



**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MINOT AND AKSAL GROUP, LLC
FOR THE CITIZENS ALLEY ADDITION**

THIS DEVELOPMENT AGREEMENT is made and entered into by and between the City of Minot, a municipal corporation, hereinafter the "City," and Aksal Group, LLC, hereinafter the "Developer." City and Developer are jointly referred to herein as the "Parties."

WHEREAS, the City may enter into a development agreement with a person having ownership or control of real property within its jurisdiction; and

WHEREAS, this Development Agreement (hereinafter the "Agreement"), relates to the Citizens Alley Addition owned by the Developer, and located within the City of Minot, whose legal description is Citizens Alley Addition, to the City of Minot, Ward County, North Dakota (hereinafter the "Property"); and

WHEREAS, the purpose of this Agreement is to memorialize specific restrictions that apply to the Property; and

WHEREAS, the Property was originally platted as Block 1, Kyle's Addition, Portion of Lots 1, 2, and 3, Block 1, Original Minot Addition West, and Lot 4, Block 1, Original Minot Addition Less the Soo R/W City of Minot, North Dakota, which was recorded with the Ward County Recorder on August 29, 1995; and

WHEREAS, the Planning Commission recommended City Council approve the zoning map amendment and preliminary plat of Citizens Alley Addition, subject to conditions, on September 6, 2023; and

WHEREAS, the City Council approved the preliminary plat of Citizens Alley Addition and Resolution 3824, to vacate Kyles Addition, subject to conditions, on September 18th, 2023; and

WHEREAS, the City Council approved the rezoning to Central Business District with a Planned Unit Development overlay of Block 1, Kyles Addition, Portion of Lots 1, 2 and 3, Block 1, Original Minot Addition West, and Lot 4, Block 1, Original Minot Addition Less the Soo Right-of-Way to the City of Minot, North Dakota and Ordinance 5892, on October 2, 2023; and

WHEREAS, the City Council approved the final plat of Citizens Alley Addition, on _____; and

WHEREAS, The City Council approved this Agreement and authorized the Mayor to sign the same on behalf of the City on _____ ("Effective Date"); and

WHEREAS, this Agreement is necessary to ensure the orderly development of the site and expound on and memorialize conditions of approval; and

NOW, THEREFORE, in exchange for the mutual performance of the Parties under this Agreement, the Parties hereby agree to the following terms, conditions, and obligations:

1. **Conditions for approval.** The Parties hereto agree and stipulate that each of the City's conditions of approval shall be fulfilled in the following manner:
 - a. **Condition #1:** Maintenance easement(s) shall be incorporated into the final plat document subject to approval of the City Engineer or their designee. This condition is fulfilled upon the recordation of a final plat including item described in this condition with the Ward County Recorder's Office at the Developer's expense.
 - b. **Condition #2:** Utility easement(s) shall be incorporated into the final plat document subject to approval of the City Engineer or their designee. This condition is fulfilled upon the recordation of a final plat including item described in this condition with the Ward County Recorder's Office at the Developer's expense.
 - c. **Condition #3:** This Agreement will be signed and financial security shall be provided to the City prior to any work within the right-of-way in alignment with the Land Development Ordinance of the City of Minot and City of Minot policies.
 - d. **Condition #4:** Any portion of property that does not comprise Citizens Alley Addition is not part of the scope of approvals and must follow all requirements of the underlying zoning district for which the property resides.
 - e. **Condition #5:** The signage on page 7 thru 11 of the approved PUD Plan shall be considered the allowable signage for Lots 2 & 3, Citizens Alley Addition. Lot 1, Citizens Alley Addition shall follow signage requirements per the Land Development Ordinance of the City of Minot.
 - f. **Condition #6:** Temporary signage located within Lot 2 and on Lots 1 & 3 along the facades of the buildings abutting Lot 2 is permitted for active events or to provide information on upcoming events and current event sponsorships. Temporary signage will be removed within one (1) week of the conclusion of the respective event for which the temporary signage was erected.
 - g. **Condition #7:** A letter of intent and site plan shall accompany each programmed event/activity to be reviewed and approved by the Community Development Department and Engineering Department prior to commencement of each respective programmed event/activity with sufficient detail and information as determined by the aforementioned departments. The letter of intent and site plan referred to in this section will generally surround the nature of event, arrangement of temporary structures or impassable objects, and planned walkways similar to those provided in pages 13 thru 17 of the approved PUD Plan. This is differentiated from a traditional site plan that generally requires contours, demarcation of curb, traffic flow, above and below ground storm water infrastructure, etc. Staff shall incorporate conditions of approval related to mitigating any negative externalities to ensure harmony between properties in the vicinity and onsite events/activities.
 - h. **Condition #8:** The Developer will comply with all site plan review and approval requirements as established by the Engineering Department for all permanent improvements as is standard development policy.
- Condition #9:** This Agreement must be signed prior to recording the plat. This condition is fulfilled upon recordation of this Agreement with the Ward County Recorder's Office at the Developer's expense.
2. **Governing Law/Venue.** This Agreement shall be governed by and interpreted according to North Dakota law. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in Ward County, North Dakota.

3. **Warranties and representations.** Each party represents and warrants that this Agreement has been duly authorized, executed and delivered by it; that the undersigned representatives are duly authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a valid and binding obligation, enforceable against Developer, its successors and assigns in accordance with its terms.
4. **General Compliance with Laws.** Developer agrees to at all times comply with all federal, state, and municipal laws while this Agreement is in effect, including but not limited to those relating to the payment of taxes or other charges on tickets, admissions, or in any way connected with Developer's activities in connection with this Agreement. Developer's failure or omission to comply with any such federal, state, or municipal laws will be considered a material breach of this Agreement and will justify immediate termination of this agreement by the City.
5. **Notice.** Any notice, demand, or request required or permitted to be given or made under this Agreement must be made in writing unless specifically stated otherwise in this Agreement. Notice will be deemed given when delivered in person, sent via certified mail/return receipt requested, or sent by email with confirmed receipt by the receiving party, to the Parties as specified below:

Aksal Group, LLC
Managing Member
Attn: Jessica Ackerman
1112 Sunrise Court Minot
Minot, ND 58701

CITY OF MINOT
Attn: Community and Economic Development Director
PO Box 5006
Minot, ND 58702-5006

6. **Indemnification Clause.** Developer agrees to indemnify, hold harmless, and defend the City, its officers, employees, and agents, from any and all claims, actions, suits, costs, damages, and liabilities resulting from the breach of this Agreement, the negligent actions, willful misconduct, or omissions of Developer, and Developer's guests invitees, agents, and sub-contractors, including but not limited to actions for personal injury occurring on the Developer's property, and damage to the property of any person(s) while participating in Developer's activities related to this Agreement, or any other cause of action arising from Developer's use of their property under this Agreement.

- a. **Indemnification from lawsuits filed by third parties.** To the extent the City is not covered by any insurance policy, Developer agrees to further indemnify, hold harmless, and defend the City, its officers, employees, and agents from any and all future claims, actions, suits, costs, damages and liabilities filed or alleged against the City by third parties, including but not limited to any legal action by third parties seeking injunctive or non-monetary relief, alleging a takings action, or any other claim specifically resulting from the City's consideration or approval of the final plat of the Citizen's Alley Addition and this Development Agreement. The City is primarily liable for any and all future claims described in this paragraph, and this clause shall only go into effect if the City's insurance carrier denies coverage based on language contained in its insurance policy relating to uncovered claims. The City shall have a duty to seek coverage through its insurance policy to

the fullest extent of the law and its contract with its insurance carrier.

7. **Breach of Agreement.** After the execution of this Agreement, either party that fails to perform, or under-performs their obligations under this Agreement shall be liable to the other Party for damages arising as a result of the breach. When one party fails to fulfill the agreement, the non-breaching party shall have the right to require the breaching party to continue their performance under this Agreement, unless the breach is the result of an event of force majeure.
 - a. **Notice of Breach/Opportunity to Cure.** The non-breaching party must advise the other party of the specific facts constituting breach of the agreement within thirty (30) days of discovery of the breach. Notice shall be provided to each party as stated in this Agreement. The non-breaching party must advise the other party of the specific details of the breach, and give them thirty (30) days or other such reasonable time as determined by the non-breaching party, to cure the breach.
 - b. **Force Majeure.** Neither party will be liable for inadequate performance to the extent that performance was caused by a condition beyond the party's reasonable control, such as a natural disaster, act of war or terrorism, riot, labor condition, or internet disturbance. Parties affected by force majeure must make reasonable efforts to reduce the consequences of the force majeure and resume the performance of all relevant obligations as soon as possible after the force majeure event terminates. If this Agreement cannot be performed due to an event of force majeure, that performance shall be exempted in part or in whole according to the influence and extent of the force majeure. If force majeure occurs after the party delays performance, the party shall not be exempted from their obligations under this Agreement.
8. **Prevailing party's entitlements.** In the event of any dispute hereunder or of any action by the City or Developer to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal, and legal assistant fees, costs and expenses and other professional fees, costs, and expenses whether suit be brought or not, and whether in settlement, declaratory or injunctive action, at trial, or on appeal.
9. **Agreement Binding on Successors in Interest.** This Agreement shall be recorded in the Ward County Recorder's Office, and shall constitute a covenant running with the land. This Agreement shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any property association. Developer shall advise successors in interest of this Agreement and that they are responsible for complying with the Developer's responsibilities hereunder.
10. **Counterparts.** This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all counterparts shall together shall constitute one and the same instrument.
 - a. **Electronic Signatures.** Electronic signatures shall be considered an original signature, fully enforceable, and effective for all purposes without a manually executed original.
11. **Amendments to Agreement must be in writing.** Neither this Agreement nor any item hereof may be changed, waived, discharged, or terminated orally, but only by instrument

in writing, signed by both Parties hereto.

12. **Severability.** If a Court finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.
13. **Entire Agreement.** This Agreement supersedes any and all prior understandings of the Parties, oral or written, in connection with the subject matter hereof and is intended by both Parties to be a complete and exclusive statement of their commitments and responsibilities with respect to the subject matter hereof.
14. **Effective Date.** This Agreement shall be effective on the date it is approved by the Minot City Council.

IN WITNESS WHEREOF, the parties hereto, after due authorization by its respective governing bodies/partners, hereby sign and enter into this Agreement and agree to be bound by its terms as of the Effective Date.

CITY OF MINOT, ND

By: _____
Tom Ross, Mayor

Attest: _____
Mikayla McWilliams, City Clerk

Aksal Group, LLC

By: _____
Jessica Ackerman, Managing Member,
Aksal Group, LLC

STATE OF NORTH DAKOTA)
COUNTY OF _____) ss
)

On this _____ day of _____, 2024, before me personally appeared
_____, known to me to be the person who is described in, and who executed
the within and foregoing instrument and who acknowledged to me that he executed the same.

(seal) _____

Notary Public, _____ County,
North Dakota.
My Commission Expires: _____