to do business in the State of North Dakota:

(a) "all-risk of direct physical loss" commercial property insurance in the amount of the full replacement value of the Mercantile Garage, and similar coverage insuring personal property and contents owned by the City in the Mercantile Garage for the full replacement value thereof (as reasonably

determined by the City), with a Waiver of Subrogation in favor of GPMH, to the extent available without material additional cost. Certificates evidencing such insurance shall be furnished by GPMH to the City upon request and such certificates shall contain an endorsement requiring the insurance carrier to endeavor to provide thirty (30) days' written notice in the event of cancellation. Premiums with respect to the policies which City must obtain shall be paid by City.

7.04. GPMH shall indemnify and hold the City harmless from any and all claims, demands and actions, and all costs and expenses relating thereto (including reasonable attorneys' fees) (collectively, "Claims"), for damage, injury, death, disability or illness of or to any Persons or property that occur during the Term, arising out of, or as a result of, either or both GPMH's negligent management of the Mercantile Garage or GPMH's default under this Agreement. GPMH shall require its Garage Management Company to indemnify and hold the City harmless from any and all Claims for damage, injury, death, disability or illness of or to any Persons or property, arising out of, or as a result of, either or both the Garage Management Company's negligent management of the Mercantile Garage or the Garage Management Company's default under its Garage Management Company Agreement.

SECTION 8. ASSIGNMENT. No Party hereto shall assign its rights hereunder without the prior written consent of the other Party to this Agreement.

SECTION 9. PERMITS AND LICENSES. During the Term, GPMH must apply for, secure (or cause to be applied for and secured) and maintain, in its own name, all municipal permits and licenses required for the Mercantile Garage and carry out the responsibilities under all such permits and licenses to the public and to the agencies having jurisdiction.

SECTION 10. NOTICES. All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To GPMH:
GREAT PLAINS MERCANTILE HOLDINGS, LLC
ATTN: Mike Allmendinger, President
210 Broadway N., Suite 300
Fargo, ND 58102

with a copy to:
Dan Bueide
Bueide Law Firm
1 2nd St. N, Suite 100
Fargo, ND 58102

To the City:	City Auditor Fargo City Hall 225 4th Street North Fargo, ND 58102
and to:	Director of Strategic Planning ATTN: James Gilmour Fargo City Hall 225 4th Street NorthFargo, ND 58102
and to:	Director of Planning and Development ATTN: Nicole Crutchfield Fargo City Hall 225 4th Street North Fargo, ND 58102
with copy to:	Erik R. Johnson Fargo City Attorney 505 Broadway, Suite 206 Fargo, ND 58102

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

SECTION 11. ESTOPPEL. Each Party, respectively, agrees that at any time and from time to time within ten (10) Business Days after receipt of a written request by a Party, to execute, acknowledge and deliver to such Party a statement in writing certifying: (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same are in full force and effect as modified and identifying the modifications; (b) that no Party is in default under any provisions of this Agreement or, if there has been a default, the nature of such default; and (c) as to any other matter that the requesting Party or a prospective mortgagee or other lender shall reasonably request. It is intended that any such statement may be relied upon by any Person, prospective mortgagee of, or assignee of any mortgage, upon such interest. GPMH agrees to include in its Garage Management Company Agreement provisions similar to those set forth in this Section 11.

SECTION 12. SURVIVAL OF COVENANTS, AGREEMENTS, REPRESENTATIONS, AND WARRANTIES. No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, or agreement in this Agreement.

SECTION 13. ADDITIONAL DOCUMENTS AND APPROVAL. The Parties, whenever and as often as any shall be reasonably requested to do so, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

SECTION 14. GOOD FAITH. In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties acknowledges that the other has acted to date in good faith and each Party agrees to continue to act in good faith. Each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent, or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent, or other similar efforts does not constitute a warranty, representation, or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

SECTION 15. CALCULATION OF TIME. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

SECTION 16. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement.

SECTION 17. ENTIRE AGREEMENT. Except as otherwise provided in this Agreement and the other written agreements contemplated hereby, this Agreement contains the sole and entire agreement among the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements among them with respect to such subject matter.

SECTION 18. AMENDMENT. No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

SECTION 19. NO PRESUMPTION AGAINST DRAFTER. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

SECTION 20. SEVERABILITY. If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid, or unenforceable under any laws, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by any laws.

SECTION 21. THIRD PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise, except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

SECTION 22. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the Laws of the State, and the Parties agree that all legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State, Cass County, District Court and shall not be removed therefrom to any other federal or state court. The parties hereby waive personal jurisdiction and venue for all claims and defenses.

SECTION 23. COUNTERPARTS. This Agreement may be executed and delivered in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

SECTION 24. RELATIONSHIP OF PARTIES. It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

SECTION 25. APPROVAL BY PARTIES. In each instance where the approval or consent of any Party may be sought or is required, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 26. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature, and that a breach or violation of this Agreement shall result in immediate and irreparable harm. In the event of any such actual or threatened breach or violation of this Agreement caused by a Party, the Party so harmed shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. The Parties waive the right to assert the defense that a breach of this Agreement can be compensated adequately in damages in an action at law.

SECTION 27. DEFAULT; REMEDIES CUMULATIVE; LIMITATION ON REMEDIES; WAIVER.

27.01. Each of the following shall constitute a default by any Party (the "Defaulting Party") under this Agreement ("Event of Default"), but further subject to Section 28 below:

(a) the failure to make any payment of any sums payable under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the Defaulting Party by the other Party (the "Non-Defaulting Party");

(b) the Defaulting Party's violation or failure to perform or observe any covenant or condition of this Agreement other than a failure under Section 27.1(a), which failure or violation shall continue for 30 days after receipt of written notice to the Defaulting Party by the Non-Defaulting Party identifying with particularity the failure or violation; provided, however, if such violation or failure reasonably cannot be cured within such 30 day period, then a reasonably longer period of time provided that the Defaulting Party commences to cure such violation or failure within such 30 day period and diligently pursues the same to completion; or

(c) (i) the Defaulting Party shall institute voluntary proceedings in bankruptcy, (ii) involuntary proceedings in bankruptcy shall be instituted against the Defaulting Party that are not discharged within ninety (90) days thereafter, (iii) any proceedings shall be instituted by or against the Defaulting Party under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within ninety (90) days after filing, (iv) a trustee or receiver shall be appointed for the Defaulting Party by any court of competent jurisdiction, or (v) the Defaulting Party shall make a general assignment for the benefit of its creditors.

(d) in the case of GPMH, a default or breach of the Development Agreement by GPMH beyond the applicable notice and cure period set forth in such Development Agreement.

27.02. Upon the occurrence of an Event of Default, the Non-Defaulting Party will have the right to exercise any of the following remedies:

(a) exercise any remedy afforded hereunder;

(b) seek specific performance or other equitable relief;

(c) sue for money damages; or

(d) in the case of an Event of Default by GPMH, terminate this Agreement. Except as expressly set forth in this Agreement, GPMH shall not be entitled to terminate this Agreement.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder, nor endorsement or statement on any check or letter accompanying such payment shall be deemed an

accord and satisfaction, and the other Party or Parties may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

27.03. No Party shall suspend its performance under this Agreement pending the resolution of any Event of Default.

27.04. No Party shall interfere with Mercantile Garage operations pending the resolution of any Event of Default.

SECTION 28. RISK OF CERTAIN LOSSES; FORCE MAJEURE. The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure condition and without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Parties. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement. Unavailability of funds shall not constitute Force Majeure.

SECTION 29. LIMITED RECOURSE OBLIGATIONS; MEMBERS AND OFFICERS NOT LIABLE. All covenants, stipulations, promises, agreements, and obligations of GPMH contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of GPMH and not of any shareholder, member, partner, owner, manager, officer, employee, or agent of GPMH in his or her individual capacity, and no recourse shall be had for any claim hereunder against any shareholder, member, partner, owner, manager, officer, employee, or agent of GPMH in such capacity. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any commissioner, member, director, officer, employee, or agent of the City in his or her individual capacity, and no recourse shall be had for any claim hereunder against any commissioner, member, director, officer, employee, or agent of the City in such capacity.

SECTION 30. INCLUSION IN MANAGEMENT AGREEMENT. GPMH shall include in its Garage Management Company Agreement, or make the same expressly subject to, the terms and provisions of this Agreement to the extent required to require the Garage Management Company to perform those obligations allocated thereto in this Agreement.

SECTION 31. BINDING COVENANTS. The provisions herein shall be deemed covenants that run with the land, and shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

SECTION 32. RECORDING OF PARKING AGREEMENT. This Agreement shall not be recorded, but at the request of any Party, the Parties shall promptly execute,

acknowledge and deliver to each other a Memorandum of Parking Agreement in form reasonably acceptable to the Parties (and a memorandum of modification of parking agreement in respect of any modification of this Agreement) sufficient for recording. Such memoranda shall not be deemed to change or otherwise affect any obligations or provisions of this Agreement.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, GPMH and the City have caused this Agreement to be executed as of the date first set forth above.

GPMH:

GREAT PLAINS MERCANTILE HOLDINGS, LLC,
a North Dakota limited liability company

By: _____

Name: _____

Title: _____

CITY:

CITY OF FARGO,
a North Dakota municipal corporation

By: _____

Name: _____

Title: Mayor

ATTEST:

By: _____

Name: _____

Title: City Auditor

EXHIBIT A

Legal Description of Real Property, on a portion of which the Mercantile Garage will be located

THAT PART OF LOTS 2, 3, 4, 5, 10, 11, AND THE ADJACENT VACATED ALLEY, BLOCK 21, KEENEY AND DEVITT'S SECOND ADDITION, AND THAT PART OF LOT B, BLOCK 1, GREAT NORTHERN DEPOT ADDITION, ALL IN THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, AND ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID BLOCK 21; THENCE NORTH 02°50'50" WEST (ASSUMED BEARING), ALONG THE WEST LINE OF SAID BLOCK 21, FOR A DISTANCE OF 199.96 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; THENCE NORTH 87°04'26" EAST, ALONG THE NORTH LINE OF SAID LOT 10, FOR A DISTANCE OF 160.51 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 163.69 FEET; THENCE NORTH 87°06'54" EAST FOR A DISTANCE OF 129.69 FEET; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 36.18 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID BLOCK 21; THENCE NORTH 87°04'26" EAST, ALONG THE SOUTH LINE AND SOUTH LINE AS EXTENDED EAST OF SAID BLOCK 21 FOR A DISTANCE OF 37.72 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY LINE OF VACATED 5TH STREET NORTH AS DEPICTED ON DOCUMENT NO.???, ON FILE AND OF RECORD AT THE CASS COUNTY RECORDER'S OFFICE; THENCE NORTH 12°48'06" EAST, ALONG THE EASTERLY LINE OF SAID VACATED 5TH STREET NORTH, FOR A DISTANCE OF 163.92 FEET; THENCE SOUTH 87°06'54" WEST FOR A DISTANCE OF 189.72 FEET; THENCE NORTH 02°53'06" WEST FOR A DISTANCE OF 42.03 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 10 AS EXTENDED EAST; THENCE SOUTH 87°04'26" WEST, ALONG THE NORTH LINE AS EXTENDED EAST AND ALONG THE NORTH LINE OF SAID LOT 10, FOR A DISTANCE OF 22.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 26,153 SQUARE FEET, MORE OR LESS.

[will be replaced with applicable condominium unit description prior to execution]

EXHIBIT B

Parking Expenses

(i) Wages of on-site supervisory personnel, attendants and cashiers, clerical and audit staff assigned to the Mercantile Garage, and a charge from GPMH for employee benefits including, but not limited to, monetary fringe benefits such as workers' compensation insurance, unemployment insurance, social security, group health and dental insurance, retirement benefits; provided, however, in the event an employee does not devote his or her full working time to the Mercantile Garage, then all of the foregoing charges pertaining to such employee shall be appropriately prorated to the Mercantile Garage in a manner reasonably acceptable to the City; provided further, in no event shall the compensation (direct or indirect) of any off-site management personnel be included in Parking Expenses, the same being borne solely by GPMH.

(ii) (a) Ad valorem taxes and special assessments levied against real property; (b) sales taxes imposed by the various jurisdictions in which the Mercantile Garage is located; (c) any other taxes generated by the presence or operation of the Mercantile Garage, except income taxes incurred by GPMH or the Garage Management Company; and (d) the cost of Permits.

(iii) Expenses for the Mercantile Garage management office including, but not limited to, telephone, postage, office supplies, computer and software expenses, subject to an equitable proration if the management office services other facilities in addition to the Mercantile Garage.

(iv) General repair and maintenance of the Mercantile Garage, including signs and electrical, mechanical and parking equipment, incurred in the ordinary course of business.

(v) The costs of printing parking tickets and related forms, cards, decals, invoices and stationary for use exclusively at the Mercantile Garage.

(vi) Power and hand sweeping and cleaning, and line painting, as required at the Mercantile Garage.

(vii) Insurance premiums, including business interruption insurance and property and casualty insurance.

(viii) Business license, business taxes, license fees and permits.

(ix) Costs of advertising and promoting the Mercantile Garage incurred by GPMH or its Garage Management Company.

(x) The costs of towing vehicles or otherwise enforcing parking restrictions, replacing or changing access devices and similar costs related to users of the Mercantile Garage.

(xi) Uniforms and janitorial supplies.

(xii) Snow clearance where required to be performed by GPMH.

(xiii) Bank charges associated with the maintenance of bank accounts for the Mercantile Garage.

(xiv) Gas, electric, water, telecommunications and any other utility charges.

(xv) Fees payable to a Garage Management Company pursuant to an approved Garage Management Company Agreement.

(xvi) Amounts expended from time to time used by the GPMH to pay extraordinary maintenance and replacement costs, including costs periodically incurred to repair or cure defects (excluding construction defects covered by a construction warranty) or conditions in order to maintain or restore the Mercantile Garage to a commercially reasonable condition, and as shall be used for improvements required as a result of a City inspection as described in Section 6.1. Such expenditures may include operating expenditures or Capital Expenditures.

(xvii) Cost for preparing any required operational, maintenance and financial records as required under this Agreement.

EXHIBIT B

Parking Expenses

(xviii) Wages of on-site supervisory personnel, attendants and cashiers, clerical and audit staff assigned to the Mercantile Garage, and a charge from GPMH for employee benefits including, but not limited to, monetary fringe benefits such as workers' compensation insurance, unemployment insurance, social security, group health and dental insurance, retirement benefits; provided, however, in the event an employee does not devote his or her full working time to the Mercantile Garage, then all of the foregoing charges pertaining to such employee shall be appropriately prorated to the Mercantile Garage in a manner reasonably acceptable to the City; provided further, in no event shall the compensation (direct or indirect) of any off-site management personnel be included in Parking Expenses, the same being borne solely by GPMH.

(xix) (a) Ad valorem taxes and special assessments levied against real property; (b) sales taxes imposed by the various jurisdictions in which the Mercantile Garage is located; (c) any other taxes generated by the presence or operation of the Mercantile Garage, except income taxes incurred by GPMH or the Garage Management Company; and (d) the cost of Permits.

(xx) Expenses for the Mercantile Garage management office including, but not limited to, telephone, postage, office supplies, computer and software expenses, subject to an equitable proration if the management office services other facilities in addition to the Mercantile Garage.

(xxi) General repair and maintenance of the Mercantile Garage, including signs and electrical, mechanical and parking equipment, incurred in the ordinary course of business.

(xxii) The costs of printing parking tickets and related forms, cards, decals, invoices and stationary for use exclusively at the Mercantile Garage.

(xxiii) Power and hand sweeping and cleaning, and line painting, as required at the Mercantile Garage.

(xxiv) Insurance premiums, including business interruption insurance and property and casualty insurance.

(xxv) Business license, business taxes, license fees and permits.

(xxvi) Costs of advertising and promoting the Mercantile Garage incurred by GPMH or its Garage Management Company.

(xxvii) The costs of towing vehicles or otherwise enforcing parking restrictions, replacing or changing access devices and similar costs related to users of the Mercantile Garage.

(xxviii)Uniforms and janitorial supplies.

(xxix) Snow clearance where required to be performed by GPMH.

(xxx) Bank charges associated with the maintenance of bank accounts for the Mercantile Garage.

(xxxi) Gas, electric, water, telecommunications and any other utility charges.

(xxxii) Fees payable to a Garage Management Company pursuant to an approved Garage Management Company Agreement.

(xxxiii) Amounts expended from time to time used by the GPMH to pay extraordinary maintenance and replacement costs, including costs periodically incurred to repair or cure defects (excluding construction defects covered by a construction warranty) or conditions in order to maintain or restore the Mercantile Garage to a commercially reasonable condition, and as shall be used for improvements required as a result of a City inspection as described in Section 6.1. Such expenditures may include operating expenditures or Capital Expenditures.

(xxxiv) Cost for preparing any required operational, maintenance and financial records as required under this Agreement.

EXHIBIT G

Guaranty

This Guaranty is made by [_____, a _____] limited liability company, ("Guarantor"), in favor of the City of Fargo, North Dakota, a municipal corporatoin (the "City"), to induce the City to enter into that certain Development Agreement of substantially even date herewith, with Great Plains Mercantile Holdings, LLC, a North Dakota limited liability company ("GPMH") for the for the planning, design, financing, acquisition, development, and construction of the Mercantile Project (as defined in the Development Agreement) in Fargo, North Dakota (as amended, supplemented or otherwise modified from time to time, the "Development Agreement") and in consideration of the City entering into the Development Agreement.

GPMH is a [_____] of Guarantor and Guarantor will derive benefit from the making of the Guaranty.

NOW, THEREFORE, for good and valuable consideration, Guarantor hereby covenants and agrees as follows:

1. Guarantor hereby unconditionally guarantees the full and timely payment and performance by GPMH of all of its obligations under the Development Agreement, as it from time to time may be amended, and hereby undertakes that if GPMH shall in any respect fail to perform and observe all of the terms, provisions, conditions, and stipulations of the Development Agreement, Guarantor warrants the faithful payment and performance of all of such terms and conditions and will fully indemnify and keep indemnified the City against all claims, losses, damages, costs and expenses whatsoever which the City may incur by reason of GPMH's failure to perform and observe any of the terms, provisions, conditions, and stipulations of the Development Agreement and in addition against all claims, losses, damages, costs and expenses which the City may incur by reason of GPMH's breach of any other duty to the City, (collectively the "Guaranteed Obligations"). THE OBLIGATIONS OF THE GUARANTOR HEREUNDER SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL THE GUARANTOR BE DISCHARGED FROM ANY THEREOF, FOR ANY REASON WHATSOEVER, including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Guarantor shall have received notice thereof):

   (a) (i) any increase in, (ii) any extension of the time of payment, observance or performance of, (iii) any other amendment or modification of any of the other

terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, the Guaranteed Obligations;

(b) (i) any failure to obtain, (ii) any release, composition or settlement of, (iii) any amendment or modification of any of the terms and provisions of, (iv) any subordination of, or (v) any discharge, disallowance, invalidity, illegality, voidness or other enforceability of, any other guaranties of the Guaranteed Obligations;

(c) any termination of or change in any relationship between Guarantor and GPMH, including any such termination or change resulting from a change in the ownership of Guarantor or from the cessation of any commercial relationship between the Guarantor and GPMH;

(d) any exercise of, or any election not or failure to exercise, delay in the exercise of, waiver of, or forbearance or other indulgence with respect to, any right, remedy or power available to the City, including (i) any election not or failure to exercise any right of set-off, recoupment or counterclaim, and (ii) any election of remedies effected by the City, and

(e) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF THE GUARANTOR HEREUNDER OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF THE GUARANTOR HEREUNDER OR DISCHARGE GUARANTOR FROM ANY THEREOF.

2. Guarantor represents and warrants to the City that:

(a) Guarantor is a duly organized and validly existing [_____];

(b) Guarantor directly or indirectly owns all of the ownership interests of GPMH;

(c) Guarantor is authorized and has all necessary power and authority, corporate and other, to execute and deliver this Guaranty and to perform the obligations of Guarantor, including all obligations of GPMH pursuant to the Development Agreement. This Guaranty reasonably may be expected to benefit directly or indirectly, Guarantor, and this Guaranty has been duly executed and delivered by Guarantor and is the valid, binding, and enforceable contract of Guarantor, and;

(d) The execution and delivery of this Guaranty by Guarantor and its performance of its obligations under the Guaranty, do not (and, to the best of Guarantor's knowledge, will not) conflict with any law, rule or regulation, or any agreement, instrument, indenture, deed or any other restriction, to which Guarantor is subject or a party, or accelerate or affect any of its obligations under any thereof.

3. Guarantor shall cause GPMH to duly and timely perform all of the Guaranteed Obligations including the obligations of GPMH under the Development Agreement, as it may from time to time be amended.

4. The obligations of the Guarantor hereunder include, without limitation, all liabilities for liquidated or similar damages and warranty obligations of GPMH.

5. The City may enforce against Guarantor any and all of the rights of the City under this Guaranty without having instituted or completed any legal, arbitration or other proceedings against GPMH.

6. This Guaranty shall be governed by and construed according to the laws of the State of North Dakota.

7. Guarantor waives: (a) any requirement, and any right to require, that any right or power be exercised or any action be taken against GPMH; (b) (i) notice of acceptance of and intention to rely on this Guaranty, and (ii) all other notices that may be required by applicable law or otherwise to preserve any rights against Guarantor under this Guaranty, including any notice of default, demand, dishonor, presentment and protest; and, (c) diligence.

8. Guarantor shall not assert any right to set off against claims by the City hereunder other than claims which GPMH has a right to set off under the Development Agreement.

9. Guarantor's obligations hereunder (a) are absolute and unconditional, (b) are unlimited in amount, (c) constitute a guaranty of payment and performance and not a guaranty of collection, (d) are as primary obligor and not as a surety only (e) shall be a continuing guaranty of all present and future Guaranteed Obligations and (f) shall be irrevocable.

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

To Guarantor: _____, LLC
c/o_____
Attn: Mike Almendinger, President
210 Broadway N., Suite 300
Fargo, ND 58102

with a copy to: Dan Bueide
Bueide Law Firm
1 2nd St. N, Suite 100
Fargo, ND 58102

To the City: City Auditor
Fargo City Hall
200 N. 3rd Street
Fargo, ND 58102

and to: Director of Strategic Planning and Development
Attn: James Gilmour
Fargo City Hall
200 N. 3rd Street
Fargo, ND 58102

with copy to: Office of the Fargo City Attorney
Attn: Erik R. Johnson
505 Broadway, Suite 206
Fargo, ND 58102

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

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered to the City in the name and on behalf of Guarantor by one of its officers who is duly authorized to do so, for the benefit of the City, as of this ___ day of _____, 2019.

GUARANTOR:

[Insert Guarantor Name]

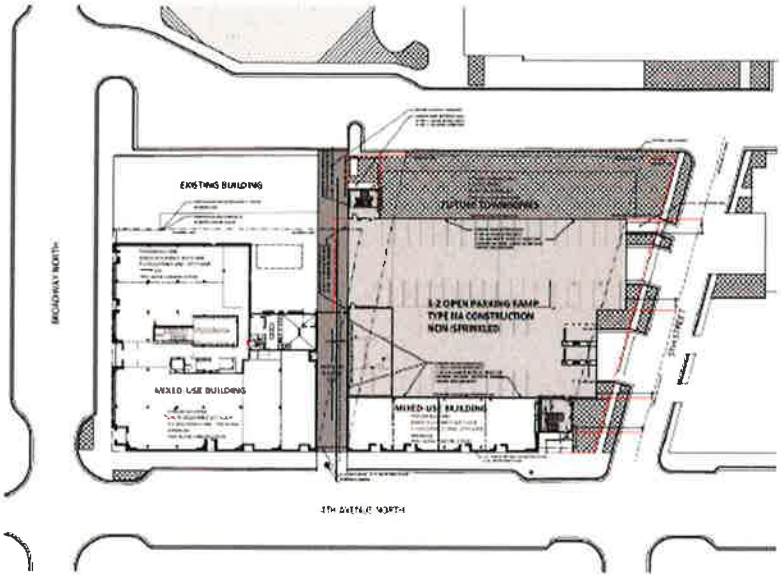
By: _____
Name: _____
Its: _____

EXHIBIT H

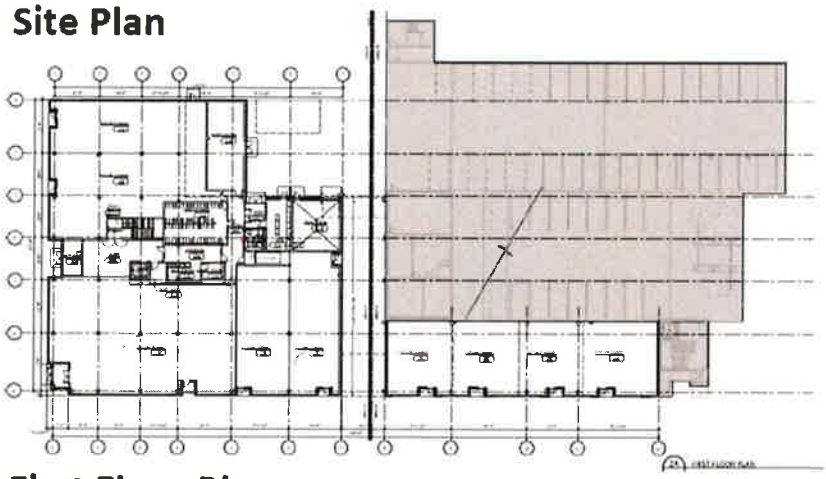
Great Plains Mercantile Holdings LLC Mixed-Use Development

Property Summary

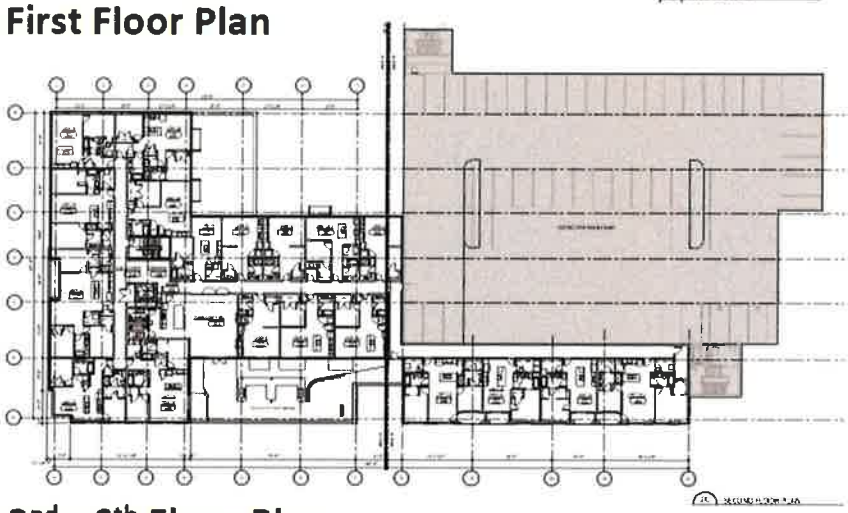
Type of Property	Commercial Parking Garage & Mixed Use
Apartment Units	100
Floors	6
Approximate Parking Garage SF	139,027
Minimum Garage Parking Stalls	360
Total Rentable SF	95,000
Commercial SF	15,000



Site Plan



First Floor Plan



2nd - 6th Floor Plan

EXHIBIT I
Mortgage

THIS INSTRUMENT WAS DRAFTED BY,
AND WHEN RECORDED SHOULD BE
RETURNED TO:
Fargo City Attorney
Attn: Erik R. Johnson
505 Broadway, Suite 206
Fargo, ND 58102

**MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING STATEMENT**

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT (this "Mortgage") is made as of [_____ __, 2019], by GREAT PLAINS MERCANTILE HOLDINGS, LLC, a North Dakota limited liability company ("Mortgagor"), having its mailing address at 210 Broadway N., Suite 300, Fargo, ND 58102, in favor of CITY OF FARGO, a North Dakota municipal corporation, having its principal office at 200 N. 3rd St., Fargo, ND 58102 ("Mortgagee").

RECITALS

A. Mortgagor and Mortgagee are parties to that certain Development Agreement dated [October _____, 2019] (as amended, restated, modified, supplemented, increased, or extended from time to time, the "Development Agreement"). All capitalized terms used herein and not otherwise defined have the meanings assigned to such terms in the Lease.

B. The obligations secured by this Mortgage (the "Obligations") are prompt payment and/or performance of all performance and payment obligations of Mortgagor under or in connection with the Development Agreement.

NOW, THEREFORE, Mortgagor, in consideration of the foregoing recitals, which are hereby incorporated herein by reference and which are true and correct on the date hereof, and of the City entering into the Development Agreement and performing thereunder, and to secure the payment and performance of the Obligations, hereby grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, its successors and assigns, forever, with power of sale, and grants to Mortgagee, its successors and assigns, a security interest in Mortgagor's right, title and interest in the following, all of which is collectively called the "Mortgaged Property":

A. LAND AND IMPROVEMENTS

The land described in **Exhibit A** attached hereto and all mineral rights, hereditaments, easements and appurtenances thereto (collectively the "Land"), and all improvements and structures thereon (the "Improvements"); and

B. FIXTURES AND PERSONAL PROPERTY

All fixtures (the "Fixtures"), and all machinery, equipment and personal property (collectively, the "Personal Property") now or hereafter located on, in or under the Land and the Improvements and necessary for the operation of the Land or the Improvements, and which are owned by Mortgagor or in which Mortgagor has an ownership interest, including any construction and building materials stored on and to be included in the Improvements, plus any repairs, replacements and betterments to any of the foregoing and the proceeds and products thereof; and

C. LEASES AND RENTS

Subject to the revocable license granted to Mortgagor under this Mortgage, all rights of Mortgagor with respect to tenants or occupants now or hereafter occupying any part of the Land or the Improvements, if any, including all leases and licenses and rights in connection therewith, whether oral or written (collectively, the "Leases"), and all rents, income, both from services and occupation, royalties, revenues and payments, including prepayments and security deposits (collectively, the "Rents"), which are now or hereafter due or to be paid in connection with the Land, the Improvements, the Fixtures or the Personal Property; and

D. GENERAL INTANGIBLES

All general intangibles of Mortgagor which relate to any of the Land, the Improvements, the Fixtures, the Personal Property, the Leases or the Rents, including proceeds of insurance and condemnation or conveyance of the Land and the Improvements, accounts, trade names, contract rights, accounts receivable and bank accounts relating to the Land, the Improvements, the Fixtures, the Personal Property, the Leases and the Rents; and

E. AFTER ACQUIRED PROPERTY AND PROCEEDS

All after acquired property similar to the property herein described and conveyed which may be subsequently acquired by Mortgagor and used in connection with the Land, the Improvements, the Fixtures, the Personal Property and other property; and all cash and non-cash proceeds and products of all of the foregoing property.

TO HAVE AND TO HOLD the same, and all estate therein, together with all the rights, privileges and appurtenances thereunto belonging, to the use and benefit of Mortgagee, its successors and assigns, forever.

PROVIDED NEVERTHELESS, should Mortgagor pay and perform all the Obligations, and should Mortgagor perform and observe all the terms, covenants and conditions in this Mortgage, then these presents will be of no further force and effect, and this Mortgage shall be satisfied by Mortgagee, at the expense of Mortgagor.

This Mortgage also constitutes a security agreement within the meaning of the Uniform Commercial Code as in effect in the State of North Dakota (the "UCC"), with respect to all property described herein as to which a security interest may be granted and/or perfected pursuant to the UCC, and is intended to afford Mortgagee, to the fullest extent allowed by law, the rights and remedies of a secured party under the UCC.

MORTGAGOR FURTHER covenants, warrants and agrees as follows:

ARTICLE 1

AGREEMENTS

Section 1.1 Performance of Obligations; Incorporation by Reference. Mortgagor shall perform, observe and comply with all provisions hereof and of the Development Agreement required to be performed, observed and complied with by Mortgagor, including without limitation the Obligations, and will duly and punctually pay to Mortgagee all sums required to be paid by Mortgagor pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Mortgagor. Time is of the essence hereof. All of the covenants, obligations, agreements, warranties and representations of Mortgagor contained in the Development Agreement and all of the terms and provisions thereof, are hereby incorporated herein and made a part hereof by reference as if fully set forth herein.

Section 1.2 Further Assurances. If Mortgagee requests, Mortgagor shall sign and deliver and cause to be recorded and hereby authorizes Mortgagee to record any further mortgages, instruments of further assurance, certificates, financing statements, continuation statements and other documents (without the consent of Mortgagor) as Mortgagee reasonably may consider necessary or desirable in order to perfect, continue and preserve the Obligations and Mortgagee's rights, title, estate, liens, security interests and interests under the Development Agreement.

Section 1.3 Sale, Transfer, Encumbrance. Except as otherwise expressly permitted by the Development Agreement, if Mortgagor sells, conveys, transfers or otherwise disposes of, or encumbers, any part of its interest in the Mortgaged Property, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, Mortgagee shall have the

option to declare the Obligations immediately due and payable without notice. Mortgagor shall give notice of any proposed action to Mortgagee at least thirty (30) days prior to taking such action. Mortgagor shall pay all reasonable costs and expenses incurred by Mortgagee in evaluating any such action. No such action shall relieve Mortgagor from liability for the Obligations. The consent by Mortgagee to any action shall not constitute a waiver of the necessity of such consent to any subsequent action.

Section 1.4 Insurance. Mortgagor shall obtain, maintain and keep in full force and effect (and upon request of Mortgagee shall furnish to Mortgagee copies of) policies of insurance required of Mortgagor as described in, and meeting the requirements set forth in, the Development Agreement.

Section 1.5 Taxes, Liens and Claims, Utilities. Subject to reimbursement rights set out in the Development Agreement, Mortgagor, at least fifteen (15) days before any penalty attaches thereto, shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges and levies (collectively, "Impositions") imposed upon or against the Mortgaged Property or the Rents, or upon or against the Obligations, or upon or against the interest of Mortgagee in the Mortgaged Property or the Obligations, except Impositions measured by the income of Mortgagee. Mortgagor shall provide evidence of such payment at Mortgagee's request. Mortgagor shall keep the Mortgaged Property free and clear of all liens, encumbrances, easements, covenants, conditions, restrictions and reservations (collectively, "Liens") except for the permitted encumbrances specifically listed in Mortgagee's loan policy of title insurance covering this Mortgage, except for those encumbrances otherwise permitted by the Development Agreement and except for any of the same caused, or consented to in writing, by Mortgagee. Mortgagor shall pay or cause to be paid when due all charges or fees for utilities and services supplied to the Mortgaged Property. Notwithstanding anything to the contrary contained in this Section, Mortgagor shall not be required to pay or discharge any Imposition or Lien so long as Mortgagor shall in good faith, and after giving notice to Mortgagee, contest the same by appropriate legal proceedings. If Mortgagor contests any Imposition or Lien against the Mortgaged Property, Mortgagor shall provide such security to Mortgagee as Mortgagee shall reasonably require against loss or impairment of Mortgagor's ownership of or Mortgagee's lien on the Mortgaged Property and shall in any event pay such Imposition or Lien before loss or impairment occurs.

Section 1.6 Leases. Mortgagor shall not enter into or amend any Lease without Mortgagee's prior written consent.

Section 1.7 Indemnity. Mortgagor shall indemnify Mortgagee and its respective successors and assigns and their directors, officers, agents and employees (collectively the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, all losses, damages, suits, claims, judgments, penalties, fines, liabilities, costs and expenses by reason of, or on account of, or in connection with the construction, reconstruction or alteration of the Mortgaged Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property. The indemnity contained in this Section shall include reasonable costs of defense of any such claim asserted against an Indemnified Party, including reasonable attorneys' fees. The indemnity contained in this Section shall exclude any liability for claims or losses arising out of any Indemnified Party's gross negligence or willful

misconduct. The indemnity contained in this Section shall survive payment and performance of the Obligations and satisfaction and release of this Mortgage and any foreclosure thereof or acquisition of title by deed in lieu of foreclosure, but only to the extent that the events giving rise to a matter covered by the indemnity occurred prior thereto.

Section 1.8 Release. Mortgagee acknowledges is obligations to release this Mortgage as to a portion of the Mortgaged Property pursuant to the terms and conditions set out in Section 5.3 of the Development Agreement. Further, upon the occurrence of the Roberts Garage Closing, Mortgagee shall record a satisfaction of this Mortgage acknowledging Mortgagee has fully satisfied all of its obligations under this Mortgage and the Mortgage is terminated and of no further force or effect.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

Mortgagor makes the following representations and warranties:

Section 2.1 Ownership, Liens, Compliance with Laws. Mortgagor owns the Mortgaged Property free from all Liens, except for the permitted encumbrances specifically listed in Mortgagee's loan policy of title insurance covering this Mortgage and except for those encumbrances otherwise permitted by the Development Agreement.

Section 2.2 Use. The Mortgaged Property is not homestead property, agricultural property or in agricultural use, or owner-occupied residential property containing four units or less.

ARTICLE 3

DEFAULTS AND REMEDIES

Section 3.1 Events of Default. An Event of Default, as such term is defined in the Development Agreement, shall constitute an "Event of Default" hereunder. In addition, the following shall be an Event of Default: any failure to comply with, or breach of, any term of this Mortgage, which is not cured (i) within thirty (30) days following Mortgagor obtaining knowledge of such failure, or (ii) if such failure cannot be cured within thirty (30) days, such reasonable amount of time necessary for Mortgagor to cure such failure, provided that Mortgagor is diligently pursuing such cure, but in no event shall such amount of time exceed ninety (90) days following Mortgagor obtaining knowledge of such failure. Mortgagor covenants and agrees to provide Mortgagee with written notice promptly, and in any event, within five (5) business days of obtaining knowledge of any failure to comply with, or breach of, any term of this Mortgage.

Section 3.2 Remedies. Upon the occurrence of one or more other Events of Default, all of the Obligations, at the option of Mortgagee, shall be accelerated and become immediately due and payable upon notice to Mortgagor. In either event, the Obligations shall be due and payable

without presentment, demand or further notice of any kind. Mortgagee shall have the right to proceed to protect and enforce its rights by one or more of the following remedies:

(a) MORTGAGEE SHALL HAVE THE RIGHT TO BRING SUIT either for damages, for specific performance of any agreement contained in the Development Agreement, for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.

(b) MORTGAGEE SHALL HAVE THE RIGHT TO SELL THE MORTGAGED PROPERTY AT PUBLIC AUCTION AND CONVEY THE SAME TO THE PURCHASER IN FEE SIMPLE, as provided or required by law, Mortgagor to remain liable for any deficiency. Said sale may be as one tract or otherwise, at the sole option of Mortgagee. In the event of any sale of the Mortgaged Property pursuant to any judgment or decree of any court or at public auction or otherwise in connection with the enforcement of any of the terms of this Mortgage, Mortgagee, its successors or assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Development Agreement and any claims for interest accrued and unpaid thereon, together with all other sums, with interest, advanced or secured hereby and unpaid hereunder, in order that there may be credited as paid on the purchase price the total amount of the Obligations then due, advanced or secured hereby and unpaid hereunder or under the Development Agreement.

(c) MORTGAGEE SHALL HAVE THE RIGHT TO OBTAIN THE APPOINTMENT OF A RECEIVER at any time after the occurrence of an Event of Default. Mortgagee may apply for the appointment of a receiver to the district court for the county where the Mortgaged Property or any part thereof is located, by an action separate from any foreclosure of this Mortgage pursuant to applicable law, or as a part of the foreclosure action. Mortgagee shall be entitled to the appointment of a receiver without regard to waste, adequacy of the security or solvency of Mortgagor. The receiver, who shall be an experienced property manager, shall collect (until the Obligations are fully paid and satisfied and, in the case of a foreclosure sale, during the entire redemption period) the Rents, and shall manage the Mortgaged Property, execute Leases within or beyond the period of the receivership if approved by the court and apply all rents, profits and other income collected by him in accordance with applicable law and otherwise in his sole discretion.

Mortgagee shall have the right, at any time and without limitation to advance money to the receiver to pay any part or all of the items which the receiver should otherwise pay if cash were available from the Mortgaged Property and sums so advanced, shall be secured hereby, or if advanced during the period of redemption shall be part of the sum required to be paid to redeem from the sale.

(d) MORTGAGEE SHALL HAVE THE RIGHT TO COLLECT THE RENTS from the Mortgaged Property and apply the same in the manner hereinbefore provided with respect to a receiver. For that purpose, Mortgagee may enter and take possession of the Mortgaged Property and manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to collect the Rents and to conserve the value of the Mortgaged Property. Mortgagee may also take possession of, and for these purposes use, any and all of the Personal Property. The expense (including any receiver's fees, attorneys' fees, costs and agent's

compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Rents actually received by Mortgagee. Enforcement hereof shall not cause Mortgagee to be deemed a mortgagee in possession unless Mortgagee elects in writing to be a mortgagee in possession.

(e) MORTGAGEE SHALL HAVE THE RIGHT TO ENTER AND TAKE POSSESSION of the Mortgaged Property and manage and operate the same in conformity with all applicable laws and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property.

(f) MORTGAGEE SHALL HAVE ALL OF THE RIGHTS AND REMEDIES PROVIDED IN THE UCC, including the right to proceed under the UCC provisions governing default as to any Personal Property separately from the real estate included within the Mortgaged Property, or to proceed as to all of the Mortgaged Property in accordance with its rights and remedies in respect of said real estate. If Mortgagee should elect to proceed separately as to such Personal Property, Mortgagor agrees to make such Personal Property available to Mortgagee at a place or places acceptable to Mortgagee, and if any notification of intended disposition of any of such Personal Property is required by law, such notification shall be deemed reasonably and properly given if given at least ten (10) days before such disposition in the manner hereinafter provided.

(g) MORTGAGEE SHALL HAVE THE RIGHT TO FILE PROOF OF CLAIM and other documents as may be necessary or advisable in order to have its claims allowed in any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, its creditors or its property, for the entire amount due and payable by Mortgagor in respect of the Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

Each remedy herein specifically given shall be in addition to every other right now or hereafter given or existing at law or in equity, and each and every right may be exercised from time to time and as often and in such order as may be deemed expedient by Mortgagee and the exercise or the beginning of the exercise of one right shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right. Mortgagee shall have all rights and remedies available under the law in effect now and/or at the time such rights and remedies are sought to be enforced, whether or not they are available under the law in effect on the date hereof.

Section 3.3 Expenses of Exercising Rights Powers and Remedies. The reasonable expenses (including any receiver's fees, attorneys' fees, appraisers' fees, environmental engineers' and/or consultants' fees, costs incurred for documentary and expert evidence, stenographers' charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree of foreclosure) of procuring all abstracts of title, continuations of abstracts of title, title searches and examinations, title insurance policies and commitments and extensions therefor and endorsements thereto, UCC and chattel lien searches, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to

prosecute any foreclosure action or to evidence to bidders at any sale which may be had pursuant to any foreclosure decree the true condition of the title to or the value of the Mortgaged Property, and agent's compensation) incurred by Mortgagee after the occurrence of any Event of Default and/or in pursuing the rights, powers and remedies contained in this Mortgage shall be immediately due and payable by Mortgagor and shall be added to the indebtedness secured by this Mortgage.

Section 3.4 Restoration of Position. In case Mortgagee shall have proceeded to enforce any right under this Mortgage by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property subject to the lien hereof.

Section 3.5 Marshalling. Mortgagor, for itself and on behalf of all persons and entities which may claim under Mortgagor, hereby waives all requirements of law relating to the marshalling of assets, if any, which would be applicable in connection with the enforcement by Mortgagee of its remedies for an Event of Default hereunder, absent this waiver. Mortgagee shall not be required to sell or realize upon any portion of the Mortgaged Property before selling or realizing upon any other portion thereof.

Section 3.6 Waivers. No waiver of any provision hereof shall be implied from the conduct of the parties. Any such waiver must be in writing and must be signed by the party against which such waiver is sought to be enforced. The waiver or release of any breach of the provisions set forth herein to be kept and performed shall not be a waiver or release of any preceding or subsequent breach of the same or any other provision. No receipt of partial payment after acceleration of any of the Obligations shall waive the acceleration. No payment by Mortgagor or receipt by Mortgagee of a lesser amount than the full amount secured hereby shall be deemed to be other than on account of the sums due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Mortgagee may accept any check or payment without prejudice to Mortgagee's right to recover the balance of such sums or to pursue any other remedy provided in this Mortgage. The consent by Mortgagee to any matter or event requiring such consent shall not constitute a waiver of the necessity for such consent to any subsequent matter or event.

Section 3.7 Mortgagee's Right to Cure Defaults. If Mortgagor shall fail to comply with any of the terms of the Development Agreement with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term contained herein, in the Development Agreement, Mortgagee may make advances to perform the same without releasing Mortgagor from any of the Obligations. Mortgagor agrees to repay upon demand all sums so advanced and all sums expended by Mortgagee in connection with such performance, including without limitation attorneys' fees, interest, and all sums so advanced and/or expenses incurred, with interest, shall be secured hereby, but no such advance and/or incurring of expense by Mortgagee, shall be deemed to relieve Mortgagor from any default hereunder, in the Development Agreement, or to release Mortgagor from any of the Obligations.

Section 3.8 Suits and Proceedings. Mortgagee shall have the power and authority, upon prior notice to Mortgagor, to institute and maintain any suits and proceedings as Mortgagee may deem advisable to (i) prevent any impairment of the Mortgaged Property by any act which may be unlawful or by any violation of this Mortgage, (ii) preserve or protect its interest in the Mortgaged Property, or (iii) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if, in the sole opinion of Mortgagee, the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

ARTICLE 4

MISCELLANEOUS

Section 4.1 Binding Effect; Survival; Number; Gender. This Mortgage shall be binding on and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns. All agreements, representations and warranties contained herein or otherwise heretofore made by Mortgagor to Mortgagee shall survive the execution, delivery and foreclosure hereof. The singular of all terms used herein shall include the plural, the plural shall include the singular, and the use of any gender herein shall include all other genders, where the context so requires or permits.

Section 4.2 Severability. The unenforceability or invalidity of any provision of this Mortgage as to any person or circumstance shall not render that provision unenforceable or invalid as to any other person or circumstance.

Section 4.3 Notices. Any notice or other communication to any party in connection with this Mortgage shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail addressed to such party at the address specified below. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received.

To Mortgagor: GREAT PLAINS MERCANTILE HOLDINGS, LLC,
ATTN: Mike Allmendinger, Vice-President
210 Broadway N., Suite 300
Fargo, ND 58102

with a copy to: Dan Bueide
Bueide Law Firm
1 2nd St. N, Suite 100
Fargo, ND 58102

To Mortgagee: City Auditor
Fargo City Hall
200 N. 3rd Street
Fargo, ND 58102

and to:	Director of Strategic Planning ATTN: James Gilmour Fargo City Hall 200 N. 3rd Street Fargo, ND 58102
with copy to:	Erik R. Johnson 505 Broadway, Suite 206 Fargo, ND 58102

Either party may change its address for notices by a notice given not less than ten (10) Business Days prior to the effective date of the change.

Section 4.4 Applicable Law. This Mortgage shall be construed and enforceable in accordance with, and be governed by, the laws of the State of North Dakota, without giving effect to conflict of laws or principles thereof. Whenever possible, each provision of this Mortgage and any other statement, instrument or transaction contemplated hereby or relating hereto, shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto.

Section 4.5 Waiver of Jury Trial. **MORTGAGOR AND MORTGAGEE BY ACCEPTANCE HEREOF EACH IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

Section 4.6 Effect. This Mortgage is in addition and not in substitution for any other guarantees, covenants, obligations or other rights now or hereafter held by Mortgagee from any other person or entity in connection with the Obligations.

Section 4.7 Assignability. Mortgagee shall have the right to assign this Mortgage, in whole or in part, or sell participation interests herein, to any person obtaining an interest in the Obligations.

Section 4.8 Headings. Headings of the Sections of this Mortgage are inserted for convenience only and shall not be deemed to constitute a part hereof.

Section 4.9 Fixture Filing. This Mortgage shall be deemed to be a fixture financing statement within the meaning of the UCC and for such purpose, the following information is given with respect to Mortgagor as fee owner of the Land:

Name and address of Debtor:	GREAT PLAINS MERCANTILE HOLDINGS, LLC, ATTN: Mike Allmendinger, 210 Broadway N., Suite 300 Fargo, ND 58102
Type of organization:	limited liability company
Jurisdiction of organization:	_____
Organization ID No.:	_____
Name and address of Secured Party:	City of Fargo, North Dakota City Auditor Fargo City Hall

200 N. 3rd Street
Fargo, ND 58102

Description of the types (or items) of property covered by this Financing Statement:	See Granting Clauses on pages 2-3 above
Description of real estate to which the collateral is attached or upon which it is or will be located:	See Exhibit A hereto
Record owner of real estate to which the collateral is attached or upon which it is or will be located:	GREAT PLAINS MERCANTILE HOLDINGS, LLC

Some of the above-described collateral is or is to become fixtures upon the above-described real estate and this Financing Statement is to be filed for record in the public real estate records.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

MORTGAGOR:

GREAT PLAINS MERCANTILE HOLDINGS, LLC

By: _____
Name: _____
Title: _____

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

On this ___ day of _____, 2019, before me, personally appeared, _____ known to me to be the _____ of the limited liability company that is described in and that executed the foregoing instrument, and acknowledged that such limited liability company executed the same.

(Seal)

_____
Notary Public

_____ County
State of _____

My commission expires:

_____, 20___

EXHIBIT A

OMITTED

EXHIBIT B

Legal Description of Garage Parcel

Legal Description of Real Property, on a portion of which the Mercantile Garage will be located

THAT PART OF LOTS 2, 3, 4, 5, 10, 11, AND THE ADJACENT VACATED ALLEY, BLOCK 21, KEENEY AND DEVITT'S SECOND ADDITION, AND THAT PART OF LOT B, BLOCK 1, GREAT NORTHERN DEPOT ADDITION, ALL IN THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, AND ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID BLOCK 21; THENCE NORTH 02°50'50" WEST (ASSUMED BEARING), ALONG THE WEST LINE OF SAID BLOCK 21, FOR A DISTANCE OF 199.96 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; THENCE NORTH 87°04'26" EAST, ALONG THE NORTH LINE OF SAID LOT 10, FOR A DISTANCE OF 160.51 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 163.69 FEET; THENCE NORTH 87°06'54" EAST FOR A DISTANCE OF 129.69 FEET; THENCE SOUTH 02°53'06" EAST FOR A DISTANCE OF 36.18 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID BLOCK 21; THENCE NORTH 87°04'26" EAST, ALONG THE SOUTH LINE AND SOUTH LINE AS EXTENDED EAST OF SAID BLOCK 21 FOR A DISTANCE OF 37.72 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY LINE OF VACATED 5TH STREET NORTH AS DEPICTED ON DOCUMENT NO.???, ON FILE AND OF RECORD AT THE CASS COUNTY RECORDER'S OFFICE; THENCE NORTH 12°48'06" EAST, ALONG THE EASTERLY LINE OF SAID VACATED 5TH STREET NORTH, FOR A DISTANCE OF 163.92 FEET; THENCE SOUTH 87°06'54" WEST FOR A DISTANCE OF 189.72 FEET; THENCE NORTH 02°53'06" WEST FOR A DISTANCE OF 42.03 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 10 AS EXTENDED EAST; THENCE SOUTH 87°04'26" WEST, ALONG THE NORTH LINE AS EXTENDED EAST AND ALONG THE NORTH LINE OF SAID LOT 10, FOR A DISTANCE OF 22.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 26,153 SQUARE FEET, MORE OR LESS.

Legal description prepared by Curtis Skarpohl, Houston Engineering.

EXHIBIT J

Form of Certificate of Completion

CERTIFICATE OF COMPLETION

A. GREAT PLAINS MERCANTILE HOLDINGS, LLC ("GPMH"), pursuant to the Development Agreement with the CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION (the "City"), dated _____, 2019 (the "Agreement"), has agreed to plan, design, finance, acquire, develop, and construct the Mercantile Project.

B. The GPMH has substantially completed construction of the [Garage/Wrap] as required under the Agreement, which project is legally described on Schedule I attached hereto.

C. The issuance of this Certificate of Completion by the City is not intended nor shall it be construed to be a warranty or representation by the City as to the structural soundness of the [Garage/Wrap], including, but not limited to, the quality of materials, workmanship or the fitness of the Garage/Wrap] for its proposed use.

NOW THEREFORE, this is to certify that all construction and other physical improvements specified to be done and made by GPMH with regard to the [Garage/Wrap] have been substantially completed, and the provisions of the Agreement imposing obligations on the GPMH to construct the [Garage/Wrap] as required under the Agreement, are hereby satisfied and terminated, and the Recorder in and for Cass County, North Dakota is hereby authorized to record this instrument, to be a conclusive determination of the satisfactory termination or said provisions of the Agreement.

[*Remainder of page intentionally blank.*]

Dated: _____, 20___

CITY: CITY OF FARGO, NORTH DAKOTA

By _____
Its Mayor

By _____
Its City Auditor

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

On this ___ day of _____, 2019, before me, personally appeared, _____ and _____ known to me to be the _____ and _____ of the municipal corporation that is described in and that executed the foregoing instrument, and acknowledged that such municipal corporation executed the same.

(Seal)

_____
Notary Public

_____ County
State of _____

My commission expires:

_____, 20___

SCHEDULE I

Legal Description

EXHIBIT K

Disbursing Agreement

THIS DISBURSING AGREEMENT (the "Agreement"), is made an entered into as of the _____, 2019, by and among Great Plains Mercantile Holdings, LLC ("GPMH"), City of Fargo, a North Dakota municipal corporation (the "City"); and The Title Company, as title and escrow agent ("Title Company").

WITNESSETH:

A. GPMH and the City entered into a Development Agreement dated of substantially even date hereof (the "Development Agreement"). Undefined capitalization terms used herein are used with the same meanings assigned such terms in the Development Agreement. Pursuant to the Development Agreement, GPMH will construct the Garage pursuant to the terms of such Development Agreement and the City will reimburse the GPMH for the Final Total Project Cost up to the Guaranteed Project Cost.

B. Pursuant to the Development Agreement, the parties agreed to execute this Agreement concurrently with the execution of the Development Agreement to provide a mechanism for the disbursement of funds to GPMH in connection with the Garage Work in accordance with the Development Agreement and this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed by and among the parties hereto as follows:

SECTION 1. DISBURSEMENT OF FUNDS.

1.01 Conditions for Disbursements to GPMH. GPMH has certified to the City that all of GPMH's representations and warranties under the Development Agreement remain true and correct as if made on the date of such request.

(b) No Event of Default by GPMH remains uncured under the Development Agreement and no event or condition exists that with the giving of notice and opportunity to cure would be an Event of Default under the Development Agreement.

(c) No construction lien or other encumbrance shall have been filed and remain in effect against the Garage Parcel, or if there has been such a lien, GPMH shall have agreed to indemnify Title Company from and against any loss arising therefrom in a form reasonably acceptable to Title Company.

(d) GPMH has submitted a duly and properly authorized draw request (in form reasonably acceptable to the City and the Title Company) evidencing through attached invoices, receipts, cancelled checks, or other evidence,

reasonably acceptable to the Title Company and the City that the costs have been incurred and relate to work incorporated into the Garage Parcel (a "Draw Request").

(e) GPMH has submitted to the Title Company and the City, or the Title Company shall obtain as a precondition of payment, where applicable, a partial and conditional (subject only to payment) waiver of mechanic's lien and/or materialmen's lien, executed by all contractors to be paid out of the Draw Request in the amount of the lienable costs payable from the Draw Request, in the form reasonably required by the Title Company.

(f) The City and Title Company have approved GPMH's Draw Request.

(g) The Title Company has unconditionally agreed to issue an appropriate date down endorsement to the City's title policy relating to the Garage Parcel providing acceptable coverage over mechanic's lien and/or materialmen's lien, which must be acceptable to the City.

(h) GPMH has delivered to the Title Company all other items reasonably requested in connection with the Draw Request.

(i) All terms and conditions of this Agreement have been satisfied with respect to each disbursement.

1.02 Draw Procedure. GPMH shall not be permitted to submit more than one (1) Draw Request per month. Upon satisfaction of the conditions set forth in Section 1.01 above, the Title Company shall notify the City that all requirements for the payment of the Draw Request have been met. The City shall, subject to Section 1.04 below, within five (5) Business Days thereafter deposit the amount of such approved Draw Request less a 5% retainage with the Title Company and the Title Company shall pay such approved amounts to each contractor and other person identified in the relevant Draw Request, less the 5% retainage. Parking Ramp hard construction costs shall include a Construction Manager's fee of 3% of certain construction costs paid to the Construction Manager, Kilbourne Construction Management, LLC, all as more-fully described in the Development Agreement. Soft costs incurred by GPMH in connection with the Garage Work may be included in any Draw Request, provided all the conditions of Section 1.01 and this Section 1.02 are met, and there shall be no 5% retainage on the incurred soft costs.

1.03 GPMH's Fee. GPMH shall not be entitled to the 5% retainage on the Garage Work except pursuant to this Section 1.03. Upon the issuance of a Certificate of Completion, satisfaction of the conditions set forth in Section 1.01 above, and agreement by the parties on the Final Total Project Cost, the Title Company shall notify the City that all requirements for the payment under this Section 1.03 have been met. The City shall, subject to Section 1.04 below, within five (5) Business Days thereafter deposit the amount of the 5% retainage and the Title Company shall pay such amounts to GPMH. The GPMH Fee under the Development Agreement will be paid at the agreed-upon rate (3%) applied to and paid with each Draw Request (and will not be subject to the 5% retainage).

1.05 Maximum City Payment. The City shall not be required to pay any amounts to GPMH in excess of the lesser of the Final Total Project Cost and the Guaranteed Project Cost.

SECTION 2. RECORDS. The Title Company shall keep records showing the names of all Applicants to whom disbursements are made by the Title Company, the date, the amount and purpose of such disbursement, which records may be inspected by GPMH and the City.

SECTION 3. INSUFFICIENT DOCUMENTATION. If the Title Company shall determine in its reasonable judgment that proper documentation to support a given disbursement as required by this Agreement has not been furnished, the Title Company shall withhold payment of all or such portion of such disbursement as shall not be so supported by proper documentation, and shall promptly notify GPMH and the City of the discrepancy in or omission of such documentation. Until such time as such discrepancy or omission is corrected to the satisfaction of the Title Company and the City, it shall withhold such amount, unless otherwise directed in writing by the City.

SECTION 4. NOTICE. Any notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Agreement shall be deemed to have been given as and when provided for in the Development Agreement, addressed to the party to which the notice is to be given at the address set forth in the Development Agreement, or to any other address in the United States of America specified in a notice given by such party to the others not less than three (3) business days prior to the effective date of the address change.

SECTION 5. COMPENSATION. The Title Company costs and fees in connection with making disbursements in accordance with the terms of this Agreement shall be split equally between GPMH and the City. GPMH's share of such costs shall not be included in the Total Project Cost.

SECTION 6. MISCELLANEOUS. This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that the Title Company may not delegate its duties hereunder. This Agreement is made solely by the signatory parties hereto, and no other persons (except the successors and assigns of the signatory parties) shall have any right to rely on or enforce or have the benefit of any provision of this Agreement. This Agreement shall be governed by the laws of the State of North Dakota. This Agreement can be amended or modified only by a writing signed by the parties hereto.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

CITY OF FARGO, a North Dakota municipal corporation

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

ATTEST:

By: _____
Steve Sprague, City Auditor

GREAT PLAINS MERCANTILE HOLDINGS, LLC

By: _____
Name: _____
Its: _____

THE TITLE COMPANY

By: _____
Name: _____
Title: _____

[Signature page to Disbursing Agreement]