
AMENDED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MINOT, as City

AND

BIG M MINOT, LLC, as Developer

Dated as of ----- Relating to:

Redevelopment of the Midwest Federal Building

AMENDED DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2024 (hereinafter referred to as the “Effective Date”), by and between Big M Minot, LLC, a North Dakota limited liability company, having an address of 400 10th St. SE, Minot, North Dakota 58701(the “Developer”), and the City of Minot, North Dakota, a municipal corporation and political subdivision whose principal office and mailing address is 10 3rd Avenue SW, Minot, North Dakota, 58702 (the “City”).

WHEREAS, the City has adopted a General Development Plan for Urban Renewal and Urban Development Plan in accordance with the provisions of Section 40-58-06, North Dakota Century Code, and will issue TIF Bonds to finance costs associated with TIF District No. 2022-1; and

WHEREAS, on June 28, 2022, the City held a public hearing regarding approval of this Agreement; and

WHEREAS, Developer has purchased the following described property specifically for purposes of this project:

ORIGINAL MINOT ADDITION LOTS 13, 14, 15 & SOUTH 3.2' OF LOT 16
BLOCK 6 (Building parcel)

ORIGINAL MINOT ADDITION SOUTH 13' OF LOT 18 & ALL LOT 17 & LOT
16 LESS SOUTH 3.2' BLOCK 6 (Parking lot parcel just north of building)

(hereinafter the “Property”); and

WHEREAS, the Property contains an existing building commonly referred to as the Midwest Federal Building, which is need of environmental mitigation, remodeling, and repurposing to restore the Midwest Federal Building to a level which will support occupancy and current industry standards; and

WHEREAS, in its current condition, the Property is blighted as it is functionally obsolete and in need of environmental mitigation; and

WHEREAS, Developer intends to reconstruct the Midwest Federal Building into a mixed-use building, offering underground parking, commercial and office space on the first five floors and residential apartments on floors six, seven, and eight(the “Project”); and

WHEREAS, Developer will be responsible for all costs associated with the design, renovation, and construction of the Project; and

WHEREAS, certain costs associated with the Project will be reimbursed by tax increment revenue generated by the creation of TIF District No. 2022-1 on the Property; and

WHEREAS, the City intends to issue TIF Bonds secured by a pledge of the above-described tax increment revenue and/or special assessments in order to reimburse Developer for certain costs associated with the Project; and

WHEREAS, the City has determined it to be in the best interests of the City to create TIF District No. 2022-1 to pay costs associated with the Project and to aid in the redevelopment of commercial and industrial property in the City; and

WHEREAS, Developer believes that it is in the best interest that the City create a tax increment financing district to pay the costs associated with the Project for the purpose of promoting commercial redevelopment in the City as set out in this Agreement; and

WHEREAS, the City, pursuant to N.D.C.C. §§ 40-05-24 and 40-58-20.2(2), has obtained the consent of the Minot Public School District (the “School District”) and Ward County (the “County”) to participate in the property tax incentive that will be in the form of tax increment financing for the Project; and

WHEREAS, it is necessary for Developer and the City to enter into this Agreement pursuant to N.D.C.C. § 40-58-20.1.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the City and Developer agree as follows:

1. **DEFINITIONS.** The terms in this Section for all purposes of this Agreement, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

“Change in Law” means the introduction or repeal (in whole or in part) of, the amendment, alteration or modification to, or the change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any applicable laws, standards, practices, or guidelines issued or published by any governmental entity that occur after the Effective Date that are binding on the City, Developer, or the Property.

“City” means the City of Minot, North Dakota, a municipal corporation and political subdivision of the State of North Dakota.

“City Council” means the City Council of the City of Minot, North Dakota.

“City Manager” means the Person appointed and acting as the City Manager for the City.

“Completion” means a certificate of occupancy, or like certificate, has been issued by the City.

“County” means Ward County, North Dakota.

“County Auditor” means the Ward County Auditor.

“County Commission” means the Ward County Commission.

“Developer” means Big M Minot, LLC, a North Dakota limited liability corporation.

“Guarantor” means each Person who has executed the Guaranty. Each officer, manager, director, governor, and/or member of the respective Developer that owns thirty percent (30%) of more of the outstanding membership interests of the respective Developer shall be required to be a Guarantor. Further, the Guarantors shall collectively own not less than sixty percent (60%) of the outstanding membership interests of the respective Developer. If, at any time, the Guarantors collectively own less than such sixty percent (60%), then additional officers, managers, directors, governors, and/or members of the respective Developer, that may own less than thirty percent (30%) of the outstanding membership interests, shall be required to execute a Guaranty to achieve the collective sixty percent (60%) ownership requirement of the Guarantors.

“Guaranty” means the Guaranty attached as **Exhibit A** and by this reference incorporated herein, with such changes, renewals, modifications or amendments thereto as the City shall deem reasonably necessary.

“Midwest Federal Building” means the portion of the Property to be reconstructed as a component of the Project.

“Party” means either the City or Developer, as the context requires, and its respective representatives, successors, and assigns, and if reference is made to the Parties, **“Parties”** means both the City and Developer, and their respective representatives, successors, and assigns.

“Project” means the proposed development of the Property with an 8-story building, incorporating underground parking, 5-floors of commercial and office space and 3-floors of residential apartments.

“Property” means the Midwest Federal Building and parking lot parcel legally described as:

ORIGINAL MINOT ADDITION LOTS 13, 14, 15 & SOUTH 3.2' OF LOT
16 BLOCK 6 (Building parcel)

ORIGINAL MINOT ADDITION SOUTH 13' OF LOT 18 & ALL LOT 17
& LOT 16 LESS SOUTH 3.2' BLOCK 6 (Parking lot parcel just north of
building).

The Property is shown on the map attached as **Exhibit B**.

“Reimbursable Costs” means certain expenses incurred by Developer for the Project eligible for reimbursement by the City, which includes reimbursable costs described in

Developer's application and permitted by this Agreement and N.D.C.C. § 40-58-20.1, Subd. 3.

"School District" means Minot Public Schools.

"TIF Bond Proceeds" means all of the proceeds from the sale of the TIF Bonds issued by the City used to reimburse Developer for certain costs incurred for the Project, except for costs of issuance (including items such as underwriter's discount and any bond insurance premium) and any reasonable required reserve fund.

"TIF Bonds" means the tax increment financing general obligation bonds issued by the City, which the City will pledge tax increment revenue from the TIF District and special assessments for debt service thereof. It is acknowledged that the TIF Bonds may be taxable.

"TIF District" or "TIF District No. 2022-01" means Tax Increment Financing District 2022-01 created by the City on June 28, 2022, by way of resolution.

"Unavoidable Delay" means a failure or delay in a party's performance of its obligations under this Agreement, or during any cure period specified in this Agreement which does not entail the mere payment of money, not within the party's reasonable control, including but not limited to acts of God, governmental agencies, the other party, strikes, labor disputes (except disputes which could be resolved by using union labor), fire or other casualty, or lack of materials; provided that within ten (10) days after a party impaired by the delay has knowledge of the delay it shall give the other party notice of the delay and the estimated length of the delay, and shall give the other party notice of the actual length of the delay within ten (10) days after the cause of the delay has ceased to exist. The parties shall pursue with reasonable diligence the avoidance and removal of any such delay. Unavoidable Delay shall not extend performance of any obligation unless the notices required in this definition are given as herein required.

2. **CREATION OF TIF DISTRICT.** On June 28, 2022, the City, by a separate resolution, created Tax Increment Financing District No. 2022-01 (the "TIF District") in the City as permitted in the General Plan for the City and Urban Renewal and Development Plan. The TIF District includes the Property.
3. **CONSENT.** Developer has requested and hereby consents to and approves the creation of the TIF District. Developer expressly waives any objection to any irregularity with regard to the creation of the TIF District. Further, Developer waives all rights to appeal (pursuant to N.D.C.C. § 28-34-01) such action of the City to a court. This waiver is express and Developer acknowledges it is waiving any and all rights of appeal regarding any irregularity with regard to the creation of the TIF District.
4. **INCREASED PROPERTY VALUE.** Except as otherwise set forth herein, Developer understands and agrees that the increased value of the Property in the TIF District will be taxed as a general real estate tax in the City. The Parties agree that the Property is subject to the Minimum Assessment Agreement, which is incorporated by reference into this Agreement as **Exhibit C**. The Parties agree to comply with the terms and conditions of the

Minimum Assessment Agreement as they relate to the Property throughout the term of this Agreement.

5. **TERM OF TIF DISTRICT.** Except as limited by Section 6 and 7 of this Agreement, pursuant to N.D.C.C. § 40-58-20 and as set forth in the preceding Section, tax increments will be collected from the TIF District for not more than twenty (20) years, commencing with the taxable year in which the City requests the County Auditor to compute, certify and remit to the City, the tax increment resulting from the development and redevelopment of the Property, pursuant to N.D.C.C. § 40-58-20(1) and this Section.
6. **CITY AND SCHOOL DISTRICT CONTRIBUTION.** The tax increments and the property tax incentive under the TIF District and this Agreement shall be the tax increment, as described in and calculated pursuant to N.D.C.C. § 40-58-20(4), resulting from the Project and based on applying ninety (90%) of the incremental value that is computed and certified pursuant to N.D.C.C. § 40-58-20(3) to debt service on the TIF Bonds, with the remaining ten (10%) of the tax increment going to the City, School District, and Minot Park District. For purposes of making this calculation of the tax increment and the incremental value, the original taxable value, as described in N.D.C.C. § 40-58-20(2) shall be the taxable value of the Property, as last assessed and equalized for the property tax year immediately preceding the date City requests the County Auditor to compute, certify and remit tax increments, pursuant to N.D.C.C. § 40-58-20(1).
7. **COUNTY CONTRIBUTION.** The tax increments that would normally be allocated to the County and the property tax incentive under the TIF District and this Agreement shall be the tax increment allocated from the County, as described in and calculated pursuant to N.D.C.C. § 40-58-20(4), resulting from the Project and based on applying one hundred percent (100%) of the incremental value that is computed and certified pursuant to N.D.C.C. § 40-58-20(3) for a period of eight (8) years, commencing on June 28, 2022. For purposes of making this calculation of the tax increment and the incremental value, the original taxable value, as described in N.D.C.C. § 40-58-20(2) shall be the taxable value of the Property, as last assessed and equalized for the property tax year immediately preceding the date City requests the County Auditor to compute, certify, and remit tax increments, pursuant to N.D.C.C. § 40-58-20(1). The County Commission approved County participation for a period of eight (8) years and to apply one hundred (100%) of the incremental value to the Project at a special meeting on May 20, 2022; the minutes of the County Commission are attached as **Exhibit D** to this Agreement. The County Commission has authorized its representatives to sign an acknowledgement consenting to the terms described in Section 7 hereof.
8. **DEVELOPMENT; DEVELOPER REPRESENTATIONS.**
 - a. Developer is a North Dakota limited liability company and has power to enter into this Agreement and has duly authorized, by all necessary corporate action, the execution and delivery of this Agreement.

- b. Developer will, to the extent required by this Agreement, construct the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations.
- c. Developer has received no written notice or communication from any local, state or federal official that the activities of the Developer or the City with respect to the Property may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of any local, state or federal environmental law, regulation or review procedure with respect to the Property.
- d. Neither the execution or delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented by, limited by, conflicts with, or results in a breach of, any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.
- e. Developer will be responsible for design, construction, and installation of the Project, at Developer's initial sole cost.
- f. The City shall have the right to oversee, approve of, all proposed Reimbursable Costs for the Property to be reimbursed.
- g. Developer shall notify the City when the portions of the Project to be reimbursed has reached Completion, and within ninety (90) calendar days of such notification by Developer, the City shall reinspect the Property and provide written notice to Developer of any objection to the work performed. Failure to provide said objection within ninety (90) calendar days shall be deemed approval and acceptance by the City.
- h. Developer shall be responsible for all maintenance of the Project.
- i. Developer's use of the Property shall be subject to and in compliance with all of the conditions, covenants, restrictions and limitations imposed by this Agreement, and all applicable laws, ordinances, and regulations.
- j. Developer represents and warrants that it is the owner in fee simple of the Property and that there are no liens, defects or other encumbrances upon title to the Property that would hinder the development of the Property by the Developer as contemplated by this Agreement.
- k. Subject to any mortgage requirements that would require the Developer to act sooner, upon any damage or destruction of the Project, or any portion thereof, by fire or other casualty, the Developer shall within one hundred twenty (120) days after such damage or destruction, commence the process required to repair, reconstruct and restore the damaged or destroyed Project, or portion thereof, to substantially the same condition or utility value as existed prior to the event causing

such damage or destruction and shall diligently pursue such repair, reconstruction, and restoration.

1. Developer agrees to permit the City and any of their officers, employees or agents access to the Property at all reasonable times for the purpose of inspection of all work being performed in connection with the Project; provided, however, that the City shall have an obligation to inspect such work.

9. **INSURANCE.**

- a. Subject to the terms of any mortgage relating to the Property, the Developer shall keep and maintain the Property and Project at all times insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with facilities of the type and size comparable to the Project, and the Developer shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for direct damage insurance covering all risks of loss, including, but not limited to, the following:

- a. fire
- b. extended coverage perils
- c. vandalism and malicious mischief
- d. boiler explosion (but only if steam boilers are present)
- e. collapse

on a replacement cost basis in an amount equivalent to the full insurable value thereof ("full insurable value" shall include the actual replacement cost of the Project, exclusive of foundations and footings, without deduction for architectural, engineering, legal or administrative fees or for depreciation). Insurance in effect with respect to any portion of the Project to be rehabilitated or renovated as a part of the Project prior to reimbursement of costs by the City to the Developer pursuant to Section 10 shall be maintained on an "all-risk" builder's risk basis during the course of construction. The policies required by this Section shall be subject to a no coinsurance clause or contain an agreed amount clause, and may contain a deductibility provision not exceeding \$25,000.

- b. Subject to the terms of any mortgage relating to the Property, policies of insurance required by this Section shall insure and be payable to the Developer, and shall provide for release of insurance proceeds to the Developer for restoration of loss. In case of loss, the Developer is hereby authorized to adjust the loss and execute proof thereof in the name of all parties in interest.

10. **REIMBURSABLE COSTS.**

- a. The City will remit TIF Bond Proceeds to Developer as reimbursement for certain costs incurred by Developer for the Project on a monthly basis. Specifically, the City will remit the TIF Bond Proceeds for the Reimbursable Costs on the Property, or any other Reimbursable Costs permitted by N.D.C.C. § 40-58-20.1, Subd. 3.
- b. The City will reimburse the Developer for Reimbursable Costs on a monthly basis. The Developer shall provide the City detailed receipts, invoices, or statements for Reimbursable Costs to draw upon TIF Bond Proceeds once per month. Within thirty (30) calendar days of receipt of the receipts, invoices, or statements, the City, in addition to inspecting the Property to be reimbursed, will review such statements and notify Developer of any discrepancies or the need for additional information. The Developer shall remedy such deficiencies or discrepancies to the City's satisfaction, and the City will remit a payment to the Developer upon such satisfaction. The City shall remit any undisputed amounts owed to Developer for reimbursement. If the City disputes items submitted by Developer for reimbursement, the City and Developer shall negotiate such items in Good Faith to arrive at a reimbursement amount. The City and Developer agree that the reimbursement amount shall not exceed the proceeds received from the sale of TIF Bonds, net of cost of issuance or premium or discount.

11. **CONDITIONS PRECEDENT FOR PAYMENT OF REIMBURSABLE COSTS.** The payment by the City to the Developer of the Reimbursable Costs are subject to the satisfaction of the following conditions precedent:

- a. The City has determined that Developer's submitted requests for reimbursement are permitted Reimbursable Costs under the terms of this Agreement.
- b. The Guarantors have executed and delivered to the City their respective Guaranty.
- c. The Minimum Assessment Agreement has been executed.
- d. There has been no event of default under this Agreement by the Developer.

12. **CONDITIONS PRECEDENT TO ISSUANCE OF TIF BONDS.**

- a. Approval by the City Council to issue the TIF Bonds.

- b. The Guarantors have executed and delivered to the City their respective Guaranty.
 - c. There has been no event of default under this Agreement by the Developer.
- 13. **APPLICATION OF FUNDS.** Developer agrees that the tax increment revenue generated from the TIF District will be applied to the costs of the TIF Bonds issued by the City for the twenty (20) years (levied 2022 through 2041 and collected 2023 through 2042) of the TIF District or until the debt service of the TIF Bonds is paid in full, whichever occurs first.
- 14. **EVENTS OF DEFAULT.** Subject to Unavoidable Delay, the following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events which occurs and continues for more than thirty (30) days after written notice by the defaulting party of such default (and the term “default” shall mean any event which would with the passage of time or giving of notice, or both, be an “Event of Default” hereunder):
 - a. Failure of the Developer to construct the Project as required hereunder.
 - b. Failure of the Developer or the City to observe and perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder.
 - c. Failure of the Developer to pay any taxes on the Property as they become due.
 - d. Filing of any voluntary petition in bankruptcy or similar proceedings by the Developer; general assignment for the benefit of creditors made by the Developer or admission in writing by the Developer of inability to pay its debts generally as they become due; or filing of any involuntary petition in bankruptcy or similar proceedings against the Developer which are not dismissed or stayed within sixty (60) days.
- 15. **REMEDIES ON DEFAULT.** In the event the City desires to exercise any of its rights or remedies as provided herein or otherwise available to the City at law or in equity, the City shall first provide written notice to Developer setting forth with specific particularity the Event of Default and the action required to cure or remedy the same (the “Default Notice”). Developer or any transferee or assignee, shall have thirty (30) days from receipt of a Default Notice to cure or remedy the Event of Default specified in the Default Notice, or such longer period as may be reasonably required to complete the cure as soon as reasonably possible under the circumstances. If, following Developer’s receipt of a Default Notice, Developer does not cure or remedy the Event of Default therein specified within the time provided above, the City may take any one or more of the following actions at any time prior to Developer’s curing or remedying the Event of Default:
 - a. Suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure its default and continue its performance under this Agreement.

- b. In the case of a material default that is not cured within a reasonable period of time, Terminate all rights of Developer under this Agreement.
- c. Not issue the TIF Bonds or withhold reimbursement from the TIF Bond proceeds.
- d. Take whatever action at law or in equity may appear necessary or desirable to the City to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement.
- e. Pursue and obtain against Developer and each Guarantor full and complete reimbursement for all costs and expenses the City has incurred under this Agreement, including recovery of the outstanding balance of the TIF Bonds.

In the event the City should fail to observe or perform any covenant, agreement or obligation of the City on their part to be observed and performed under this Agreement, Developer may take any one or more of the following actions:

- a. Suspend its performance under this Agreement until it receives assurances from the City deemed adequate by Developer, that the City will cure its default and continue its performance under this Agreement.
- b. In the case of a material default that is not cured within a reasonable period of time, Terminate all rights of the City under this Agreement.
- c. Take whatever action at law or in equity may appear necessary or desirable to Developer to enforce performance and observance of any obligation, agreement, or covenant of the City under this Agreement.

- 16. **TERMINATION.** This Agreement will terminate and be of no further force and effect after the TIF Bonds issued relating to the TIF District have been paid in full, or December 31, 2043, whichever event occurs first.
- 17. **NO REMEDY EXCLUSIVE.** No remedy herein conferred upon or reserved to the City or to the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or Developer to exercise any remedy reserved to them, it shall not be necessary to give notice, other than such notice as may be required under this Agreement.
- 18. **RESPONSIBILITIES OF DEVELOPER.**
 - a. Developer must obtain all required permits, licenses and approvals, and must meet all requirements of all local, state, and federal laws and regulations which must be obtained or met in connection with the development and construction of private buildings and businesses. Without limitation to the foregoing, Developer must

request and obtain from the City all necessary variances, conditional use permits, or zoning changes. The Parties agree and acknowledge that this Agreement does not constitute review or approval of any permits, approvals, or licenses which may be required by the City.

- b. Developer shall devote each such parcel to the uses specified for it in the submitted plan and the Developer shall begin and complete the development of such land for uses required in the plan by February 28 2025.
 - c. Developer shall retain the interest it acquires on individual properties transferred to it until it has completed the construction and development of said properties in accord with the provisions of the submitted plan and disposition instruments.
 - d. Developer shall not sell, lease, or otherwise transfer the interests in the Property, or any part thereof, or transfer or assign any of Developer's rights or interests under this Agreement without the prior written consent of the City.
 - e. Developer agrees that no covenant, agreement, lease, conveyance, or other instrument shall be effected or executed by the City or by a Developer (or any successor in interest) whereby the use of the land in the project area is restricted, either by the City or Developer (or any successor in interest) upon the basis of race, creed, color, or national origin in the sale, lease, or occupancy thereof. The foregoing restriction shall be implemented by appropriate covenants or other provisions and disposal instruments as covenants running with the land.
 - f. Developer, its successor, or assigns shall not discriminate in the use, sale, or lease of any property within the project area or any part thereof, against any person because of race, color, religion, or national origin and such provisions shall be included in disposition instruments as a covenant running with the land.
 - g. Developer shall ensure that all plans for structures, site improvements, signs (other than directional signs) and landscaping must be approved in writing for conformance with the provisions of the submitted plan by the City of Minot Engineering Department before construction is commenced.
19. **PARKING RAMP.** Developer intends to use the parking ramps for its residential tenants on Mondays through Fridays after 5:00 p.m. and for twenty-four (24) hours a day on Saturdays and Sundays. Developer agrees and acknowledges that the failure to comply with this provision shall be deemed a default of this Agreement.
20. **SPECIAL ASSESSMENTS.** Developer acknowledges that special assessments for improvement districts benefitting the Property may be levied as special assessments against the Property and are not included in this Agreement.
21. **INSUFFICIENT REVENUE.**

- a. Developer agrees that in the event there is inadequate revenue generated from the TIF District to cover the costs incurred by the City for debt service on the TIF Bonds, the amount of said delinquency shall be specially assessed against the Property, levied and certified as a special assessment.
 - b. Developer agrees that the above-described special assessments benefit the Property and will be subject to such assessment. The Developer, for itself, and its successors and assigns, waives any objection to any irregularity with regard to the assessment process for such assessments. This waiver includes a waiver to any objection to the amount of the special assessment levied against the Property, including any and all claims that such assessment is excessive, arbitrary, capricious, or unreasonable. Further, the Developer, for itself and its successors and assigns, waives all rights to appeal such action of the City to the court. These waivers are express, and the Developer acknowledges that it is waiving any and all rights of appeal to the assessment and reassessment.
22. **GUARANTY.** To further secure payment for any delinquency amount, the Guaranty from each Guarantor required to provide a Guaranty shall be executed and delivered to the City. Without in any manner limiting the ability of the City to levy the special assessment, as described in Section 16, each Guarantor **shall be jointly and severally liable for any insufficient revenue and the City may, in addition to any other remedy available to it, also seek and obtain payment of the amount from each Guarantor, jointly or severally.**
23. **EXCESS REVENUE.** Developer agrees and acknowledges that any excess increment remaining in the City's fund for the TIF District at the termination of payments for the TIF Bonds will belong to the City.
24. **INTERPRETATION AND ADMINISTRATION.** The City will have full power and authority to interpret, construe, and administer this Agreement and its interpretations, and construction thereof and action thereunder will be binding and conclusive on the parties for all purposes.
25. **GOVERNING LAW.** This Agreement will be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement must be brought in an appropriate venue located in Ward County, North Dakota.

26. **CHANGE IN LAW.** Developer will ensure that the Project is performed in accordance with the terms of this Agreement following any Change in Law. If a Change in Law occurs or will occur within ninety (90) calendar days, either Party may notify the other Party and include in such notification: (i) an opinion on its likely effects; (ii) any necessary changes to the Project or implementation of this Agreement, including the full detail of the procedure for implementing such changes; and (iii) amendments (if any) required by this Agreement. After either Party delivers a notice of change in Law, the Parties shall meet and discuss the issues referred to in such notice and any ways in which Developer can mitigate the effect of the relevant Change in Law.
27. **LEGISLATIVE AND TAX DISCLOSURE.** Developer acknowledges and agrees that the authority of the City to create, impose, and administer the TIF District is derived from North Dakota statutory authority and the North Dakota legislature has the power to amend, repeal, and replace any and all laws relating to tax increment financing, property tax valuation, and collection.
28. **ASSIGNMENT.** Except as otherwise expressly provided in this Agreement, Developer agrees, on behalf of itself, its officers and partners and the personal representatives of the same, and any other person or persons claiming any benefits under Developer by virtue of this Agreement, that this Agreement and the rights, interests, and benefits hereunder will not be assigned, transferred, pledged or hypothecated in any way by Developer, or by any other person claiming under it by virtue of this Agreement, and will not be subject to execution, attachment, or similar process. Any attempt at assignment, transfer, pledge, or hypothecation or other disposition of this Agreement or of such rights, interests, and benefits contrary to the foregoing provisions or the levy of any attachment or similar process, will be null and void and without effect.
29. **TAX INCREMENT.** Developer agrees and acknowledges that it has no rights to the tax increment generated by the TIF District. Reimbursement to Developer is limited solely to the TIF Bond Proceeds as set forth herein.
30. **INDEMNIFICATION; RELEASE OF LIABILITY.** Developer agrees it will indemnify, defend, and hold harmless the City, its officers, employees, agents, and contractors from any and all claims or causes of action, of any nature, arising or purportedly arising out of actions of Developer, its officers, employees, agents, or contractors in connection with this Agreement. The Developer agrees to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with the Developer's acts or omissions. Without limiting the foregoing, the indemnification obligation of the Developer shall include the obligation and duty to defend the City, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the Developer's indemnification obligations.

The Developer hereby releases and forever discharges the City from any and all claims or causes of which may result from a loss of the tax increments as provided herein, whether by legislative action or judicial decision. The Developer understands and agrees that the tax increment financing which is to be provided to the Developer pursuant to Chapter 40-

58 of the North Dakota Century Code is solely dependent upon the validity of said provisions and compliance with all of the provisions contained therein. The Developer has satisfied itself as to such validity and compliance and hereby waives any and all claims and causes of actions which it has or may have against the City in the event of loss of the tax exemption for any reason.

31. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the Parties. It may not be changed orally but only upon an agreement in writing approved by the City Council and signed by the Mayor and Finance Director. It may be modified as to terms and conditions from time to time upon mutual consent of the Parties; however, such modification must be reduced to writing, signed by the Parties and the document appended to and made a part of this Agreement.
32. **NOTICE.** All notices, certificates, or other communications required under this Agreement will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:
- If to the City: City of Minot, North Dakota
 Attn: City Manager
 103rd Ave. SW
 Minot, North Dakota 58702
- If to Developer: Big M Minot, LLC
 Attn: President
 400 10th St. SE
 Minot, ND 58701
33. **BINDING EFFECT.** This Agreement will inure to the benefit of and will be binding upon the City and Developer, and their respective successors and assigns.
34. **SEVERABILITY.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; however, the parties agree that this Agreement will be reformed to replace any invalid, illegal, or unenforceable provision or portion of this Agreement with an alternative provision that is enforceable and bears as close of a resemblance as possible to any provision determined to be invalid, illegal, or unenforceable.
35. **AMENDMENTS, CHANGES, AND MODIFICATIONS.** This Agreement may be amended or any of its terms modified only by the written amendment authorized and executed by the City and Developer. Any proposed modification which will substantially change the development plan with regard to costs, nature or type of the project, manner of payment, or completion dates as previously approved by the City is subject to the requirements of Section D of the Official Urban Renewal Plan and General Development Plan for the City of Minot, including the requirements of a public hearing, before it may be approved.
36. **CONFLICT OF TERMS.** In the event there is a conflict of terms between the minimum assessment agreement and this Agreement, the terms of this Agreement shall prevail.

37. **COOPERATION.** The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.
38. **REPRESENTATION.** The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement and agree they have not been influenced by any representations or statements made by any other Parties.
39. **WAIVER OF JURY TRIAL.** THE CITY AND DEVELOPER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS CONTRACT, OR IN ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CITY AND DEVELOPER ENTERING INTO THIS CONTRACT. THE PARTIES STIPULATE AND AGREE THAT THE DISTRICT COURT OF WARD COUNTY, NORTH DAKOTA, SHALL BE THE SOLE AND EXCLUSIVE VENUE FOR ANY LAWSUIT PERTAINING TO THIS CONTRACT AND CONSENT TO THE PERSONAL JURISDICTION IN SAID COURT IN THE EVENT OF ANY SUCH LAWSUIT.
40. **AUTHORITY TO EXECUTE AGREEMENT.** The Parties agree and acknowledge that the person or persons executing this Agreement on behalf of each Party have been duly authorized by that Party to execute this Agreement on its behalf.
41. **EXECUTION COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.
42. **HEADINGS.** The headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions or sections of this Agreement.
43. **RECORDING.** The Parties agree that this Agreement shall be recorded on the Property at the Ward County Recorder's office and shall run with the land and be binding upon any successors and assigns.
44. **AGREEMENT TO PAY ATTORNEYS' FEES.** Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

4872-5293-0595\1

Big M Minot, LLC

[illegible]

(SEAL)

17

COUNTY ACKNOWLEDGEMENT

Acknowledged by:

Ward County, North Dakota

Jim Rostad, Chairman

Marisa Haman, County Auditor

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

On this ____ day of _____, 202_, before me, a Notary Public in and for said County and State, personally appeared Jim Rostad and Marisa Haman, known to me to be the Chairman and County Auditor, respectively, of Ward County North Dakota, that is described in and who executed the foregoing instrument and acknowledged to me that they executed the same on behalf of Ward County, North Dakota.

(SEAL)

Notary Public

EXHIBIT A – GUARANTY

GUARANTY

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce CITY OF MINOT, a municipal corporation under North Dakota law (herein, with its participants, successors and assigns, called “Lender”), enter into that certain Tax Increment Financing Development Agreement, dated the ____ day of _____, 2022 (referred to herein as the “TIF Development Agreement”), a copy of which is attached hereto as Exhibit “A,” and by this reference incorporated herein or extend other accommodations to or for the account of _____ (herein collectively called “Borrower”) or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

- A. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by, relating to or arising out of the following: TIF Development Agreement, and any extensions, renewals or replacements thereof, including but not limited to the payment of any “Deficiency Amount” as described in the TIF Development Agreement (hereinafter referred to as the “Indebtedness”).
- B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the “Indebtedness”). Without limitation, this guaranty includes the following described debt(s):
- _____.

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder. PROVIDED, that the amount of Indebtedness shall be reduced and released in such amounts as set forth in paragraph 20 (b) of the TIF Development.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, until the later of (a) all Indebtedness has been paid in full or (b) the TIF Bonds, as described in the TIF Development Agreement, have been paid in full. The death or incompetence of the Undersigned

shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntary against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to the payment and performance of all of the debts, liabilities or obligations of the Borrower to the Lender relating to or arising out of the TIF Development Agreement, plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source of payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this Paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty is ☐ unsecured; ☐ secured by a mortgage dated ____ day of _____, 20____; ☐ secured by a security agreement dated ____ day of _____, 20____; ☐ secured by _____.

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty), without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodations or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the Interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the

enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefore; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 1111 (b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligator, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amount which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such amount was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under

this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all of the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefits of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application thereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and the Lender. The Undersigned waives notice of Lender's acceptance hereof.

14. If the Lender is required to commence any action against the Undersigned to enforce any provision of this guaranty, the venue for such action shall be in a North Dakota District Court located in Ward County, by a Judge alone and without a trial by jury. The Undersigned, having had an opportunity to consult with independent counsel of his choosing, hereby knowingly and voluntarily waives his right to a trial by jury in any manner relating to this guaranty, the Indebtedness or any other agreement, document or instrument related thereto. Further, the Undersigned acknowledges and agrees that a North Dakota District Court located in Ward County shall have complete and full personal jurisdiction over the Undersigned and subject matter jurisdiction with respect to such action.

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned
the ____ day of _____, 20____.

[insert name of guarantor]

STATE OF _____)

: ss.

COUNTY OF _____)

Notary Public for the State of _____

EXHIBIT B - MAP OF PROPERTY

TIF District 2022-1

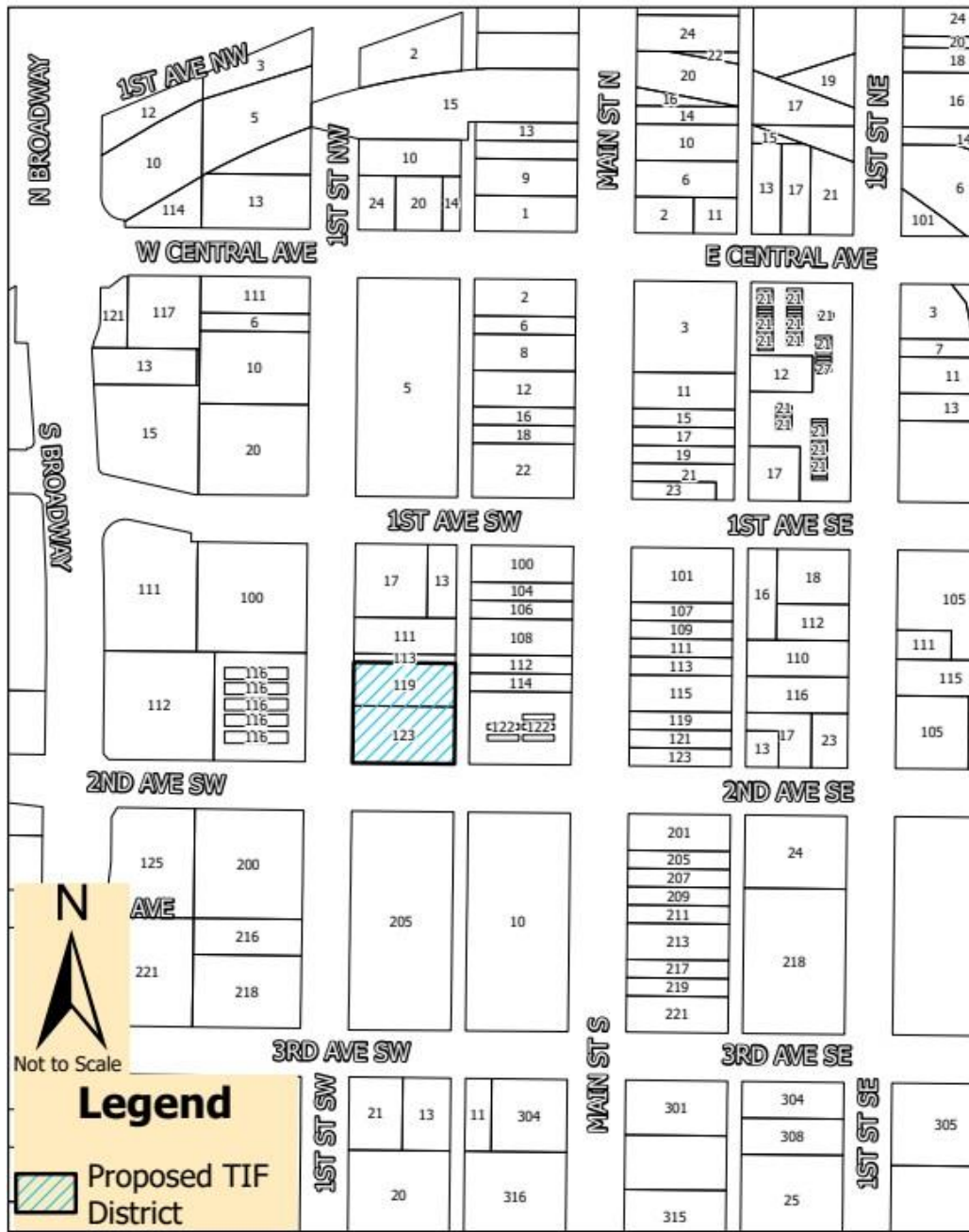


EXHIBIT C – MINIMUM ASSESSMENT AGREEMENT
(INSERT HERE)

EXHIBIT D – MINUTES OF THE COUNTY COMMISSION

Special Meeting Minutes of the Board of Ward County Commissioners

May 20, 2022

The special meeting of the Ward County Commission was called to order by Chairman Rostad at 1:00 PM with Commissioners Anderson, Fjeldahl, Pietsch, and Weppier present. Also present were department heads Jason Blowers, Marisa Haman, and Noreen Barton.

Roza Larson, State's Attorney, spoke to clarifying the motion that was passed at the last Commission meeting on May 17, 2022 regarding EPIC Companies M building project. The motion was for 100% tax relief for Ward County for 8 years. There was a question as to whether the negotiations in that meeting were done under the terms of the TIF or if it was simply a tax exemption for 8 years.

Moved by Comm. Weppier, seconded by Comm. Anderson to approve an 8 year, 100% Ward County property tax exemption as part of the TIF.

Ms. Larson researched and found that 1) tax exemptions can only be done for up to 5 years and 2) since the property is in the city, the city needs to start any type of tax exemption, not the county. Also, once a TIF is in place, other exemptions cannot be utilized simultaneously. Ms. Larson also stated under NDCC 40-05-24, a party can negotiate with entities any requested terms under the TIF (such as length of incentive and taxable values, among others).

David Lakefield, City of Minot Finance Director, appeared and spoke to what year this exemption would start. Since values have been set for 2022, Mr. Lakefield stated it will start in 2023. There is a formula to determine how much will be available for financing and with any type of change in funding, the figures may change a bit to consider different terms.

Further discussion was held on the TIF and government entities borrowing money to help with refurbishing buildings using taxpayer's assets. Mr. Lakefield stated there are limited uses that a TIF can be used for and that not all projects will qualify for its use. Blake Nybakken of EPIC Companies spoke via the telephone to the BLU project in the City of Minot and the differences between the two projects.

Roll call; Comm. Weppier, Anderson, and Rostad voted yes; Comm. Fjeldahl and Pietsch voted no; motion carried.

At 1:39 PM with no further business, the meeting was adjourned.

ACCEPTED AND APPROVED THIS 7TH DAY OF JUNE, 2022


Chairman, Ward County Commission

ATTEST:



Marisa Haman, County Clerk

EXHIBIT E – FORM OF PARTIAL RELEASE OF GUARANTY

(RESERVED FOR RECORDING DATA)

PARTIAL RELEASE OF GUARANTY

THIS PARTIAL RELEASE OF GUARANTY, made this ____ day of _____, 2022, submitted by the City of Minot, North Dakota (the "City").

WHEREAS, the City and Big M Minot, LLC (the "Developer"), entered into a Development Agreement, dated _____, 2022, for the redevelopment of the Midwest Federal Building (the "Project"), at the following described property:

ORIGINAL MINOT ADDITION LOTS 13, 14, 15 & SOUTH 3.2' OF LOT 16
BLOCK 6 (Building parcel)

ORIGINAL MINOT ADDITION SOUTH 13' OF LOT 18 & ALL LOT 17 & LOT
16 LESS SOUTH 3.2' BLOCK 6 (Parking lot parcel just north of building)

(the "Property"); and

WHEREAS, Developer, being owner of the Project, and the residential condominiums located on the top two (2) floors of the Midwest Federal Building, has sold a residential condominium unit located within the Property, and more particularly described as follows:

[LEGAL DESCRIPTION OF CONDOMINIUM UNIT]

(the "Condominium Unit Property"); and

WHEREAS, the Property is subject to the Guaranty set forth in Section 20(a) of the Development Agreement, which further secures payment for any delinquent amount; and

WHEREAS, pursuant to Section 20(b) of the Development Agreement, the City acknowledged and agreed to provide Developer with a partial release of the Guaranty on a pro rata basis for the value for each residential condominium unit sold; and

NOW THEREFORE, the City, in accordance with Section 20(b) of the Development Agreement, does hereby partially release the Condominium Unit Property from the Guaranty required by Section 20(a) of the Development Agreement, in the amount of [\$\$\$]. This Partial Release is effective upon recording in the office of the Ward County Recorder.

(Signatures appear on the following pages.)

CITY:

City of Minot, North Dakota

By:

Its:

STATE OF NORTH DAKOTA)

)ss.

COUNTY OF WARD)

On this ____ day of _____, 2022, before me personally appeared

_____, _____, known to me to be the person described in, and who executed
the within and foregoing instrument, and acknowledged that she/he executed the same.

Notary Public

(SEAL)

My Commission Expires: