



Cypress Development, LLC  
9 Caprington Dr.  
Henderson, NV 89052

## Cypress Development & City of Minot Agreements

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## CYPRESS DEVELOPMENT MANAGEMENT AGREEMENT

This Cypress Development Management Agreement (“**Agreement**”) is made effective as of January 19, 2015, by and between Cypress Development, LLC (“**CYPRESS**”) and City of Minot, North Dakota (“**CITY**”), collectively the Parties.

### RECITALS

**WHEREAS**, The Parties desire to clarify certain relationships, understandings, and agreements with respect to the development and management of certain properties in Minot North Dakota, including two sites known as the Renaissance and Central Avenue sites (the “Renaissance Site” and “Central Avenue Site”), collectively the Sites, more particularly described in **Exhibit A**;

**WHEREAS**, The parties have previously entered into the following agreements, which will continue to be in effect, subject to updates and/or modifications as evidenced in this Agreement or in addenda drafted or to be drafted:

- 1) The development agreement entered into between the CITY and CYPRESS effective October 7, 2013 (the “**Development Agreement**”), attached hereto as **Exhibit C**, shall be modified pursuant to the Amendment attached hereto as **Schedule C-1 and C-2**, incorporated herein.
- 2) The work letter (the “**Work Letter**”) entered into between the CITY and CYPRESS effective October 7, 2013, attached hereto as **Exhibit D**, shall be modified pursuant to the Amendment attached hereto as **Schedule D-1**, incorporated herein.

**WHEREAS**, The Parties have previously entered into the following agreements, which are hereby being terminated and/or replaced as described herein:

- 1) Four-year Ground leases (with up to five annual extensions) for the Sites entered into between the CITY and CYPRESS effective October 7, 2013 are hereby terminated and replaced with two revised leases (the “**Cypress Renaissance Lease**” and the “**Cypress Central Lease**”), effective as of the Commencement Date, with terms of ninety-nine (99) years as further detailed in the new Lease documents attached hereto as **Exhibits E1 and E2** respectively;
- 2) Declaration of condominium agreements and all exhibits thereto (the “**Condominium Agreements**”) for the Sites entered into between the CITY and CYPRESS effective October 7, 2013 are hereby terminated; however, the Parking Management Agreement and Estimated Parking Structure Usage are attached as **Exhibit F**, incorporated herein.
- 3) Memorandum of purchase option agreements for the Sites entered into between the CITY and CYPRESS effective October 7, 2013 are hereby terminated, whereby the language for the purchase, lease and/or ownership of the buildings developed and constructed on the Sites are incorporated into the Site specific Lease agreements; and

**ACCORDINGLY**, the parties agree as follows

1. **General Services.** CYPRESS will provide management and development services related to the Renaissance and Central Avenue Sites as described in Exhibit A, pursuant to the Development Agreement, attached hereto as Exhibit C, the Work Letter attached hereto as Exhibit D, and the Leases, attached hereto as Exhibits E1 and E2 and all other Exhibits and Schedules attached hereto and to the documents referenced above.

2. **Expenses, Costs, Advances, Management Fee and Special Services.** CYPRESS shall pay all expenses, costs, and advances related to the development of the properties and as described in the Development Agreement and the Work Letter.

3. **Independent Contractor.** CYPRESS is retained only to the extent set forth in this Agreement and is acting only as an independent contractor for CITY to provide the services described in this Agreement. No employee, contractor or agent of CYPRESS shall be deemed to be an employee of the CITY.

4. **Term.** This Agreement shall begin on the date hereof and continue until the termination of the Development Agreement and any addenda thereto, the Work Letter, and/or any Lease between the City and Cypress Development, LLC, Cypress Renaissance, LLC, Cypress Central, LLC or any other CYPRESS related entity.

5. **Indemnification.** To the extent permitted under North Dakota law, the parties each agree to indemnify, defend and hold the other harmless, as well as the current officers, directors and employees, from any and all claims and liabilities against any of them arising out of the performance of direct services solely in the pursuit of the party's purpose.

6. **Notices.** All notices or requests provided for hereunder must be in writing and may be given by hand delivery, by telecopy or by depositing the same in the United States Mail, addressed to the party to be notified, registered or certified mail, with return receipt requested, or by delivering such notice in person to such party. Notices given by mail shall be deemed received upon mailing in accordance with the foregoing and notices sent by other means shall be effective upon receipt by the party to be notified.

8. **Binding Effect; Parties in Interest.** This Agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. No person or entity that is not a party to this shall have any right or power to enforce any provision of this Agreement.

9. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes all prior understandings, whether written or oral, and specifically supersedes and terminates any and all condominium declarations related to the Properties, and any and all purchase options or other documents relating to the development of the Properties.

**IN WITNESS WHEREOF,** CYPRESS and CITY have signed this Agreement as of the date first above written.

Executed in the presence of:

Lisa Jundt

Signature of Witness

Lisa Jundt

Print Name

**THE CITY OF MINOT**, a North Dakota  
municipal corporation

By: Dan W. Van  
Mayor

Date: 1/15/15

Executed in the presence of:



Signature of Witness



Print Name

**CYPRESS DEVELOPMENT, LLC**, a  
North Dakota limited liability company

By: 

Name: Steve Larson

Title: Managing Member

Date: 1-19-15

## Cypress Development Management Agreement

### EXHIBIT A

#### Legal Description of Renaissance and Central Avenue Sites

##### Renaissance Site:

- Address: the property and all improvements thereon owned by the City of Minot located at 205 1<sup>st</sup> St. SW, Minot, ND 58701
- Legal Description: LOTS 13 THRU 24, BLOCK 11, ORIGINAL MINOT ADDITION
- Parcel #: MI242381100240
- Includes the property (land) and all Parking Ramp Improvements thereon

##### Central Avenue Site:

- Address: the property and all improvements thereon owned by the City of Minot located at 5 Central Avenue West, Minot, ND 58701
- Legal Description: LOTS 13 THRU 24, BLOCK 3, ORIGINAL MINOT ADDITION AKA “ALL OF WEST ½ OF BLOCK 3, ORIGINAL MINOT ADDITION”
- Parcel #: MI242380300240
- Includes the property (land) and all Parking Ramp Improvements thereon

Cypress Development Management Agreement

**Exhibit C**  
**Development Agreement**

**DEVELOPMENT AGREEMENT**

(Site #1 – Renaissance Apartments –1st Street, 2nd Avenue and 3rd Avenue SW)  
(Site #2 – Central Avenue Apartments – 1st Street, 2nd Avenue and Central Avenue SW)

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the “City”), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company, whose principal address is 105 First Street SE, Suite 301, Minot, ND 58701 (“Developer”). The City and Developer are hereinafter sometimes individually referred to as a “Party” and collectively, as the “Parties.”

**RECITALS:**

**WHEREAS**, the City is the owner of certain real property located in the City of Minot, North Dakota, more particularly described on Exhibit A-1 (Site #1), and certain real property located in the City of Minot, North Dakota, more particularly described on Exhibit A-2 (Site #2) attached hereto and made a part hereof the (“Site”); and

**WHEREAS**, pursuant to that certain Disposition and Development Agreement between the City and Developer, a copy of which is attached hereto and made a part hereof as Exhibit B (the “DDA”), Developer agreed to develop Site #1 and construct thereon a mixed-use residential / commercial development (the “Site #1 Project”) consisting of two (2) phases (collectively, the “Project Improvements”), which Project shall be developed and constructed substantially in accordance with the Scope of Development attached here to and made a part hereof as Exhibit C, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA; and

**WHEREAS**, the City and Developer desire to enter into this Agreement in order to memorialize certain agreements pertaining to the development of the Site, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated into the body of this Agreement as if recited herein in their entirety.

2. Development of the Site; Construction of the Project Improvements.

(a) Site #1 Project Improvements. Promptly following the execution of this Agreement, Developer shall proceed with the development of Site #1 and construction of the Project Improvements in accordance with the Schedule of Performance attached to the DDA. The mixed-use Project Improvements shall be constructed in the following phases: (a) 225-space, multi-level parking structure to be constructed by a contractor and subcontractors managed by Developer (the “Site #1 Parking Structure”); and (b) 13,543 square feet of retail/commercial space to be constructed by Developer directly above the Parking Structure (the “Site #1 Commercial Improvements”) and 125 multi-family residential apartment units, constructed directly above the Commercial Improvements (Collectively, the “Site #1 Residential/Commercial Improvements”). The Site #1 Project Improvements shall include all

common areas, related amenities and improvements necessary for the intended use and enjoyment thereof, as set forth in be constructed pursuant to Design Documents and Construction Documents approved by the City pursuant to the DDA, which shall include technical drawings, schedules, diagrams, engineering and architectural plans and specifications. All aspects of development, design and construction shall be managed by Developer (or an affiliate of Developer) pursuant to the terms of the construction management agreement attached hereto and made a part hereof as **Exhibit D** (the "Construction Management Agreement"). Developer further agrees to comply with all applicable provisions of all applicable development and building codes, ordinances and regulations of the City of Minot, ND, and applicable insurance requirements of the City.

(b) Site #2 Project Improvements. Promptly following the execution of this Agreement, Developer shall proceed with the development of Site #2 and construction of the Project Improvements in accordance with the Schedule of Performance attached to the DDA. The mixed-use Project Improvements shall be constructed in the following phases: (a) 225-space, multi-level parking structure to be constructed by a contractor and subcontractors managed by Developer (the "Site #2 Parking Structure"); and (b) 13,543 square feet of retail/commercial space to be constructed by Developer directly above the Parking Structure (the "Site #2 Commercial Improvements") and 125 multi-family residential apartment units, constructed directly above the Commercial Improvements (Collectively, the "Site #2 Residential/Commercial Improvements"). The Site #2 Project Improvements shall include all common areas, related amenities and improvements necessary for the intended use and enjoyment thereof, as set forth in be constructed pursuant to Design Documents and Construction Documents approved by the City pursuant to the DDA, which shall include technical drawings, schedules, diagrams, engineering and architectural plans and specifications. All aspects of development, design and construction shall be managed by Developer (or an affiliate of Developer) pursuant to the terms of the construction management agreement attached hereto and made a part hereof as **Exhibit D** (the "Construction Management Agreement"). Developer further agrees to comply with all applicable provisions of all applicable development and building codes, ordinances and regulations of the City of Minot, ND, and applicable insurance requirements of the City.

(c) Leases. To facilitate the development of each of Site #1 and Site #2, and construction of the Site #1 Project Improvements and the Site #2 Project Improvements, the Parties agree to enter into a Lease applicable to each of Site #1 and Site #2, which Lease shall be substantially in the form approved by the parties as of the date hereof (the "Lease"). Each Lease shall be executed by the Parties simultaneously with the execution of this Agreement, and shall grant the Developer access to the Site in order to undertake all pre-development testing, demolition, development and construction obligations imposed upon the Developer under this Agreement and the DDA. Each Lease shall have an initial term of four (4) years (the "Initial Term") and, provided Developer commences construction, as applicable, of the Site #1 Project Improvements and Site #2 Project Improvements during the Initial Term, shall automatically renew on an annual basis (for a term not to exceed five (5) additional years) (each 12-month renewal hereinafter being referred to as a "Renewal Term") until completion of construction of the Site #1 Project Improvements and conversion of the Site #1 Project to a condominium regime, and until completion of construction of the Site #2 Project Improvements and conversion of the Site #2 Project to a condominium regime. Rent under each Lease shall be payable as follows: (i) during the first year, Developer shall pay One Hundred Dollars (\$100.00) in advance, at the commencement of the Initial Term; (ii) in each of years two, three and four, Developer agrees to pay rent equal to One Hundred Twenty Five Thousand (\$125,000.00) per year (per site), plus interest at the rate of one (1) percent per annum on the then outstanding amount of \$375,000.00 (which amount shall be reduced by each One Hundred Twenty Five Thousand Dollar payment); and (iii) During each Renewal Term, Developer agrees to pay rent to the City equal to One Hundred and 00/100 Dollars (\$100.00) per year. During the first year, rent shall be paid in advance. In all other years, rent shall be paid annually, in arrears, in a single lump sum payment. Each Lease shall further grant Developer the exclusive right and

option to purchase, as applicable, the Site #1 Commercial Improvements and Site #1 Residential Improvements (collectively, the “Site #1 Purchase Option”) following completion of construction of the Site #1 Residential Improvements, stabilization of the rental units, and submission of the applicable Condominium Documents (as hereinafter defined), and the Site #2 Commercial Improvements and Site #2 Residential Improvements (collectively, the “Site #2 Purchase Option”), following completion of construction of the Site #2 Residential Improvements, stabilization of the rental units, and submission of the applicable Condominium Documents (as hereinafter defined). The Parties agree to execute a Memorandum of Purchase Option for the Site #1 Purchase Option and the Site #2 Purchase Option, which may be recorded at Developer’s option in the Land Records of Ward County, North Dakota. Each Lease shall contain standard mortgagee protections in the event of a default by Developer, and/or a casualty or condemnation impacting the Site or Project Improvements. The Lease and Memorandum of Purchase Option shall be prepared by Developer and subject to the City’s approval, which shall not be unreasonably withheld, conditioned or delayed.

(d) Costs of Construction.

i. Site #1 Costs of Construction. Except as otherwise provided herein and/or in the DDA, as applicable, Developer shall be responsible for all costs and expenses associated with the development of Site #1, and the design and construction of: (A) the Site #1 Commercial Improvements; (B) the Site #1 Residential Improvements; and (C) the Site #1 Parking Structure, but only to the extent the cost of the Site #1 Parking Structure exceeds Four Million Nine Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$4,937,500.00). To that end, Developer shall secure adequate sources of funds necessary to complete the Project Improvements, in the amounts generally set forth on **Exhibit F-1** attached hereto and made a part hereof (the “Site #1 Schedule of Sources and Uses”). A component of the Site #1 Schedule of Sources and Uses includes a grant in the amount of Two Million Six Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$2,687,500.00), comprised of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program – Disaster Recovery (“CDBG-DR”) funds, which the City has approved for funding assistance in connection with the construction of the Parking Structure. An additional component of the Schedule of Sources and Uses includes funding in the amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) (the “MAGIC Funds”) from the City of Minot Magic Fund, as applied for by the Minot Area Development Corporation (“MADC”) which shall be used to offset the cost of constructing the Site #1 Parking Structure and \$375,000.00 in City funds, which shall be repaid in three installment payments of \$125,000.00 each (during years 2, 3 and 4 of the Initial Term), plus interest at the rate of one percent (1%) per annum, on the then outstanding amount of \$375,000.00 (which amount shall be reduced by each One Hundred Twenty Five Thousand Dollar payment). MADC shall have the authority to review construction draw requests submitted to the City of Minot for the disbursement of the MAGIC Funds.

ii. Site #2 Costs of Construction. Except as otherwise provided herein and/or in the DDA, as applicable, Developer shall be responsible for all costs and expenses associated with the development of Site #2, and the design and construction of: (A) the Site #2 Commercial Improvements; (B) the Site #2 Residential Improvements; and (C) the Site #2 Parking Structure, but only to the extent the cost of the Site #2 Parking Structure exceeds Four Million One Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$4,937,500.00). To that end, Developer shall secure adequate sources of funds necessary to complete the Project Improvements, in the amounts generally set forth on **Exhibit F-1** attached hereto and made a part hereof (the “Site #1 Schedule of Sources and Uses”). A component of the Site #1 Schedule of Sources and Uses includes a grant in the amount of Two Million Six Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$2,687,500.00), comprised of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program – Disaster Recovery (“CDBG-DR”) funds, which the City has approved for funding assistance

in connection with the construction of the Parking Structure. An additional component of the Schedule of Sources and Uses includes funding in the amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) from the City of Minot MAGIC Fund, as applied for by MADC, which shall be used to offset the cost of constructing the Site #2 Parking Structure, and \$375,000.00 in City funds, which shall be repaid in three installment payments of \$125,000.00 each (during years 2, 3 and 4 of the Initial Term), plus interest at the rate of one percent (1%) per annum, on the then outstanding amount of \$375,000.00 (which amount shall be reduced by each One Hundred Twenty Five Thousand Dollar payment). MADC shall have the authority to review construction draw requests, which will be submitted to the City of Minot for disbursement of the MAGIC Funds.

(e) Affordable Housing Requirements. For and in consideration of the City's agreement to provide financial assistance to construct the Site #1 Parking Structure and the Site #2 Parking Structure, as applicable, in the form of CDBG-DR funds, Developer agrees to set aside no less than twenty percent (20%) of the residential apartment units within each of the Site #1 Residential Improvements and the Site #2 Residential Improvements (hereinafter, collectively, the "Set Aside Units") for occupancy by households having initial incomes at or below eighty percent (80%) of Median Family Income, adjusted for household size, as established under income guidelines promulgated by HUD. The Set Aside Units shall remain subject to the foregoing income/affordability restrictions for a period of three (3) years following the date the Set Aside Units are placed into service (pursuant to HUD Form 8609). Developer agrees to execute a HUD Rental Regulatory Agreement (or similar instrument), which shall be recorded in the Land Records of Ward County, North Dakota in order to secure Developer's agreements and obligations regarding the Set Aside Units. Upon the expiration of the three (3)-year set aside period, all income/affordability restrictions shall terminate and be of no further force or effect; provided, however, any resident occupying a Set Aside Unit at the expiration of the three (3)-year set aside period shall be permitted to remain in the applicable Set Aside Unit for a period of up to twenty-four (24) additional consecutive months, as if the income/affordability restrictions imposed under HUD's program guidelines were still in effect. The City may, but shall not be required to oversee enforcement of rental restrictions applicable to the Set Aside Units, through a separate agreement with Minot Housing Finance Agency, Lutheran Social Services, or other entity reasonably acceptable to the City. Without limiting the generality of the foregoing, Developer agrees to be responsible for all development components of each of Site #1 and Site #2 and for compliance with all applicable requirements of Title 24, C.F.R., Part 570, including specifically, Subpart K (HUD CDBG-DR funding requirements).

(f) Completion of Construction; Submission to Condominium. Promptly following completion of the Site #1 Project Improvements and the Site #2 Project Improvements, Developer agrees to finalize the Project Condominium Documents for each of Site #1 and Site #2 converting each Project to a condominium structure of ownership, and to separate, as applicable, for each of Site #1 and Site #2 the Parking Structure, Commercial Improvements and Residential Improvements into separate condominium units with the ownership of the site #1 Parking Structure and the Site #2 Parking Structure remaining with the City of Minot. Site #1 and site #2 commercial and residential units shall be owned by Developer. Developer shall undertake all requirements necessary under applicable state law in order to accomplish the foregoing including, without limitation, preparation and submission of all documents, maps, surveys, descriptions of common and limited common elements, and related amenities and improvements (collectively, the "Condominium Documents"), and the establishment of the required condominium association. Promptly following submission of the Condominium Documents and, as applicable, Developer's exercise of the Purchase Option, the City shall convey to Developer (or its designee(s), as applicable) the Commercial Improvements and Residential Improvements. The City shall retain title and ownership to the Site #1 Parking Structure and the Site #2 Parking Structure, as applicable, subject to management agreement in the condominium association. Upon recordation of the Condominium Documents, the Lease shall automatically expire and be of no further force or effect; provided, however, the Parties hereby agree to execute and deliver all reasonable and customary affidavits, documents,

instruments or releases as may be required to convey to Developer clean/marketable title to the Commercial Improvements and Residential Improvements, as contemplated hereby.

(g) Management of Parking Structure; Use of Parking Structure as Public Facility.

The Parties intend to have the condominium association (or its designee) manage and operate each of the Site #1 Parking Structure and Site #2 Parking Structure for a period not to exceed 99 years from the date of issuance of a certificate of occupancy (or its legal equivalent) for the Parking Structure. To that end, the City and Developer agree to execute and deliver a mutually-agreeable contract (the "Parking Management Agreement") for each of the Site #1 Parking Structure and Site #2 Parking Structure. The Parking Structure, being a publicly owned and funded with CDBG-DR funds, shall be made available and open to the general public. Reasonable fees may be charged for the use of each of the Site #1 Parking Structure and the Site #2 Parking Structure in accordance with 24 C.F.R. 570.200(b)(2).

(h) Representations, Warranties and Covenants. The following representations, warranties, covenants and agreements shall apply equally to each of Site #1 and Site #2, except as otherwise expressly set forth herein.

i. The City represents and warrants to Developer, and covenants and agrees with Developer as follows:

(A) The City has all requisite authority to execute this Agreement and perform its terms as herein set forth. The person signing this Agreement on behalf of the City is a duly qualified representative of the City and has all requisite power and authority to execute this Agreement on behalf of the City as the valid, binding and enforceable obligation of the City.

(B) The City has no knowledge of any currently pending or threatened taking or condemnation of the Site or any portion thereof nor is there any currently outstanding violations of law, municipal or county ordinances, or other legal requirements (including laws relating to the environmental condition of the Site), or with respect to the current use or occupancy thereof.

(C) Except as disclosed to Developer, there are no unrecorded leases, service contracts or occupancy agreements currently affecting the Site which will be binding on Developer following the execution of this Agreement.

(D) Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by the City of any material judgment, order, writ, injunction or decree issued against or imposed upon it.

(E) The City has not received written notice of any actual or threatened litigation or proceeding by any organization, person, individual or governmental agency against or affecting the Site, or against the City regarding the Site.

(F) The Site has full access to and from public highways, roads, and rights-of-way, and to the City's knowledge, there is no fact or condition which would result in the termination of the current access to or from the Site to any presently existing highways, roads, and rights-of-way on or adjoining the Site.

(G) Except as previously disclosed to Developer, there is no pending or contemplated change in any zoning or other regulation or private restriction, any pending or

threatened judicial or administrative action, or any action pending or threatened by any third parties applicable to the Site or any portion thereof.

(H) There are no parties in possession of any portion of the Site, including, but not limited to, lessees, licensees, tenants at sufferance, or trespassers, who have not been disclosed to Developer. Other than Developer, no person, firm, corporation, or other entity has any existing right or option to acquire all or any portion of the Site.

(I) The Site is now in compliance with all applicable laws, ordinances, regulations, statutes, rules, and restrictive covenants or deed restrictions relating thereto.

(J) The City has provided to Developer a copy of the Phase II Environmental Assessment dated January, 2013, prepared by CDM Smith (the "Site #1 Phase II, ESA), which represents the City's full disclosure of all environmental issues applicable to Site #1.

(K) To the City's knowledge there is no adverse fact relating to the physical condition of the Property or any portion thereof that is not readily observable or has not been specifically disclosed in writing to Developer, including without limitation landfills, hazardous wastes, sink holes, fault lines, other geological conditions, or adverse soil conditions.

(L) The City is the sole owner of good, marketable and insurable title to each of the Site #1 Property and Site #2 Property.

(M) The City covenants and agrees to require all utility companies currently located within City rights-of-way to modify (which may include relocation, as applicable) all utility improvements on the Site to accommodate the construction of the Project Improvements, all without cost or expense to Developer. The relocation of any utilities that are not currently located within City rights-of-way shall be the sole cost of Developer, unless the City has the authority to require the applicable utility company or provider to relocate its facilities at the expense of the utility company or provider, as applicable.

ii. Developer hereby represents and warrants to The City as follows:

(A) The person signing this Agreement on behalf of Developer is a duly qualified representative of Developer and has all requisite power and authority to execute this Agreement on behalf of Developer as the valid, binding and enforceable obligation of Developer.

(B) Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Developer of any material judgment, order, writ, injunction or decree issued against or imposed upon it.

(C) Neither Developer nor any owner of an interest in Developer (other than, in the case of a corporation the shares of which are traded on a public exchange, any owners of interests in such corporation) is: (x) engaged in any money laundering scheme or activity in violation of the Patriot Act, or (y) a Prohibited Person. For purposes of the foregoing: (a) the term "Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time, and (b) the term "Prohibited Person" shall mean any person or entity: (a) listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism, or (b) that is

named as a “specifically designated national (SDN)” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its website (<http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>) or at any replacement website or other replacement official publication of such list.

iii. Except as otherwise set forth herein, all representations, warranties and covenants of the Parties shall survive for a period of one (1) year from the date of execution and delivery of this Agreement.

3. Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

To the City:	City of Minot P.O. Box 5006 515 2 <sup>nd</sup> Ave SW Minot, North Dakota 57802
To Developer:	Minot Development Group, LLC 105 First Street SE, Suite 301 Minot, North Dakota 58701
With a copy to:	Cypress Development, LLC 9 Carrington Drive Henderson, NV 89052

4. Miscellaneous.

(a) No waiver by any party of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by any other party of the same, or any other provision or the enforcement thereof. A Party's consent to or approval of any act by any other Party requiring the other Party's consent or approval shall not be deemed to render unnecessary the obtaining of such Party's or any other Party's consent to or approval of any subsequent consent or approval of any party, whether or not similar to the act so consented to or approved.

(b) This Agreement or any portion hereof shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Developer shall be permitted to transfer its interest in and to this Agreement to any entity which is wholly-owned by or under common control of the Developer, or an affiliate of Developer, their respective successors, heirs and assigns. In addition, Developer shall be permitted to sell, transfer or convey all right, title and interest of the Developer, in and to the Residential/Commercial Improvements upon issuance of a certificate of occupancy (or its legal equivalent) for such improvements.

(c) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

(d) This Agreement may not be changed, except in writing signed by the parties. No waiver of any rights or obligations hereunder shall be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver shall be deemed a waiver of any other or subsequent right or obligations.

(e) The Parties hereby acknowledge and agree that (i) each Party hereto is of equal bargaining strength, (ii) each such Party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such Party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement, (iv) each such Party and its counsel and advisors have reviewed this Agreement, (v) each such Party has agreed to enter into this Agreement following such review and the rendering of such advice and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

(f) Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party, the Parties agree to confirm facsimile or electronically transmitted signatures by signing an original document. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(g) In the event any provision of this Agreement, or any instrument to be delivered pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

(h) If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter. As used in this Agreement, the expression (i) "business day" means every day other than a nonbusiness day, and (ii) "nonbusiness day" means a Saturday, Sunday or legal holiday in the State of North Dakota. Whenever a payment is due, an act is to be performed, a notice is to be delivered or a period expires under this Agreement on a nonbusiness day, such occurrence shall be deferred until the next succeeding business day.

(i) No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

(j) Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

(k) All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

(l) Whenever a period of time is herein prescribed for the taking of any action by the City or Developer, such Party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, Act of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such party (hereinafter "Force Majeure"). Except as specifically provided to the contrary under the terms of this Agreement, neither Party shall be required to perform any covenant or obligation set forth in this Agreement, nor be liable in damages to the other Party, so long as the performance or nonperformance of the covenant or obligation is delayed, caused or prevented by an Act of God or Force Majeure or by the other Party. Any time periods provided in this Agreement shall be extended by the number of days of delay caused by such Act of God or Force Majeure.

(m) This Agreement shall be governed and construed in accordance with the laws of the State of North Dakota, and the venue for all judicial proceedings arising from or out of this Agreement shall be Ward County, North Dakota.

(n) Time is of the essence of this Agreement.

(o) The "Effective Date" of this Agreement shall be the date immediately below the City's signature.

\*\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK \*\*\*

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the City and Developer as of the Effective Date.

Executed in the presence of:

Signature of Witness

Print Name

Signature of Witness

Print Name

Executed in the presence of:

Scott R Taylor

Signature of Witness

Scott R Taylor

Print Name

CM

Signature of Witness

Cristina De Leon

Print Name

**THE CITY OF MINOT**, a North Dakota municipal corporation

By: COoper L. Larson  
Mayor

Date: 10 2/13

CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company

By: CM  
Name: Steve Larson  
Title: Managing Member  
Date: 9/27/13

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the City and Developer as of the Effective Date.

Executed in the presence of:

Lisa Jundt  
Signature of Witness

Lisa Jundt, Clerk  
Print Name

Cindy K. Hemphill  
Signature of Witness

CINDY K. HEMPHILL  
Print Name

**THE CITY OF MINOT**, a North Dakota municipal corporation

By: John Carlson  
Mayor

Date: 10/7/13

Executed in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

List of Exhibits:

<u>Exhibit A-1</u>	Legal Description of Site #1
<u>Exhibit A-2</u>	Legal Description of Site #2
<u>Exhibit B</u>	Disposition and Development Agreement
<u>Exhibit C</u>	Scope of Development*
<u>Exhibit D</u>	Construction Management Agreement
<u>Exhibit E</u>	Intentionally Omitted
<u>Exhibit F-1</u>	Schedule of Sources and Uses for Central Avenue Apartments
<u>Exhibit F-1</u>	Schedule of Sources and Uses for Renaissance Apartments

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\* The Scope of Development attached hereto as Exhibit C is intended to supersede and replace the Scope of Development attached to the Development and Disposition Agreement. To the extent of any conflict, the Scope of Development attached hereto as Exhibit C shall govern and control.

2013 Cypress - City of Minot Development Agreement

Exhibit A-1

Legal Description of Site #1

Wells Fargo Bank (west of Bank) 205 1st St SW

MI 24 238 110 0240

Original Minot Addition

Lots 13 thru 24 Block 11

2013 Cypress - City of Minot Development Agreement

Exhibit A-2

Legal Description of Site #2

Bremer Bank (east across street) 5 Central Ave

MI 24 238 030 0240

Original Minot Addition

All of West ½ of Block 3

## Exhibit B to the 2013 Development Agreement

### **DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF MINOT, a North Dakota municipal corporation (the "City"), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company ("Developer").

#### **RECITALS**

A. Pursuant to a City of Minot, North Dakota, Request for Qualifications (the "RFQ"), the City solicited proposals for the development of multiple mixed-use projects on several parcels of real property owned by the City (collectively, the "Sites" and individually, a "Site").

B. Developer and other parties responded timely to the RFQ by submitting proposals for development of the Sites.

C. A selection committee designated by City evaluated all the proposals and selected Developer's proposal ("Developer's Proposal") as best meeting the goals and criteria for development of the Sites.

D. On October 3, 2011, the Minot City Council approved the selection of the Developer's Proposal as the best proposal received for a qualified development team, with the goal to revitalize the Minot downtown area to include housing, retail, and parking development; and further authorized the Mayor to sign the contract on the City's behalf.

E. The City and Developer now desire to enter into this Agreement to provide for the disposition and development of the Sites.

#### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

#### **ARTICLE 1 SUBJECT OF AGREEMENT**

##### **1.1 Purpose of Agreement**

The purpose of this Agreement is to effectuate the disposition and development of the Sites. The City has found that the development of the Sites pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City. Development on the Sites will promote the health, safety, and welfare of the area residents, and is in accord with the public purposes and provisions of applicable laws and requirements.

##### **1.2 The Sites**

The "Sites" are those parcels located in the City of Minot that are shown on the map attached hereto as **Exhibit A**, and are more particularly described in the legal description attached hereto as **Exhibit B**.

### 1.3 The Project

The term "Project" means the construction and development of mixed-use residential / commercial development substantially in accordance with the Scope of Development attached hereto as **Exhibit C** and incorporated herein by this reference, with such changes as Developer and City may, from time to time, mutually agree upon and those other changes expressly provided for herein in writing.

### 1.4 City of Minot

The principal office and mailing address of City of Minot for purposes of this Agreement is PO Box 5006, 515 Second Avenue SW, Minot, ND 58702, Attention: Finance Department or such other mailing address as the City may through written notice provide to Developer from time to time.

### 1.5 Development Team

Developer's team for the development of the Project will initially consist of Developer, CONSTRUCT NORTH DAKOTA LLC, a North Dakota limited liability company (ND License No 42113), and V-3 Studio Architecture (ND License No 1899) (the "Development Team"). The principal office and mailing address of Developer for purposes of this Agreement is 105 First Street SE, Suite 301, Minot, North Dakota 58701, Attention: Steve Larson, or such other address as Developer may through written notice provide to City from time to time. Developer shall be entitled to add to, and remove members from, the Development Team provided Developer notifies the City of same and at times maintains a Development Team qualified to develop the Project and holding all appropriate licenses.

## ARTICLE 2 DISPOSITION OF SITES

### 2.1 Ground Lease

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City and Developer agree to enter into a ground lease of each Site (each a "Ground Lease" and collectively, the "Ground Leases"). Each Ground Lease shall have an initial term of twelve (12) months and, provided Developer has commenced construction of the Project during such initial twelve (12) month period, shall automatically renew on an annual basis until completion of construction of the Project on each Site and the conversion of the Project on such Site into a condominium, but not to exceed five (5) years. Upon completion of construction of the Project on a Site and conversion of the Project on such Site into a condominium, ownership of any retail portion of the Project and the apartment units included in the Project shall remain with Developer. The land underlying the Project and the parking garage shall at all times remain the property of the City. The condominium units shall be governed by a declaration to be prepared by Developer and reasonably acceptable to the City. The rent payable on account of each Ground Lease shall be \$100 per twelve (12) month period (the "Ground Lease Rent"). Each Ground Lease shall contain customary lender protection provisions including, without limitation, the right to record a leasehold deed of

trust against each Ground Lease. The form of the Ground Lease will be prepared by Developer and shall be reasonably acceptable to the City.

## 2.2 Closing

Developer and the City shall enter into a Ground Lease of each Site in accordance with the Schedule of Performance attached hereto as **Exhibit D** and incorporated herein by this reference, as it may be revised from time-to-time in accordance with this Agreement.

Closing shall be through an escrow to be established by Developer and City at \_\_\_\_\_ Title Company, \_\_\_\_\_ address \_\_\_\_\_ Attention: \_\_\_\_\_ Escrow Officer \_\_\_\_\_ (the "Title Company"). Closing shall occur at the earliest possible date after written request of the Developer provided all conditions precedent to Closing have been met. At the time and place of Closing, Developer agrees to enter into a Ground Lease and pay to City the Ground Lease Rent for the first twelve (12) months of the term of the Ground Lease in the form of immediately available funds, except as otherwise provided herein. City and Developer agree to perform all acts necessary for the Ground Lease to be executed in accordance with the foregoing provisions and will execute escrow instructions consistent with this Agreement and close the transaction as provided herein. Escrow will close and the Ground Lease of the Site will be made upon satisfaction or written waiver of the conditions precedent to conveyance contained in this Agreement ("Closing"). Possession will be delivered to Developer concurrently with execution of a Ground Lease. A memorandum of each Ground Lease, prepared by Developer and reasonably acceptable to the City, will be recorded at Closing.

## 2.3 Conditions Precedent to Developer's Obligation to Enter Into Ground Lease

Developer's obligation to enter into a Ground Lease and develop each Site in accordance with the Scope of Development is subject to the satisfaction or waiver of each of the following conditions:

- (1) Developer's review and approval of the environmental reports and site surveys with respect to the Sites and performance of its own investigation of the environmental condition and other physical condition of the Site to the extent desired by Developer.
- (2) The Title Company's commitment reasonably satisfactory to Developer to issue to Developer, on and as of Closing, an owner's leasehold title insurance policy meeting the requirements of Section 2.6 hereof.
- (3) Developer's obtaining financing (which may be through debt and/or equity sources) for the construction of the Project on the applicable Site on a basis and on terms that are satisfactory to Developer.
- (4) The issuance of site review approval and building permits by the appropriate governmental agencies for the construction of the Project on the applicable Site in accordance with this Agreement.

(5) City shall not be in default under any material term, provision, or covenant of this Agreement.

(6) The City is in the process of applying for not less than \$6 million from the U.S. Government to pay for its share of the costs of constructing the Parking Structures. These funds are contingent upon requirements in Section 2.7.

Developer will notify City of the satisfaction, or waiver of the preceding conditions precedent, or its determination that such conditions precedent have not been met and the reasons therefore, prior to the dates of conveyance of the Sites as provided in the Schedule of Performance. In the event the foregoing conditions have not been met by the times set forth in the Schedule of Performance, Developer shall be entitled to adjust the Schedule of Performance to account for Developer's reasonable estimate of the time needed to satisfy the applicable conditions. If Developer determines that the above conditions cannot be met using commercially reasonable efforts with respect to one or more of the Sites, it shall be entitled to delete such Site or Sites from the Project and adjust the Scope of Development and Schedule of Performance accordingly.

#### **2.4 Conditions Precedent to City's Obligation to Convey**

The City's obligation to execute the Ground Lease (as defined below) and tender possession of the Sites to Developer is subject to satisfaction or waiver of the following conditions precedent to the satisfaction of City:

- (1) The City's review and approval of the Schematic Design Documents pursuant to this Agreement.
- (2) Developer's submission to the City of a request for conveyance of the Site.
- (3) Developer shall not be in default under any material term, provision, or covenant of this Agreement.
- (4) The issuance of site review approval by the appropriate governmental agencies for the construction of the Project on the applicable Site in accordance with this Agreement.

#### **2.5 Easements**

The City hereby agrees to provide all necessary access, utility easements and parking agreements required for the development of the Project.

#### **2.6 Condition of Title**

The City will assure to Developer good, marketable, insurable leasehold title to the Sites, free and clear of all liens and encumbrances except matters affecting property.

## 2.7 Environmental Condition

(1) The Developer shall commission a Phase I environmental site assessment for each Site prior to development of each Site. If the Phase I recommends the preparation of a Phase II with respect to any of the Sites, Developer shall have the Phase II prepared. In the event either the Phase I or the Phase II identifies environmental hazards that would require remediation or additional investigation, the Developer may, at its option choose not to accept the Site in question. The City shall indemnify and hold Developer harmless for any preexisting environmental condition that may be discovered as a result of said development.

(2) Notwithstanding any other provision of this Agreement, Developer shall have no obligation to purchase the property, and no transfer of title to the Developer may occur, unless and until the City of Minot has provided Developer with a written notification that it has completed a federally required environmental review and its request for release of federal funds has been approved and, any issues in the environmental review shall be satisfied before or after purchase of property. The City of Minot shall use its best efforts to conclude the environmental review of the property expeditiously. Design, engineering, and environmental assessments are exempt from environmental review.

## 2.8 Preliminary Work by Developer

Prior to entering into a Ground Lease, Developer or Developer's representatives shall have the right of access to the Sites at all reasonable times for the purposes of obtaining data and making surveys and tests necessary to carry out this Agreement. Developer shall indemnify and hold the City of Minot, and their respective officers, agents and employees, harmless against any and all damages, claims, losses, liabilities and expenses.

# **ARTICLE 3 DEVELOPMENT OF THE SITES**

## 3.1 Scope of Development; Schedule of Performance

Subject to the conditions set forth in Section 2.3 above, Developer will develop the Sites in accordance with the Scope of Development attached as **Exhibit C**, as it may be revised, and the Design Documents and Construction Documents approved pursuant to Section 3.2 below. Developer shall be entitled to consideration of revisions to the Scope of Development to the extent it conflicts with any law, regulation, or ordinance or if Developer reasonably determines that the Project would be commercially unfeasible if it were to be developed in accordance with the existing Scope of Development. Any and all changes shall be subject to EDA's and/or the City approval. The Sites shall be developed generally in accordance with the Schedule of Performance (Exhibit D) once it is determined and agreed to by all parties subject to events of force majeure, delays by the City in the performance of its obligations under this Agreement, the discovery of any environmental contamination or other adverse condition on any of the Sites, and the express provisions of this Agreement. The Schedule of Performance may, from time to time, be amended by Developer with the approval of the City, not to be unreasonably withheld, conditioned or delayed. The amendments to the Schedule of

Performance may include a phased take-down and development of the Sites by Developer and changes to any existing phasing plan.

### **3.2     Design and Construction Plans, Drawings and Related Documents; Submission to City of Minot**

3.2.1     Design Development Documents: Developer will prepare and submit to the City design development documents for the Project (the "Design Documents") in accordance with the Schedule of Performance. The City shall review the Design Documents for the sole purpose of ensuring conformance with the Scope of Development. The City shall provide any comments it has on the Design Documents within five (5) days and submit to EDA in that timeframe following receipt thereof. Construction Documents: Following approval of the Design Documents for the Project, Developer shall prepare and submit to the City of Minot construction documents for the Project ("Construction Documents"), which shall include technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Project and providing information customarily required for the use of the building trades. City shall review the construction documents for the sole purpose of ensuring conformance with the Scope of Development. The City shall provide any comments it has on the Construction Documents within fifteen (15) days and submit to EDA in that timeframe following receipt thereof.

3.2.2     Change Orders. During the course of construction, Developer shall be entitled to make changes to the Construction Documents, subject to EDA approval, provided it submits copies of any proposed change orders to the City for its review to ensure compliance with the Scope of Development. The City shall provide any comments it has on any change order within fifteen (15) days and submit to EDA in that timeframe following receipt thereof.

3.2.3     Coordination. City and Developer will communicate and consult informally as frequently as is reasonably necessary to ensure that City can promptly consider any documents submitted by Developer for City review. Developer will provide City with written progress reports every once per week during the process of development and construction of the Project.

3.2.4     Approval Standard. City acknowledges that it shall not unreasonably withhold or condition its approval of the Design Documents, Construction Documents, or any change order.

3.2.5     Phased Project. As noted above, Developer shall be entitled to request to alter the Schedule of Performance to include a phased take-down of the Sites and development of the Project. Accordingly, preparation of the Design Documents and Construction Documents and review of those documents by the City and EDA may also be phased if approved by both the City and EDA in writing.

3.2.6 City Permits. Developer shall be responsible for obtaining the governmental permits and approval required for development of the Project.

### 3.3 Costs of Construction

3.3.1 Developer will pay all costs of developing and constructing the Project except as provided below.

3.3.2 City is entering into this agreement with the acknowledgement that it is obligated to make any and all infrastructure improvements necessary to adequately service the Project. Such infrastructure improvements shall include, but not be limited to, all public works improvements (curbs, gutters, sidewalks, sewer), and relocation and upgrade of utilities (collectively, the "Infrastructure Improvements"). The City shall be responsible for costs incurred in connection with the Infrastructure Improvements only if all Federal grant funds applied for are received by the City.

3.3.3 The Project as constructed on the Sites designated on Exhibit A as (a) "1st Street, 2nd Avenue and 3rd Avenue SW," ("Site #1") and (b) "1st Street, 1st Avenue SW and Central Avenue" ("Site #2") will each include a structured parking garage constructed by Developer (the "Parking Structures") and paid for by the City contingent upon the approval funding from the US Government.

3.3.4 Upon completion of construction of each, the City and Developer shall enter into a Shared Parking Agreement pursuant to the basic terms set forth in **Exhibit H** attached hereto for the Parking Structures.

3.3.5 The City and Developer shall reasonably coordinate all development of Infrastructure Improvements and the Parking Structures with the development of the Project on the Sites so that (i) upon substantial completion of the Project on a Site, that Site will be adequately served by all necessary infrastructure, (ii) the applicable Parking Structures will be complete, and (iii) the Schedule of Performance will be not adversely affected by the City's construction or funding of the Infrastructure Improvements or the Parking Structures.

3.3.6 Developer will manage and maintain the parking structure pursuant to basic terms for a Shared Parking Agreement in Exhibit H attached hereto.

### 3.4 Other Sites.

The City hereby grants to Developer exclusive negotiation rights with the City on all City owned and controlled sites in the Downtown District that the City in the future desires to make available for private development. The City also hereby agrees to facilitate negotiations between Minot Public School District, Ward County, and Developer over the availability of other publicly owned parcels in Minot's Downtown District for future residential and mixed-use development.

## **ARTICLE 4 USE OF THE SITE**

### **4.1      Uses**

Developer covenants and agrees for itself, its successors, its assigns and every successor-in-interest to the Sites or any part thereof, that during construction and thereafter, Developer and such successors and assignees will devote the Sites to use as a mixed-use residential / retail / commercial development consisting of ground floor retail/commercial space, and parking.

## **ARTICLE 5 GENERAL PROVISIONS**

### **5.1      Assignment**

At closing of its acquisition of one or more of the Sites, Developer shall be entitled to assign all or a portion of its rights and obligations hereunder to an entity formed for the purpose of holding the applicable Site.

### **5.2      Attorney Fees**

In the event any action is brought to enforce, modify, or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs incurred in connection with such action or on appeal.

### **5.3      Notice, demands and communications Between the Parties**

Formal notices, demands and communications between the City and Developer will be sufficiently given if sent by personal delivery, next business day courier providing receipt of delivery, or registered or certified mail, postage prepaid, return receipt requested to the principal offices of the City and Developer as designated herein. Such written notices, demands, and communication may be sent in the same manner to such other addresses and to such other persons and entities as either party may from time to time designate by mail as provided in this section. Notices should be sent to the addresses shown in Sections 1.4 and 1.5 of this Agreement unless otherwise notified in writing by the parties.

### **5.4      Non-liability of Officials and Employees**

No member, official, consultant, advisor or employee of any of the parties will be personally liable to the other party or any successor in interest thereto for any amount which may become due to either party or its successor, in the event of any default or breach by either party of any obligations under the terms of this Agreement.

### **5.5      Unavoidable Delay; Extension of Time of Performance**

In addition to specific provisions of this Agreement, performance by either party hereunder will not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; labor disputes; riots; volcanoes; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemic; quarantine restrictions; freight embargoes; lack of

transportation; governmental restrictions or priorities; litigation, including but not limited to litigation challenging the validity of this transaction or any element thereof; severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or subcontractor or supplier; acts of the other party; acts or failures to act of any public or governmental agency or entities (except that the City's own acts or failure to act will not excuse performance by the City); change in economic conditions; or any other cause beyond the control or without default of the party claiming an extension of time to perform. In the event of such delay, the party delayed will give written notice of the delay and the reason therefore to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause will be for the period of duration of the cause. Times of performance under this Agreement may also be extended for any reason in writing signed by both the City and Developer.

#### **5.6      Merger**

None of the provisions of this Agreement are intended to or will be merged by reason of any transaction referred to herein and any such transaction will not affect or impair the provisions and covenants of this Agreement, but will be deemed made pursuant to this Agreement.

#### **5.7      Time of Essence**

Time is of the essence of this Agreement. All obligations of the City and Developer to each other are due at the time specified by the Agreement, as the same may be extended by mutual agreement of the parties in writing.

#### **5.8      Calculation of Time**

All periods of time referred to herein include Saturdays, Sundays, and legal holidays in the State of North Dakota except that if the last day of any period falls on any Saturday, Sunday, or such holiday period, it will be extended to include the next day which is not a Saturday, Sunday or such a holiday.

#### **5.9      Legal Purpose**

The parties agree that the Sites will be used solely for legal purposes.

#### **5.10     Severability**

If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

#### **5.11     No Partnership**

Neither anything in this Agreement contained nor any acts of the parties hereto will create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

### **5.12 Entire Agreement; Waivers; Amendments**

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of City and Developer. This Agreement may be amended by the parties, but all amendments hereto must be in writing signed by the appropriate authorities of the City and Developer.

### **ARTICLE 6 SUCCESSOR INTEREST**

This Agreement will be binding upon and inure to the benefit of the parties, their successors and assigns.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

**CITY**

CITY OF MINOT,  
a North Dakota municipal corporation

By: John C. Ladd

Name: \_\_\_\_\_

Its: \_\_\_\_\_

CYPRESS DEVELOPMENT, LLC,  
a North Dakota limited liability company

By: Steve Larson

Name: Steve Larson

Its: Managing Member

**SCHEDULE OF EXHIBITS**

EXHIBIT A - MAP OF SITE

EXHIBIT B - LEGAL DESCRIPTION OF PROPERTY

EXHIBIT C - SCOPE OF DEVELOPMENT

EXHIBIT D - PERFORMANCE SCHEDULE

EXHIBITS E, F, & G INTENTIONALLY OMITTED

EXHIBIT H - PARKING MANAGEMENT AND USE AGREEMENT TERMS

2012 Cypress - City of Minot Development Agreement  
Exhibit A - Site Maps

Site #1



## Site # 2



2012 Cypress - City of Minot Development Agreement  
Exhibit B

Legal Descriptions of Sites

Site 1

Wells Fargo Bank (west of Bank) 205 1st St SW

MI 24 238 110 0240

Original Minot Addition

Lots 13 thru 24 Block 11

Site 2

Bremer Bank (east across street) 5 Central Ave

MI 24 238 030 0240

Original Minot Addition

All of West ½ of Block 3

## Exhibit C

### Scope of Development

Developer will construct a Project with the following characteristics:

1. mixed use developments containing quality residential units over parking as provided for in schematic drawings in an attempt to maximize density to service such residential use, as determined by Developer;
2. provide ground level commercial use(s) and parking to service such commercial use as determined by Developer;
3. consist of a high-quality durable materials (which may include the following: glass, metal, brick, concrete and stone) and appropriately scaled landscape elements; and
4. provide replacement public parking as required by the Parking Agreements with all rights and revenue to be transferred to the Developer.

## 2012 Cypress - City of Minot Development Agreement

### EXHIBIT D

#### Schedule of Performance

Leases between City and Developer for Sites 1 & 2 shall be fully executed within 60 days following execution of this Agreement.

A parking management agreement between City and Developer shall be negotiated and fully executed within 60 days following execution of this agreement.

Project shall commence upon full approval by EDA, CDBG-DR and the City

Site 1

Architectural and Engineering Construction Docs - 3 months

Bid Process – 3 months

Plan review and permitting - 2 months to run concurrent with bid process

Construction – 5 months of onsite construction.

Site 2 shall have the same overall schedule but shall commence 3 months after Site 1 commencement.

Occupancy shall be upon substantial completion of the residential improvements (estimated to be no later than 13 months after commencement of construction on a Site).

Developer shall prepare condominium documents for mutual execution within 180 days of receipt of certificate of occupancy.

2012 Cypress - City of Minot Development Agreement

**EXHIBIT'S E, F & G**

**Intentionally Omitted**

## Exhibit H

### **Parking Management and Use Agreement Terms**

- Developer shall manage and maintain parking structures in a manner that will maximize the benefit both to the public and to residents of the Project.
- Developer will offer a minimum of 141 parking stalls on Site # 1 and 116 parking stalls on Site # 2, to the public Monday thru Friday during the hours of 7 am and 6 pm.
- Developer shall offer a minimum of 50 parking stalls for short term commercial shopping on Sites # 1 and #2 from 9 am to 8 pm Monday thru Friday and up to 100 parking stalls on Saturdays and Sundays for commercial shopping.
- Developer may impose a reasonable charge for public parking.

## 2013 Cypress - City of Minot Development Agreement

### Exhibit C

#### Scope of Development

Developer will construct a Project with the following characteristics:

1. mixed use developments containing quality residential units over parking as provided for in schematic drawings in an attempt to lawfully maximize density to service such residential use, in accordance with Section 2(e) of the Development Agreement;
2. provide ground level commercial use(s) and parking to service such commercial use and the residential use, in accordance with Section 2(g) of the Development Agreement;
3. consist of a high-quality durable materials (which may include the following: glass, metal, brick, concrete and stone) and appropriately scaled landscape elements; and
4. provide replacement public parking as required by the Parking Agreements and Federal regulations (*Federal Register Vol. 77, No. 73, Monday, April 16, 2012*) require the City to track and report income received from the use of real property improved with CDBG-DR funds. Income received from the use of the Parking structures, and costs incidental to the maintenance thereof, must be reported to the City on a quarterly basis. For purposes of such Federal reporting requirements, "Income" shall be defined as annual revenue generated from the operation of the parking spaces available for use by the general public within the Parking Structures (net of operating expenses, maintenance and replacement reserves) in excess of \$25,000.00. Income must be returned to the City on an annual basis for use by the City on eligible CDBG activities. (This provision number four (4.) regarding income from the parking ramps replaces and supersedes number four (4.) of the Scope of Development of the Disposition and Development Agreement.)

## 2013 Cypress - City of Minot Development Agreement

### Exhibit D

#### Construction Management Agreement

#### **W & B Construction Management Services** **Proposal**

February 15, 2013

Matt Sloan  
Minot Development Group, LLC  
105 1st Street SE, Suite 301  
Minot, ND 58701

Dear Mr. Sloan:

W & B Construction Management Services is please to submit this proposal for the Construction Management Services for Minot Development Group's two multi-level concrete parking structures to be constructed in Minot, North Dakota. The W & B commitment is to deliver solutions of the highest quality, while providing superior customer service, and leading edge knowledge in the areas of Project Management, Construction Management, Safety, and Asset Management. At the same time, application of individual experience and knowledge is combined to form a team approach, allowing our clients to benefit from diverse, yet concentrated industry specific experience. Our services and Solutions include;

1. Project Cost Estimate
2. Subcontractor Prequalification, Bid Invitation, Evaluation & Selection
3. Permit Process Control
4. Construction Document Quality Assurance Review
5. Project Budget Development and Control
6. Project Schedule Development and Control
7. Risk & Contingency Analysis
8. Auditing
9. Cost Controls
10. Coordination with local jurisdictions in the permitting, inspections, and certificate of occupancies .

#### **SCOPE OF SERVICES**

##### **Project Description**

Consultant to provide construction administration and construction observation services during the construction of two(2) multi-level concrete parking structures located in downtown Minot, North Dakota.

The project sites are currently ½ city blocks of surface parking on asphalt. The project sites will be excavated to a depth where 3 levels of a concrete parking structure will be constructed with multiple levels below grade.

## Bidding and Selection of Contractors

Consultant shall submit a list of prospective bidders and a bidding schedule for the Client's review and approval.

Consultant shall assist the Client in issuing bidding documents to bidders and conduct pre-bid conferences with prospective bidders. Assist the Client with the receipt of questions from bidders and issuance of addenda.

The Consultant shall receive bids, prepare bid analyses and make recommendations to the Client for the Client's award of contracts.

The Consultant shall advise the Owner on the division of the Project into separate contracts as required by the Scope of Work.

The Consultant shall make recommendations to the Client regarding the allocation of responsibilities for Project conditions among the Contractors.

## Permits

The Consultant shall assist the Owner in obtaining applicable building permits and special permits for permanent improvements.

## Construction Draw Management

The Consultant shall prepare monthly draw submittals which shall include; approved invoices by cost category, detailed draw summary with schedules of completion and conditional and unconditional lien releases.

## Construction Schedule

The Consultant shall prepare and update a Project construction schedule providing for each scope of work, including phasing of construction, times for commencement and completion required of each separate Contractor, ordering and delivery of materials requiring long lead time.

## Project Management

The Consultant shall provide administrative, management and related services to endeavor to coordinate the activities of the Contractors with each other and with those of the Client to complete the Project in accordance with the latest approved of Construction Cost, the Project construction schedule and the Contract Documents. The Consultant shall schedule and conduct preconstruction, construction and progress meetings with the Client and the Contractors to discuss such matters as procedures, progress and scheduling. The Consultant shall prepare and promptly distribute meeting minutes to the Client and Contractors.

# W & B Construction Management Services

Proposal

## Construction Cost Management

The Consultant shall monitor the approved estimate of Construction Cost. The Consultant shall show actual costs for activities in progress and estimates for uncompleted tasks.

## Reports and Document Administration

The Consultant shall record the progress of the Project with written progress reports to the Client, including information on each Contractors work, showing percentages of completion. The Consultant shall maintain at the Project site, on a current basis: one record copy of all contracts, Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; other related documents and revisions that arise out of the Contracts or work.

## COMPENSATION

The Consultant shall be compensated for Construction Management Services as described below.

### *Initial Payment*

An initial payment retainer of Thirty Four Thousand dollars (\$34,000.00) shall be paid to the Consultant for Construction Management Services prior to commencement of the Scope of Services described above and shall be credited toward the Client's final payment.

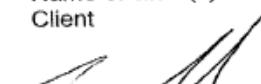
Compensation for Construction Management Services shall be as follows:

Overhead and General Conditions -	\$177,780
W & B Construction Management Services Fee -	<u>\$162,500</u>
<b>Total Fee</b>	<b>\$340,280</b>

## ACCEPTANCE OF PROPOSAL

The aforementioned Project Description, Scope of Services, Compensation and the attached Standard Terms and Conditions for Consultant Services are hereby accepted. Payments will be made as indicated above.

Accepted by   
Date: 2-28-13  
Name of client(s)  
Client

Accepted by   
Date: 2-15-13  
W&B Construction Management Service

160 Cherry Street, Auburn Ca 95604 – 916.865.8933

2013 Cypress - City of Minot Development Agreement

Exhibit E  
Intentionally Omitted

2013 Cypress - City of Minot Development Agreement

<b>EXHIBIT F-1</b>			
<b>Sources and Uses</b>			
<b>Central Avenue Apartments Mixed Use Development</b>			
<b>Sources</b>	<b>Sources</b>	<b>% of Cost</b>	<b>Uses</b>
City of Minot CDBG DR (Garage)	\$ 2,687,500	11.97%	
MADC Magic Fund (Garage)	\$ 1,500,000	6.68%	
Developer Equity Investment (Garage)	\$ 350,000	1.56%	
Apartment and Commercial Cost	\$ 17,922,709	79.80%	
<b>Uses</b>			
Parking Structure (City Budget)		\$ 4,187,500	
Developer Investment in Ramp		\$ 350,000	
Developer Investment in Apartments & Commercial Space		\$ 17,922,709	
<b>Total Sources and Uses</b>	<b>\$ 22,460,209</b>	<b>100%</b>	<b>\$ 22,460,209</b>

2013 Cypress - City of Minot Development Agreement

<b>EXHIBIT F-1</b>			
<b>Sources and Uses</b>			
<b>RENAISSANCE APARTMENTS MIXED USE DEVELOPMENT</b>			
<b>Sources</b>	<b>Sources</b>	<b>% of Cost</b>	<b>Uses</b>
City of Minot CDBG DR (Garage)	\$ 2,687,500	11.97%	
MADC Magic Fund (Garage)	\$ 1,500,000	6.68%	
Developer Equity Investment (Garage)	\$ 350,000	1.56%	
Apartment and Commercial Cost	\$ 17,922,709	79.80%	
<b>Uses</b>			
Parking Structure (City Budget)		\$ 4,187,500	
Developer Investment in Ramp		\$ 350,000	
Developer Investment in Apartments & Commercial Space		<u>\$ 17,922,709</u>	
<b>Total Sources and Uses</b>	<b>\$ 22,460,209</b>	<b>100%</b>	<b>\$ 22,460,209</b>

**Schedule C-1: Amendment to the  
DEVELOPMENT AGREEMENT**

Between

Cypress Development, LLC and the City of Minot

Effective October 7, 2013

WHEREAS, Cypress Development, LLC and the City of Minot (the Parties) entered into that certain Development Agreement (the "Agreement") dated October 7, 2013, and

WHEREAS, certain conditions have changed and the parties wish to amend the Agreement as follows:

**AMENDMENT:**

1. Section 2 (c) is amended as follows:

(c) Leases. To facilitate the development of each of Site #1 and Site #2, and construction of the Site #1 Project Improvements and the Site #2 Project Improvements, the Parties agree to enter into a Lease applicable to each of Site #1 and Site #2, which Lease shall be substantially in the form approved by the parties as of the date hereof (the "Lease"). Each Lease shall be executed by the Parties simultaneously with the execution of this Agreement, and shall grant the Developer access to the Site in order to undertake all pre-development testing, demolition, development and construction obligations imposed upon the Developer under this Agreement and the DDA. Each Lease shall have an initial term of four (4) years (the "Initial Term") and shall automatically renew on an annual basis (for a term not to exceed five (5) additional years) (each 12-month renewal hereinafter being referred to as a "Renewal Term"), however the Parties acknowledge that these Leases are intended as an interim Leases that will be replaced and superseded by long term Leases with terms of ninety-nine (99) years. Developer will prepare such long-term leases for the City's review and approval, which approval may not be unreasonably withheld, conditioned or delayed. Developer shall make best efforts to complete the construction as quickly as possible. Rent under each Lease shall be payable as follows: (i) during the first year, Developer shall pay One Hundred Dollars (\$100.00) in advance, at the commencement of the Initial Term; (ii) in each of years three, four and five, Developer agrees to pay rent equal to One Hundred Twenty Eight Thousand Seven Hundred Fifty Dollars (\$128,750); \$127,500 and \$126,250 respectively; and (iii) During each Renewal Term, Developer agrees to pay rent to the City equal to One Hundred and 00/100 Dollars (\$200.00) per year (\$100 for the land lease and \$100 for the parking ramp lease). During the first year, rent shall be paid in advance. In all other years, rent shall be paid annually, in arrears, in a single lump sum payment. Each Lease shall contain language confirming that the Developer owns all Commercial and Residential Improvements, and language confirming that the City owns all land and Parking Structure improvements. Each Lease shall contain standard mortgagee protections in the event of a default by Developer, and/or a casualty or condemnation impacting the Site or Project Improvements. The Lease shall be prepared by Developer and subject to the City's approval, which shall not be unreasonably withheld, conditioned or delayed.

2. Section 2 (d) is amended as follows:

(d) Costs of Construction.

i. Site #1 Costs of Construction. Except as otherwise provided herein and/or in the DDA, as applicable, Developer shall be responsible for all costs and expenses associated with the development of Site #1, and the design and construction of: (A) the Site #1 Commercial Improvements; (B) the Site #1 Residential Improvements; and (C) the Site #1 Parking Structure, but only to the extent the cost of the Site #1 Parking Structure exceeds Four Million Nine Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$4,937,500.00; the “Site 1 City Budget”), or such adjusted Site 1 City Budget should additional grants or loans be awarded to Developer after the execution of this Agreement. To that end, Developer shall secure adequate sources of funds necessary to complete the Project Improvements, in the amounts generally set forth on **Exhibit F-1** attached hereto and made a part hereof (the “Site #1 Schedule of Sources and Uses”). Such funding by Developer is to be used for Site 1 Project Improvement costs once the full Site 1 City Budget has been spent. A component of the Site #1 Schedule of Sources and Uses includes a grant in the amount of Two Million Nine Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$2,937,500.00), comprised of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program – Disaster Recovery (“CDBG-DR”) funds, which the City has approved for funding assistance in connection with the construction of the Parking Structure. An additional component of the Schedule of Sources and Uses includes funding in the amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) (the “MAGIC Funds”) from the City of Minot Magic Fund, as applied for by the Minot Area Development Corporation (“MADC”) which shall be used to offset the cost of constructing the Site #1 Parking Structure and \$750,000.00 in City funds, of which \$375,000 is a contribution by the City with the remaining \$375,000 to be repaid in three installment payments of One Hundred Twenty Eight Thousand Seven Hundred Fifty Dollars (\$128,750); \$127,500 and \$126,250 (during years 3, 4 and 5 of the Initial Term respectively). MADC shall have the authority to review construction draw requests submitted to the City of Minot for the disbursement of the MAGIC Funds.

ii. Site #2 Costs of Construction. Except as otherwise provided herein and/or in the DDA, as applicable, Developer shall be responsible for all costs and expenses associated with the development of Site #2, and the design and construction of: (A) the Site #2 Commercial Improvements; (B) the Site #2 Residential Improvements; and (C) the Site #2 Parking Structure, but only to the extent the cost of the Site #2 Parking Structure exceeds Four Million Nine Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$4,937,500.00; the “Site 2 City Budget”), or such adjusted Site 1 City Budget should additional grants or loans be awarded to Developer after the execution of this Agreement. To that end, Developer shall secure adequate sources of funds necessary to complete the Project Improvements, in the amounts generally set forth on **Exhibit F-2** attached hereto and made a part hereof (the “Site #2 Schedule of Sources and Uses”). Such funding by Developer is to be used for Site 2 Project Improvement costs once the full Site 2 City Budget has been spent. A component of the Site #2 Schedule of Sources and Uses includes a grant in the amount of Two Million Nine Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$2,937,500.00), comprised of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program – Disaster Recovery (“CDBG-DR”) funds, which the City has approved for funding assistance in connection with the construction of the Parking Structure. An additional

component of the Schedule of Sources and Uses includes funding in the amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) from the City of Minot MAGIC Fund, as applied for by MADC, which shall be used to offset the cost of constructing the Site #2 Parking Structure, and \$750,000.00 in City funds, of which \$375,000 is a contribution by the City with the remaining \$375,000 to be repaid in three installment payments of One Hundred Twenty Eight Thousand Seven Hundred Fifty Dollars (\$128,750); \$127,500 and \$126,250 (during years 3, 4 and 5 of the Initial Term respectively). MADC shall have the authority to review construction draw requests, which will be submitted to the City of Minot for disbursement of the MAGIC Funds.

3. Section 2(f) is amended as follows:

(f) Ninety-Nine Year Leases. Upon approval by the City of Lease documents prepared by Developer, City and Developer agree that ninety-nine year (99 year) Leases ("Ninety-Nine Year Leases") will come immediately into effect for Sites #1 and #2. Developer shall undertake all requirements necessary under applicable state law in order to accomplish the completion of the Site #1 and Site #2 Project Improvements, including, without limitation, preparation and submission of all documents, maps, surveys, descriptions of common and limited common elements, and related amenities and improvements.

4. Section 2(g) of the Development Agreement is DELETED.

5. Section 3 of the Development Agreement is amended as follows:

3. Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

To the City: City of Minot  
P.O. Box 5006  
515 2<sup>nd</sup> Ave SW  
Minot, North Dakota 57802

To Developer: Cypress Development, LLC  
9 Caprington Drive  
Henderson, NV 89052

With a Copy to: Wallace A. Glausi  
Ater Wynne LLP  
1331 NW Lovejoy #900  
Portland, Oregon 97209

6. Item number 4 in Exhibit C to the Development is hereby replaced with the following:

“4. provide replacement public parking as required by the Parking Agreements and Federal regulations (*Federal Register Vol. 77, No. 73, Monday, April 16, 2012*) require the City to track and report income received from the use of real property improved with CDBG-DR funds. Income received from the use of the Parking structures, and costs incidental to the maintenance thereof, must be reported to the City on a quarterly basis. For purposes of such Federal reporting requirements, “Program Income” shall be defined as annual revenue generated from “Public Parking Passes,” as defined in the Lease Agreements, (net of fifty percent (50%) of the operating expenses, maintenance and replacement reserves) in excess of \$25,000.00. Program Income must be returned to the City on an annual basis for use by the City on eligible CDBG activities. (This provision number four (4.) regarding income from the parking ramps replaces and supersedes number four (4.) of the Scope of Development of the Deposition and Development Agreement.)”

7. Exhibit D to the Development Agreement is replaced. WB Construction Management Services has been terminated and replaced, and Gallagher Consulting is the new Construction Manager, pursuant to Schedule C-2.

8. Schedules F1 and F2 to the Development Agreement are replaced with the updated versions attached hereto.

9. Exhibit H to the Development Agreement is hereby DELETED.

**Exhibit F-1**  
**To Schedule C-1 of the 2013 Cypress - City of Minot**  
**Development Agreement**

<b>EXHIBIT F-1</b>			
<b>Sources and Uses</b>			
<b>RENAISSANCE APARTMENTS MIXED USE DEVELOPMENT</b>			
<b>Sources</b>	<b>Sources</b>	<b>% of Cost</b>	<b>Uses</b>
City of Minot CDBG-DR (Garage)	\$ 2,687,500	8.2%	
MADC Magic Fund (Initial Garage Grant)	\$ 1,500,000	4.6%	
City of Minot, Original Funding (Garage)	\$ 750,000	2.3%	
Developer Investment (Original, Garage)	\$ 312,500	1.0%	
Developer Investment (Additional, Garage)	\$ 2,654,000	8.1%	
Developer Investment or MADC Magic Fund Loan	\$ 750,000	2.3%	
	<b>\$ 8,654,000</b>	26.5%	
<b>Subtotal, Garage Phase</b>			
Apartment and Commercial Improvement Financing	\$ 24,000,000	73.5%	
<b>Total, Garage and Apartments Phase</b>	<b>\$ 32,654,000</b>	100.0%	
<b>Uses</b>			
Parking Structure Phase			
Shaw Lundquist Original Contract		\$ 5,250,000	
Shaw Lundquist Change Orders (Proposed)		\$ 974,000	
Cost outside contract (Shoring, Excavation, Arch, Eng.)		\$ 2,430,000	
		<b>\$ 8,654,000</b>	
Apartment & Commercial Phase		\$ 24,000,000	
<b>Total Sources and Uses</b>	<b>\$ 32,654,000</b>	100.0%	<b>\$ 32,654,000</b>

**Exhibit F-2**  
 To Schedule C-1 of the 2013 Cypress - City of Minot  
 Development Agreement

<b>EXHIBIT F-2</b> <b>Sources and Uses</b> <b>CENTRAL AVENUE APARTMENTS MIXED USE DEVELOPMENT</b>			
<b>Sources</b>	<b>Sources</b>	<b>% of Cost</b>	<b>Uses</b>
City of Minot CDBG-DR (Garage)	\$ 2,687,500	8.2%	
MADC Magic Fund (Initial Garage Grant)	\$ 1,500,000	4.6%	
City of Minot, Original Funding (Garage)	\$ 750,000	2.3%	
Developer Investment (Original, Garage)	\$ 312,500	1.0%	
Developer Investment (Additional, Garage)	\$ 1,721,000	5.3%	
Developer Investment or MADC Magic Fund Loan	\$ 750,000	2.3%	
	<b>\$ 7,721,000</b>	23.6%	
<b>Subtotal, Garage Phase</b>			
Apartment and Commercial Improvement Financing	\$ 24,000,000	73.5%	
<b>Total, Garage and Apartments Phase</b>	<b>\$ 31,721,000</b>	97.1%	
<b>Uses</b>			
Parking Structure Phase			
Shaw Lundquist Original Contract		\$ 5,250,000	
Shaw Lundquist Change Orders (Proposed)		\$ 1,553,000	
Cost outside contract (Shoring, Excavation, Arch, Eng.)		\$ 918,000	
		<b>\$ 7,721,000</b>	
Apartment & Commercial Phase			\$ 24,000,000
<b>Total Sources and Uses</b>	<b>\$ 31,721,000</b>	97.1%	<b>\$ 31,721,000</b>

2013 Cypress - City of Minot Development Agreement

**Schedule C-2:** Amendment to Exhibit D of the

DEVELOPMENT AGREEMENT

Between

Cypress Development, LLC and the City of Minot

Effective October 7, 2013

WHEREAS, Cypress Development, LLC and the City of Minot (the Parties) entered into that certain Development Agreement (the "Agreement") dated October 7, 2013, and

WHEREAS, certain conditions have changed and the parties wish to amend Exhibit D of the Agreement as follows:

AMENDMENT:

1. The contents of Exhibit D is deleted in its entirety and replaced with the new Exhibit D attached hereto.

**IN WITNESS WHEREOF**, the Parties do execute and approve these Amendments, Schedule C-1 and Schedule C-2 to the Development Agreement, effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Executed in the presence of:

Lisa Jandt

Signature of Witness

Lisa Jandt

Print Name

**THE CITY OF MINOT**, a North Dakota municipal corporation

By: Oliver H. Kain  
Mayor

Date: 1/15/15

Executed in the presence of:

Dominic O'Diern

Signature of Witness

Dominic O'Diern

Print Name

**CYPRESS DEVELOPMENT, LLC**, a North Dakota limited liability company

By: Steve Larson  
Name: Steve Larson

Title: Managing Member

Date: 1-19-15

**Exhibit D to the Cypress Development Management Agreement**

**Construction Manager Consulting Agreement**

## PROJECT MANAGEMENT SERVICES AGREEMENT

THIS PROJECT MANAGEMENT SERVICES AGREEMENT is made and entered into on this 15 day of February, 2014, by and between Cypress Development LLC, a limited liability company organized under the laws of Nevada (hereinafter "Cypress"), and Gallagher Construction Services LLC, a limited liability company organized under the laws of the State of Nevada, (hereinafter the "Consultant").

### DESCRIPTION AND SCOPE OF WORK

Consultant shall perform the following services for Cypress: to act and function in the capacity of the Cypress Project Manager on the Central Parking Garage Project (hereinafter "Project"), which is comprised of tasks related to the design and construction of said situated at 5 Central Avenue, Minot, North Dakota. With guidance from Cypress, Consultant shall supervise and manage all aspects of the Project and shall regularly communicate and coordinate Project activities with Cypress and Cypress' consultants and professionals on the Project, including, but not limited to, representatives of the contracted architect and engineering firms retained, as well as the construction contractor ultimately selected by Cypress to construct the Project.

Project management services shall also include the following work and tasks pertaining to the Project:

- A. With Cypress, develop project budget and oversee payments and financial record keeping and reporting;
- B. Attend and participate in design team/review, public/community, bid/construction, close-out, and Cypress Board and committee meetings and study sessions as necessary or as directed by the Cypress General Manager and make recommendations as appropriate;
- C. Ensure that the other consultants and professionals on the Project and the construction contractor selected by Cypress are on task, meeting required deadlines and timetables, timely and fully performing and complying with their contractual obligations and duties, and staying within the Cypress approved budget parameters;
- D. Manage and administer all phases of the Project, including the design, bidding, construction, and closeout phases, and be physically present on the construction site once construction activities begin as necessary to adequately perform the duties of the Project Manager and/or as otherwise directed by the Cypress General Manager. Consultant shall visit the jobsite not less than monthly once construction activities begin;
- E. Supervise the contracted Work and activities of Cypress' other consultants and professionals on the Project, as well as the construction contractor ultimately selected by Cypress, and notify the Cypress General Manager of any material defaults on or deviations from the contract requirements;

F. Consultant shall review all pending change order logs on behalf of Cypress, and shall approve or deny change order requests in accordance with the Project documentation;

G. Prepare and provide to Cypress written status reports on a monthly basis or on a more or less frequent basis as directed by the Cypress General Manager, which reports shall include project status information, default/deviation information, and any other information requested by the Cypress General Manager. Prepare and submit project final completion report to Cypress;

H. Ensure that the Cypress General Manager is copied on all written correspondence sent by the Consultant to any person or party in connection with the Project, including governmental agencies, third parties, consultants, and contractors;

I. Promptly respond to requests for information or guidance made by the Cypress General Manager or his designee, the other consultants and professionals on the Project, and the construction contractor selected by Cypress, and provide summary progress updates as requested by the Cypress General Manager or his designee;

J. Make recommendations to the Cypress General Manager and Board, as directed, regarding Project management issues, including, but not limited to, budgetary, contract compliance, and land use issues;

K. After obtaining the approval of the Cypress General Manager, utilize subcontractors to perform any required project management tasks or activities beyond the scope of Consultant's expertise;

L. Allow Cypress representatives and representatives of state and federal agencies, including but not limited to the City of Minot and the State of North Dakota to inspect, copy and audit the Consultant's records pertaining to the Project; and

M. Perform other tasks and duties related to the management of the Project, as directed by the Cypress General Manager.

## COMPENSATION

Cypress shall pay the Consultant compensation for services rendered by him to Cypress under this Agreement at the rate of \$125.00 per hour for actual work time and at the rate of \$67.50 per hour for required travel time. The minimum monthly fee to be paid under this Agreement shall be \$5,000.00, and the maximum shall be \$10,000.00, regardless of the actual number of hours billed by Consultant. The fees and costs of any subcontractors hired by Consultant and approved by the Cypress General Manager shall not be deemed part of the Consultants compensation and shall be fully paid by Consultant. Cypress shall reimburse the Consultant for any approved subcontractors' fees and costs actually incurred by Consultant, with no mark up or add on compensation due to Consultant. Cypress shall have no obligation to reimburse Consultant for any costs or expenses whatsoever incurred by Consultant in connection with the performance of his contractual duties hereunder unless said costs or expenses are pre-approved in writing by the Cypress General Manager.

The Consultant shall submit monthly payment and reimbursement invoices to Cypress for work performed within five (5) days of the end of each calendar month. Properly submitted invoices will be paid within the month submitted. If Cypress objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

#### INDEPENDENT CONTRACTOR

The parties intend that an independent contractor-client relationship will be created by this Agreement. No employee, agent, representative or subcontractor of the Consultant shall be or shall be deemed to be the employee, agent representative or sub-contractor of Cypress. None of the benefits provided by Cypress to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from Cypress to the employees, agents, representatives or subcontractors of the Consultant.

#### TERM

The term of this Agreement shall commence on the date specified above, and shall terminate upon final project close-out, unless this Agreement is terminated sooner pursuant to paragraph "TERMINATION" below. The parties understand and agree that final project close-out will occur after all construction, commissioning, and close-out activities on the Project have been fully completed.

#### TERMINATION

Either party may terminate this Agreement, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Agreement. After termination, Cypress may take possession of all records and data within the Consultant's possession pertaining to this Project, which may be used by Cypress without restriction. Upon the termination of this Agreement, Consultant shall be entitled to receive compensation for all services rendered up to the date of termination and reimbursement for all costs and fees of approved subcontractors' incurred by Consultant up to the date of termination. The final payment shall be processed and paid like other monthly payments as provided in paragraph 2.2 above. The Consultant shall not be entitled to receive compensation or reimbursement for any services furnished by Consultant or his subcontractors after the date of termination.

#### DISCRIMINATION

In the hiring of employees for the performance of work under this Agreement or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## INDEMNIFICATION

Consultant shall defend, indemnify, and hold Cypress harmless from and against any cost, reasonable attorney's fees, and liability for damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

The sole negligence of the Consultant, its officers, employees or agents only to the extent of the negligence of the Consultant, its officers, employees or agents;

The concurrent negligence of the Consultant, its officers, employees, agents or subconsultants only to the extent of the negligence of the Consultant, its officers, employees, agents or subconsultants;

To the extent allowed by law, Cypress shall defend, indemnify, and hold the Consultant harmless from and against any cost, reasonable attorney fees, and liability for damages arising out of bodily injury or death to persons and damages to property, caused by or resulted from:

The sole negligence of Cypress, its officers, employees and agents or;

The concurrent negligence of Cypress, its officers, employees and agents, only to the extent of the negligence of Cypress, its officers, employees and agents.

## EXCHANGE OF INFORMATION

Cypress will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Agreement. Each party agrees to promptly respond to written requests for information or guidance made by the other party and mutually cooperate with the other party in performing his or its duties or obligations under this Agreement.

## OWNERSHIP AND USE OF RECORDS AND DOCUMENTS

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of Cypress. All records submitted by Cypress to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to Cypress upon Cypress' request.

## CYPRESS'S RIGHT OF INSPECTION

Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of Cypress and shall be subject to Cypress' general right of inspection and supervision to secure satisfactory completion.

## WORK PERFORMED AT CONSULTANTS RISK

Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultants own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

## MISCELLANEOUS PROVISIONS

**Non-Waiver of Breach.** The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option covered by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

**Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Nevada. . In any claim or lawsuit arising under this agreement, the prevailing party shall be entitled to recover from the non-prevailing party, its costs and attorney fees incurred in bringing or defending such lawsuit, in addition to any other recovery or award provided by law. **Written Notice.** All communications regarding this Agreement shall be sent by prepaid certified U.S. mail, return receipt requested, or registered U.S. mail to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

**Assignment.** Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

**Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of Cypress and Consultant.

**Entire Agreement.** The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of Cypress, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

**Construction of Agreement.** In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

**Compliance with Laws and Grants.** The Consultant agrees to comply with all federal, state, county, city and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultants business, equipment, and personnel engaged in work covered by this Agreement or accruing out of the performance of the work.

The parties below execute this Agreement, which shall become effective on February 17, 2014.

CONSULTANT:

By: Joseph Gallagher  
Date: 2/17/2014

NOTICES TO BE SENT TO:  
GALLAGHER CONSTRUCTION SERV.

Joseph Gallagher  
9835 Gray Sea Eagle Avenue  
Las Vegas, NV 89117

CYPRESS:

By: Michael Ballard  
Date: 2/17/2014

NOTICES TO BE SENT TO:  
CYPRESS DEVELOPMENT LLC

9 CAPRINGTON  
HENDERSON NV 89052  
\_\_\_\_\_

**LEASE**

THIS LEASE (this "Lease") is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company, whose principal address is 105 First Street SE, Suite 301, Minot, ND 58701, its successors and/or assigns ("Developer"). The City and Developer are hereinafter sometimes individually referred to as a "Party" and collectively, as the "Parties."

**W I T N E S S E T H:**

**WHEREAS**, the City is the owner of certain real property located in the City of Minot, North Dakota (the "Site"); and

**WHEREAS**, pursuant to that certain Disposition and Development Agreement between the City and Developer (the "DDA"), Developer agreed to develop the Site and construct thereon a mixed-use residential/commercial development (the "Project") consisting of two (2) phases (collectively, the "Project Improvements"), which Project shall be developed and constructed substantially in accordance with the Scope of Development approved by the City, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA; and

**WHEREAS**, the City and Developer desire to enter into this Lease in order to memorialize certain agreements pertaining to the development of the Site, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Lease and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby ratify and confirm the foregoing recitals as being true and correct, and hereby incorporate said recitals into the body of this Lease.

2. **Site.** The City hereby leases to Developer and Developer hereby leases from the City the following described real property located in the City of Minot, Ward County, North Dakota, more particularly described in **Exhibit A** attached hereto; TOGETHER with all licenses, rights, privileges and easements appurtenant thereto.

3. **Term.**

(a) The initial term (the "Initial Term") of this Lease shall be for a period of four (4) consecutive years, commencing upon the date all conditions to commencement set forth below have either been satisfied or waived ("Lease Commencement Date"). Provided Developer commences construction of the Project Improvements (as hereinafter defined) during the Initial Term, the Initial Term shall automatically renew on an annual basis (for a term not to exceed five

(5) additional years) (each 12-month renewal hereinafter being referred to as a “Renewal Term”) until completion of construction of the Project Improvements and submission of the completed Project to condominium ownership structure. The Initial Term and any Renewal Term shall together, constitute the “Term” of this Lease.

(b) Upon the City’s ascertaining that the conditions of this Section 3 have been satisfied, the City shall deliver to Developer a written confirmation of the Commencement Date (“Lease Confirmation”). The Lease Confirmation shall be binding upon Developer unless Developer objects to the notice in writing within five (5) days of Developer’s receipt of said Lease Confirmation.

(c) The Commencement of the Initial Term is conditioned upon the satisfaction of the following conditions, and to the reasonable satisfaction of the benefitted Party. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.

(i) To the Satisfaction of both the City and Developer:

(1) Construction Drawings and Technical Specifications for the Parking Structure have been approved by all required governmental entities and agencies, including The City.

(2) All land use approvals and permits for the Parking Structure required by the City have been secured and no appeal of any required approval or permit has been filed, and the time for any such appeal has expired. If an appeal was filed, it has been finally resolved.

(3) The City has the lawful authority to issue building permits that are required to construct the Project Improvements.

(4) Developer has demonstrated financial feasibility to the satisfaction of the City for the construction of the Parking Structure, consistent with the Project Budget, by providing to the City: (a) copies of bid proposals to substantiate the cost of constructing the Parking Structure, and (b) a commitment letter from an equity provider confirming its equity investment.

(5) The City has executed a construction contract for the Parking Structure Improvements, with contractors for the construction of the Parking Structure, on terms acceptable to the City.

(6) All Exhibits to this Lease are completed and agreed to by the Parties.

(ii) To Developer’s Satisfaction:

(1) The City is not in default under this Lease and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of the City under this Lease.

(iii) To the City's Satisfaction:

(1) The City has approved the Final Budget for the Parking Structure Improvements, which approval shall not be unreasonably withheld, conditioned or delayed.

(2) Developer has completed the Level I environmental assessment of the Project, and provided the City with a copy of the report, and the City has completed the Level II environmental assessment of the Project, and provided the Developer with a copy of said report, and the parties agree there are no Recognized Environmental Conditions that require remediation and/or abatement.

(3) Developer is not in default under the Lease and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Lease.

(d) Force Majeure. Upon the occurrence of a significant condition beyond the control of the City or the Developer that precludes the satisfaction of any condition set forth in this Article, the City or the Developer may, by providing written notice to the other, extend all contractual dates by one (1) day for every day of the delay, plus a reasonable mobilization period. If Developer delays Project contractual dates for more than two (2) years, the City shall have the right to terminate this Lease in its entirety, without penalty or damages. Upon the occurrence of a condition beyond the control of the City that precludes or reasonably prohibits the completion of the Project for more than two (2) years, Developer shall have the right to terminate this Lease in its entirety, without penalty or damages.

4. Project Improvements. Developer shall construct and complete the Project described in the Construction Drawings and Technical Specifications, which shall constitute the Project Improvements for the Site (the "Project Improvements"). Developer shall commence construction of the Project Improvements as soon as reasonably practicable after the Commencement Date. The Project shall be developed in the following two (2) phases (collectively, the "Project Improvements"): (a) 225-space, multi-level parking structure to be constructed by contractors hired by the City and managed by Developer (the "Parking Structure"); and (b) 13,543 square feet of commercial space and 125 units of residential to be constructed by Developer (the "Residential/Commercial Improvements"). The Project Site attached hereto as Exhibit B shall not constitute a representation or warranty by either the City or Developer to be the final plan of the development of the Site or Project Improvements. After approval of the Project by the City as set forth in the Work Letter, Developer may change the square footage of each component or the number of commercial or residential units up to a cumulative total of 20% of the approximately square footage and units described herein without the consent of the City, provided that such actions lawfully comply with existing city zoning ordinances.

5. Rent. During the Term, Developer agrees to pay rent ("Rent") to the City as follows: (a) during the first year, Developer agrees to pay rent equal to One Hundred and 00/100 Dollars (\$100.00); (b) in each of years two, three and four, Developer agrees to pay rent equal to One Hundred Twenty Five Thousand (\$125,000.00) per year, plus interest at the

rate of one (1) percent per annum on the then outstanding amount of \$375,000.00 (which amount shall be reduced by each One Hundred Twenty Five Thousand Dollar payment). During each Renewal Term, Developer agrees to pay rent to the City equal to One Hundred and 00/100 Dollars (\$100.00) per year. During the first year, rent shall be paid in advance. In all other years, rent shall be paid annually, in arrears, in a single lump sum payment. Developer shall pay Rent to the City at the City's address for notices, or to such other person or such other place as directed written notice to Developer from the City.

6. Premises Taxes. In addition to Rent and other sums payable by Developer under this Lease, Developer shall be responsible for taxes, possessory interest and assessments on the Site as set forth below:

(a) Real Property Taxes. Developer shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes and assessments imposed upon the portions of the Site leased or owned by Developer. Notwithstanding the foregoing, the City has confirmed the Site is included in the "Renaissance Zone."

7. Insurance.

(a) City's Insurance. During the Term, the City shall procure and maintain in full force and effect with respect to the Site: (i) a policy or policies of property insurance as available through the North Dakota Insurance Reserve Fund (including, to the extent required, sprinkler leakage, vandalism and malicious mischief coverage, and any other endorsements required by the holder of any fee mortgage and earthquake, flood and terrorism insurance to the extent the City reasonably deems prudent); and (ii) a policy of commercial liability insurance, in the form and content acceptable to the City, insuring the City's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site or Common Areas. If said policies of insurance are not available through the North Dakota Insurance Reserve Fund, the Developer or condominium association may obtain a policy or policies of insurance from third party providers, the premium(s) for which shall be assessed by the association to the Parking Structure and paid through revenue generated from the Parking Structure.

(b) Developer's Public Liability. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site by Developer, a policy or policies of commercial liability insurance, written by a reputable insurance company authorized to do business in the State of North Dakota in commercially reasonable form and content acceptable to the City insuring Developer's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site in an amount of not less than Two Million Dollars (\$2,000,000). The policy shall insure the hazards of Site and Developer's operations therein, shall include independent contractor and contractual liability coverage and shall: (a) name the City and the City's managing agent as an additional insured; (b) contain a cross liability provision and; (c) contain a provision that the insurance provided hereunder shall be primary and non-contributing with any other insurance available to the City.

(c) Developer's Property and Other Insurance. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site, a policy or policies of standard form property insurance insuring against the perils of fire, extended coverage, vandalism, malicious mischief, special extended coverage and sprinkler leakage. This insurance policy shall be upon the Project Improvements all property owned by Developer, for which Developer is legally liable or that was installed at Developer's expense, and which is located in Site, including without limitation, furniture, fittings, installations, cabling, fixtures (other than the Project Improvements installed by the City), and any other personal property, in the amount of not less than one hundred percent (100%) of the full replacement costs thereof. This insurance policy shall also insure direct or indirect loss of Developer's earning attributable to Developer's inability to use fully or obtain access to Site.

(d) Form of Insurance/Certificates. All policies shall be written in a form satisfactory to the City and shall be taken out with insurance companies licensed in the state in which the State of North Dakota and holding a General Policy Holder's Rating of "A" and a financial rating of "X" or better, as set forth in the most current issues of A.M. Best's Insurance Guide. Developer shall furnish to the City, prior to Developer's entry into Site and thereafter within ten (10) days prior to the expiration of each such policy, a certificate of insurance (or renewal thereof) issued by the insurance carrier of each policy of insurance carried by Developer pursuant hereto and, upon request by the City, a copy of each such policy of insurance. Said certificates shall expressly provide that such policies shall not be cancelable or subject to reduction of coverage below the minimum amounts required by this Lease or required by any lender having an interest in the Site or otherwise be subject to modification except after thirty (30) days prior written notice to the parties named as insured herein.

(e) Developer's Failure. If Developer fails to maintain any insurance required in the Lease, Developer shall be liable for any loss or cost resulting from said failure, and the City shall have the right to obtain such insurance on Developer's behalf and at Developer's sole expense. This Section 7(e) shall not be deemed to be a waiver of any of the City's rights and remedies under any other section of this Lease. If the City obtains any insurance which is the responsibility of Developer to obtain under this Article 7, the City shall deliver to Developer a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Developer shall promptly remit said amount as additional Rent to the City.

(f) Intentionally Omitted.

(g) Indemnification.

(i) Developer, as a material part of the consideration to be rendered to the City, hereby indemnifies and agrees to defend and hold the City, the City's officers, employees and agents and Lender and Site harmless for, from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent as a result of Developer's or Developers' officers, employees, agents, assignees, subdevelopers, concessionaires, licensees, contractors or invitees' use, maintenance, occupation, operation or control of Site during the Term, or

resulting from any breach or default in the performance of any obligation to be performed by Developer hereunder or for which Developer is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, or to the extent arising from any act, neglect, fault or omission of Developer or any of Developer's officers, employees, agents, servants, subdevelopers, concessionaires, licensees, contractors or invitees, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Site or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the Developer, except and to the extent as may arise out of the gross negligence or willful misconduct of the City and/or its agents, employees or contractors.

(ii) City, as a material part of the consideration to be rendered to Developer, hereby indemnifies and agrees to defend and hold Developer and Site harmless from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent as a result of the City's or the City's employees, agents, or contractors, gross negligence or willful misconduct, or resulting from any breach or default in the performance of any obligation to be performed by the City hereunder or for which the City is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Developer and/or Premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the City, except and to the extent as may arise out of the gross negligence or willful misconduct of Developer and/or its officers, agents, employees, assignees, subdevelopers, concessionaires, licensees, contractors, or invitees.

(iii) In no event shall the City, its agents, employees and/or contractors be liable for any personal injury or death or property damage caused by other lessees or persons in or about Site and/or the Project, as the case may be, or caused by public or quasi-public work, or for consequential damages arising out of any loss of the use of Site or any equipment or facilities therein by Developer or any person claiming through or under Developer.

8. Liens. Developer shall promptly file and/or record, as applicable, all notices of completion provided for by law, and shall pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Developer or at the request of the City on behalf of Developer, and shall keep the Site and the Site free and clear of all mechanics' and materialmen's liens in connection therewith. The City shall have the right, and shall be given ten (10) business days written notice by Developer prior to commencement of the work, to post or keep posted on the Site, or in the immediate vicinity thereof, any notices of non-responsibility for any construction, alteration, or repair of the Site by Developer. If any such lien is filed, Developer shall cause same to be discharged of record

within thirty (30) days following written notice thereof, or if Developer disputes the correctness or validity of any claim of lien, the City may, in its reasonable discretion, permit Developer to post or provide security in a form and amount acceptable to the City to insure that title to the Site remains free from the lien claimed. If said lien is not timely discharged the City may, but shall not be required to, take such action or pay such amount as may be necessary to remove such lien and Developer shall pay to the City any such amounts expended by the City, together with interest thereon.

## 9. Hazardous Materials.

### (a) Defined Terms.

(i) "Hazardous Materials" means, among other things, any of the following, in any amount: (a) any petroleum or petroleum derived or derivative product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls and medical wastes; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation or court decisions now existing or hereafter existing as the same may be interpreted by government offices and agencies.

(ii) "Hazardous Materials Laws" means any federal, state or local statutes, laws, ordinances or regulations or court decisions now existing or hereafter existing that control, classify, regulate, list or define Hazardous Materials or require remediation of Hazardous Materials contamination.

(iii) "Recognized Environmental Conditions" means the presence or likely presence of hazardous Substance on the Site under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Site or into the ground, ground water, or surface water of the Site, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

(iv) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

(v) "Unforeseen Environmental Condition" means the presence of a Hazardous Substance on the Site that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by applicable law.

(b) Developer Compliance with Hazardous Materials Laws. Developer will not cause any Hazardous Material to be brought upon, kept, generated or used on the Site in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Developer, at its sole cost and expense, will comply with (and obtain all permits required under) all Hazardous Materials Laws, groundwater wellhead protection laws, storm water management laws, fire protection provisions, and prudent industry practice relating to the presence, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Site that Developer brings upon, keeps, generates or uses on the Site and in no event shall Developer allow any liens or encumbrances pertaining to Developer's use of Hazardous Materials to attach to any portion of the Site. On or before the expiration or earlier termination of this Lease, Developer, at its sole cost and expense, will completely remove from the Site (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Developer causes to be present in, on, under or about the Site. Developer will not take any remedial action in response to the presence of any Hazardous Materials in on, under or about the Site, nor enter into (or commence negotiations with respect to) any settlement agreement, consent decree or other compromise with respect to any claims relating to or in any way connected with Hazardous Materials in, on, under or about the Site, without first notifying the City of Developer's intention to do so and affording the City reasonable opportunity to investigate, appear, intervene and otherwise assert and protect the City's interest in the Site. The City shall have the right from time to time to inspect the Project to determine if Developer is in compliance with this Section 9.

(c) Phase I Environmental Assessment. Within thirty (30) days after the date of the execution of this Lease, Developer shall undertake a Phase I Environmental Assessment ("Assessment") of the Site in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). Developer shall provide a copy of the Assessment to the City promptly after Developer's receipt thereof. Upon receipt and after review of the Assessment the City may, at its sole cost and expense, undertake further environmental testing of the Site.

10. Reconstruction. If the Project is damaged or destroyed during the Term, the Developer shall, except as hereinafter provided, diligently repair or rebuild it to substantially the condition in which it existed immediately prior to such damage or destruction. If the Developer is obligated or elects to repair or restore as herein provided, the Developer shall be obligated to make repair or restoration only to the extent of available insurance proceeds.

11. Ownership of Property.

(a) Site. The City warrants and represents to Developer that it is the owner of the fee simple title to the Site, and has full right and authority to enter into this Lease and perform the obligations arising hereunder. The City further represents and warrants that neither the City's interest in this Lease nor the City's fee title to the Site are, as of the date hereof, encumbered by any mortgage.

(b) The City hereby covenants and agrees that from and after the date hereof, and for the entire Term of this Lease, the City shall not transfer, assign, mortgage or otherwise

encumber its interest in this Lease or its fee title to the Site or any part thereof or any interest therein.

(c) Improvements. Developer shall, during the entire Term of this Lease, own the Residential/Commercial Improvements constructed or placed upon the Site. The City agrees that the Developer or any approved sub-developer while not in default thereof shall have the right at any time and from time to time to remove any and all fixtures, furniture, furnishings, equipment and other property installed in or upon the Site.

12. Intentionally Omitted.

13. Use. Developer shall use and develop the Site in conformity with the DDA, and for no other use without first obtaining the City's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. At all times Developer's use of the Site shall comply with all rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities and fire insurance rating organizations or similar bodies.

14. Maintenance. Developer, at its cost, shall promptly following the completion of the Project, record a Declaration of Condominium for the Project (the "Declaration") which shall create a condominium association to maintain in good condition and repair and replace all structural and non-structural portions of the Project, and all Improvements thereon, including but not limited to the building, and all fixtures, equipment and personal property therein. The Declaration shall obligate the condominium association to keep the Project in a clean and developable condition and permit no waste to be committed therein. Upon vacating the Site, Developer shall leave the Site in the condition existing at the commencement of this Lease, ordinary wear and tear excepted.

15. Utilities.

(a) Utility Easements. The City shall grant to Developer such easements on the adjoining property owned by the City as the Developer, any utility company or companies, and/or the municipal authorities having jurisdiction thereof, may reasonably require to install, provide and maintain all utilities to the Project and grant and/or use its best efforts to obtain such modifications of existing utility easements as Developer may reasonably request so as to remove any existing easements from their present locations to the perimeter or boundaries of the Site to avoid or reduce interference with the construction of the Project Improvements and the continued use thereof. The City shall, promptly upon request, execute in recordable form such instruments granting such easements and/or modifications thereof as may be reasonably requested by any of the aforesaid parties. Utility easements between the Parking Structure Improvements and Residential/Commercial Improvements shall be contained in the Declaration.

(b) Utility Charges. Developer agrees to pay all charges for water, gas, electricity and all other utilities services used by the Developer on the Project when due, which charges shall be apportioned between the Parking Structure Improvements and Residential/Commercial Improvements pursuant to the Declaration.

16. City's Interest in the Site to Developer's Financing.

(a) City acknowledges and agrees that it will not be possible for the Developer to construct the Project Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the construction of said Improvements and the development of the Project. However, it is recognized that these loans or financial arrangements must not require the City's fee simple interest in the real property described in the attached Exhibit A to secure or guarantee payment of the loans or financial arrangements undertaken by the Developer.

17. Quiet Enjoyment. The City covenants and agrees with Developer that upon Developer paying the Rent and observing and performing all the terms, covenants and conditions on Developer's part to be observed and performed, Developer may peaceably and quietly enjoy the Site.

18. Option to Purchase. Developer shall have the right and option to purchase the Commercial Improvements and Residential Improvements (but not the Parking Structure) (collectively, the "Purchase Option") for the purchase price of One Hundred Dollars (\$100.00) plus the amount, if any, outstanding on Developer's Three Hundred Seventy-Five Thousand Dollar payment obligation under Section 5 of this Lease (collectively, the "Purchase Price"). Provided all payments to the City under this Lease are current, Developer may exercise the Purchase Option upon the expiration of the Initial Term unless otherwise agreed by the City and Developer, by written notice to the City, in which event the closing shall occur within sixty (60) days thereafter. At closing, the City shall convey the Commercial Improvements and/or Residential Improvements to Developer subject only to matters which existed upon the Lease Commencement Date and any encumbrances (including approved subleases permitted hereunder) approved by Developer, Developer shall pay all closing and recording expenses. Developer's rights with respect to the Purchase Option hereunder shall be assignable to and exercisable by any Leasehold Mortgagee, without requiring any consent or approval by the City. The Parties agree to execute a Memorandum of Purchase Option, which may be recorded at Developer's option in the Land Records of Ward County, North Dakota. The Lease and Memorandum of Purchase Option shall be prepared by Developer and subject to the City's approval, which shall not be unreasonably withheld, conditioned or delayed.

19. Miscellaneous Provisions.

(a) Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

To the City: City of Minot  
P.O. Box 5006  
515 2nd Ave SW  
Minot, North Dakota 57802

To Developer: Minot Development Group, LLC  
105 First Street SE, Suite 301  
Minot, North Dakota 58701

(b) Applicable Law. This Lease shall be governed and construed in accordance with the laws of the State of North Dakota, and any and all actions, suits, or proceedings between the parties hereto shall only be brought in the county in which the Sites are located. In no event shall either party ever commence an action or seek to remove a pending action between the parties hereto in or to any United States Federal District Court, except in the case of a bankruptcy proceeding.

(c) Short Form Lease. Either Party shall have the right to record this Lease or, alternatively, either party shall, at the request of the other execute, acknowledge and deliver at any time after the date of this Lease a memorandum or short form of lease prepared by the requesting party, which memorandum or short form of lease shall include a notice to all persons with respect to the provisions hereof restricting the right of persons dealing with the Developer to a mechanic's lien upon the Site, in compliance with other requirements of applicable law

(d) Net Lease. The City shall not have or incur any expense or cost in its ownership of the Site during the Term of this Lease, and all such expenses including, without limitation, including real estate and possessory interest taxes, insurance, utilities, repairs and maintenance shall be solely the responsibility of Developer.

(e) Binding Effect of Lease. The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

(f) Waiver. Any waiver of any covenant or condition by the City shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition.

(g) Definitions. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation of this Lease. Each and every term and provision of this Lease which requires any performance (whether affirmative or negative) by Developer shall be deemed to be both a covenant and a condition. The words "reenter" and "reentry" as used herein are not restricted to their technical legal meaning.

(h) Integration. No oral statement or prior written matter shall have any force or effect. No waiver of any provision of this instrument shall be effective unless in writing,

signed by the waiving party. Each party agrees that it is not relying on any representations or agreements other than those contained in this Lease.

(i) Invalidity of Certain Provisions. If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the remainder of this Lease shall not be affected thereby and each and every remaining provisions of this Lease shall be enforceable to the fullest extent permitted by law.

(j) Option to Cancel for Financing Reasons. The City acknowledges that it has been advised that Developer may procure some part or all of the funds to finance on an interim and long-term basis, the construction of Improvements from state or local governmental sources. If any such financing institution, agency or entity requires any modification of the terms and provisions of this Lease as a condition to such financing (including the issuance of a commitment) as Developer may desire, then the City agrees to approve and execute such modifications within thirty (30) days after Developer's request therefor, provided such modification is lawful and shall not materially modify the terms and conditions hereof or impose any liability on the City.

(k) Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by the City or Developer, such party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, Act of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such party. Financial inability shall not be a cause outside of such party's control.

(l) Amendment of Lease. Neither this Lease nor any provision hereof may be changed, modified, waived, discharged or terminated except by an instrument dated subsequent to the date hereof duly executed by the parties hereto.

(m) Termination. This Lease shall be terminated upon conversion to Condominium of the Project Improvements, and recordation of the Declaration.

**[SIGNATURES TO FOLLOW]**

[SIGNATURE PAGE FOR LEASE]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:

Lisa Frost  
Print Name: Lisa Frost

Print Name: \_\_\_\_\_

CITY:

**THE CITY OF MINOT**, a North Dakota  
municipal corporation

By: C. Johnson  
Mayor

Date: 10/7/13



**EXHIBIT A**

**Legal Description**

Wells Fargo Bank (west of Bank) 205 1st St SW

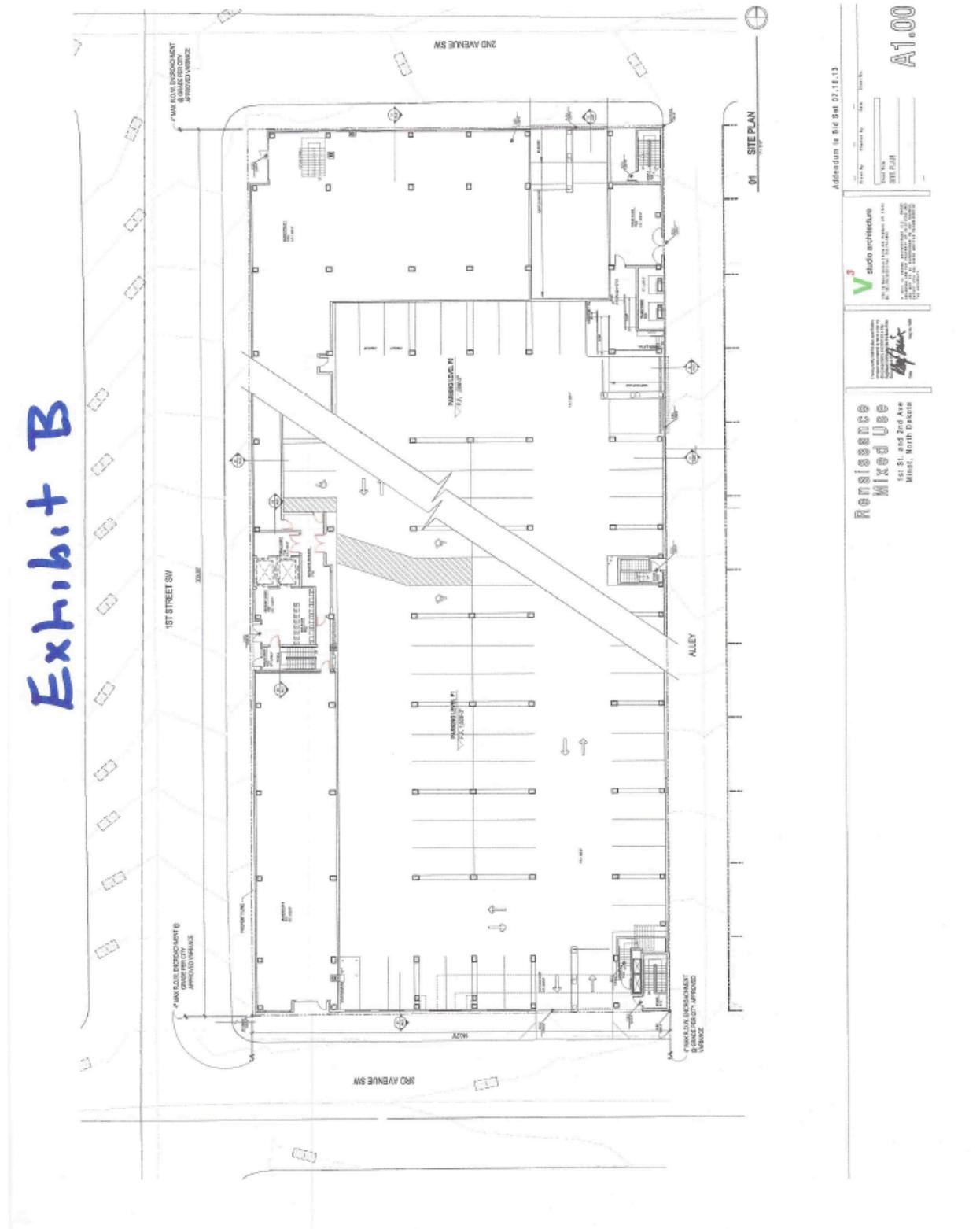
MI 24 238 110 0240

Original Minot Addition

Lots 13 thru 24 Block 11

**EXHIBIT B**  
Project Site Plan

Exhibit B



**LEASE**

THIS LEASE (this "Lease") is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company, whose principal address is 105 First Street SE, Suite 301, Minot, ND 58701, its successors and/or assigns ("Developer"). The City and Developer are hereinafter sometimes individually referred to as a "Party" and collectively, as the "Parties."

**W I T N E S S E T H:**

**WHEREAS**, the City is the owner of certain real property located in the City of Minot, North Dakota (the "Site"); and

**WHEREAS**, pursuant to that certain Disposition and Development Agreement between the City and Developer (the "DDA"), Developer agreed to develop the Site and construct thereon a mixed-use residential/commercial development (the "Project") consisting of two (2) phases (collectively, the "Project Improvements"), which Project shall be developed and constructed substantially in accordance with the Scope of Development approved by the City, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA; and

**WHEREAS**, the City and Developer desire to enter into this Lease in order to memorialize certain agreements pertaining to the development of the Site, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Lease and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby ratify and confirm the foregoing recitals as being true and correct, and hereby incorporate said recitals into the body of this Lease.

2. **Site.** The City hereby leases to Developer and Developer hereby leases from the City the following described real property located in the City of Minot, Ward County, North Dakota, more particularly described in **Exhibit A** attached hereto; TOGETHER with all licenses, rights, privileges and easements appurtenant thereto.

3. **Term.**

(a) The initial term (the "Initial Term") of this Lease shall be for a period of four (4) consecutive years, commencing upon the date all conditions to commencement set forth below have either been satisfied or waived ("Lease Commencement Date"). Provided Developer commences construction of the Project Improvements (as hereinafter defined) during the Initial Term, the Initial Term shall automatically renew on an annual basis (for a term not to exceed five

(5) additional years) (each 12-month renewal hereinafter being referred to as a “Renewal Term”) until completion of construction of the Project Improvements and submission of the completed Project to condominium ownership structure. The Initial Term and any Renewal Term shall together, constitute the “Term” of this Lease.

(b) Upon the City’s ascertaining that the conditions of this Section 3 have been satisfied, the City shall deliver to Developer a written confirmation of the Commencement Date (“Lease Confirmation”). The Lease Confirmation shall be binding upon Developer unless Developer objects to the notice in writing within five (5) days of Developer’s receipt of said Lease Confirmation.

(c) The Commencement of the Initial Term is conditioned upon the satisfaction of the following conditions, and to the reasonable satisfaction of the benefitted Party. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.

(i) To the Satisfaction of both the City and Developer:

(1) Construction Drawings and Technical Specifications for the Parking Structure have been approved by all required governmental entities and agencies, including The City.

(2) All land use approvals and permits for the Parking Structure required by the City have been secured and no appeal of any required approval or permit has been filed, and the time for any such appeal has expired. If an appeal was filed, it has been finally resolved.

(3) The City has the lawful authority to issue building permits that are required to construct the Project Improvements.

(4) Developer has demonstrated financial feasibility to the satisfaction of the City for the construction of the Parking Structure, consistent with the Project Budget, by providing to the City: (a) copies of bid proposals to substantiate the cost of constructing the Parking Structure, and (b) a commitment letter from an equity provider confirming its equity investment.

(5) The City has executed a construction contract for the Parking Structure Improvements, with contractors for the construction of the Parking Structure, on terms acceptable to the City.

(6) All Exhibits to this Lease are completed and agreed to by the Parties.

(ii) To Developer’s Satisfaction:

(1) The City is not in default under this Lease and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of the City under this Lease.

(iii) To the City's Satisfaction:

(1) The City has approved the Final Budget for the Parking Structure Improvements, which approval shall not be unreasonably withheld, conditioned or delayed.

(2) Developer has completed the Level I environmental assessment of the Project, and provided the City with a copy of the report, and the City has completed the Level II environmental assessment of the Project, and provided the Developer with a copy of said report, and the parties agree there are no Recognized Environmental Conditions that require remediation and/or abatement.

(3) Developer is not in default under the Lease and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Lease.

(d) Force Majeure. Upon the occurrence of a significant condition beyond the control of the City or the Developer that precludes the satisfaction of any condition set forth in this Article, the City or the Developer may, by providing written notice to the other, extend all contractual dates by one (1) day for every day of the delay, plus a reasonable mobilization period. If Developer delays Project contractual dates for more than two (2) years, the City shall have the right to terminate this Lease in its entirety, without penalty or damages. Upon the occurrence of a condition beyond the control of the City that precludes or reasonably prohibits the completion of the Project for more than two (2) years, Developer shall have the right to terminate this Lease in its entirety, without penalty or damages.

4. Project Improvements. Developer shall construct and complete the Project described in the Construction Drawings and Technical Specifications, which shall constitute the Project Improvements for the Site (the "Project Improvements"). Developer shall commence construction of the Project Improvements as soon as reasonably practicable after the Commencement Date. The Project shall be developed in the following two (2) phases (collectively, the "Project Improvements"): (a) 225-space, multi-level parking structure to be constructed by contractors hired by the City and managed by Developer (the "Parking Structure"); and (b) 13,543 square feet of commercial space and 125 units of residential to be constructed by Developer (the "Residential/Commercial Improvements"). The Project Site attached hereto as Exhibit B shall not constitute a representation or warranty by either the City or Developer to be the final plan of the development of the Site or Project Improvements. After approval of the Project by the City as set forth in the Work Letter, Developer may change the square footage of each component or the number of commercial or residential units up to a cumulative total of 20% of the approximately square footage and units described herein without the consent of the City, provided that such actions lawfully comply with existing city zoning ordinances.

5. Rent. During the Term, Developer agrees to pay rent ("Rent") to the City as follows: (a) during the first year, Developer agrees to pay rent equal to One Hundred and 00/100 Dollars (\$100.00); (b) in each of years two, three and four, Developer agrees to pay rent equal to One Hundred Twenty Five Thousand (\$125,000.00) per year, plus interest at the

rate of one (1) percent per annum on the then outstanding amount of \$375,000.00 (which amount shall be reduced by each One Hundred Twenty Five Thousand Dollar payment). During each Renewal Term, Developer agrees to pay rent to the City equal to One Hundred and 00/100 Dollars (\$100.00) per year. During the first year, rent shall be paid in advance. In all other years, rent shall be paid annually, in arrears, in a single lump sum payment. Developer shall pay Rent to the City at the City's address for notices, or to such other person or such other place as directed written notice to Developer from the City.

6. Premises Taxes. In addition to Rent and other sums payable by Developer under this Lease, Developer shall be responsible for taxes, possessory interest and assessments on the Site as set forth below:

(a) Real Property Taxes. Developer shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes and assessments imposed upon the portions of the Site leased or owned by Developer. Notwithstanding the foregoing, the City has confirmed the Site is included in the "Renaissance Zone."

7. Insurance.

(a) City's Insurance. During the Term, the City shall procure and maintain in full force and effect with respect to the Site: (i) a policy or policies of property insurance as available through the North Dakota Insurance Reserve Fund (including, to the extent required, sprinkler leakage, vandalism and malicious mischief coverage, and any other endorsements required by the holder of any fee mortgage and earthquake, flood and terrorism insurance to the extent the City reasonably deems prudent); and (ii) a policy of commercial liability insurance, in the form and content acceptable to the City, insuring the City's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site or Common Areas. If said policies of insurance are not available through the North Dakota Insurance Reserve Fund, the Developer or condominium association may obtain a policy or policies of insurance from third party providers, the premium(s) for which shall be assessed by the association to the Parking Structure and paid through revenue generated from the Parking Structure.

(b) Developer's Public Liability. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site by Developer, a policy or policies of commercial liability insurance, written by a reputable insurance company authorized to do business in the State of North Dakota in commercially reasonable form and content acceptable to the City insuring Developer's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site in an amount of not less than Two Million Dollars (\$2,000,000). The policy shall insure the hazards of Site and Developer's operations therein, shall include independent contractor and contractual liability coverage and shall: (a) name the City and the City's managing agent as an additional insured; (b) contain a cross liability provision and; (c) contain a provision that the insurance provided hereunder shall be primary and non-contributing with any other insurance available to the City.

(c) Developer's Property and Other Insurance. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site, a policy or policies of standard form property insurance insuring against the perils of fire, extended coverage, vandalism, malicious mischief, special extended coverage and sprinkler leakage. This insurance policy shall be upon the Project Improvements all property owned by Developer, for which Developer is legally liable or that was installed at Developer's expense, and which is located in Site, including without limitation, furniture, fittings, installations, cabling, fixtures (other than the Project Improvements installed by the City), and any other personal property, in the amount of not less than one hundred percent (100%) of the full replacement costs thereof. This insurance policy shall also insure direct or indirect loss of Developer's earning attributable to Developer's inability to use fully or obtain access to Site.

(d) Form of Insurance/Certificates. All policies shall be written in a form satisfactory to the City and shall be taken out with insurance companies licensed in the state in which the State of North Dakota and holding a General Policy Holder's Rating of "A" and a financial rating of "X" or better, as set forth in the most current issues of A.M. Best's Insurance Guide. Developer shall furnish to the City, prior to Developer's entry into Site and thereafter within ten (10) days prior to the expiration of each such policy, a certificate of insurance (or renewal thereof) issued by the insurance carrier of each policy of insurance carried by Developer pursuant hereto and, upon request by the City, a copy of each such policy of insurance. Said certificates shall expressly provide that such policies shall not be cancelable or subject to reduction of coverage below the minimum amounts required by this Lease or required by any lender having an interest in the Site or otherwise be subject to modification except after thirty (30) days prior written notice to the parties named as insured herein.

(e) Developer's Failure. If Developer fails to maintain any insurance required in the Lease, Developer shall be liable for any loss or cost resulting from said failure, and the City shall have the right to obtain such insurance on Developer's behalf and at Developer's sole expense. This Section 7(e) shall not be deemed to be a waiver of any of the City's rights and remedies under any other section of this Lease. If the City obtains any insurance which is the responsibility of Developer to obtain under this Article 7, the City shall deliver to Developer a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Developer shall promptly remit said amount as additional Rent to the City.

(f) Intentionally Omitted.

(g) Indemnification.

(i) Developer, as a material part of the consideration to be rendered to the City, hereby indemnifies and agrees to defend and hold the City, the City's officers, employees and agents and Lender and Site harmless for, from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent as a result of Developer's or Developers' officers, employees, agents, assignees, subdevelopers, concessionaires, licensees, contractors or invitees' use, maintenance, occupation, operation or control of Site during the Term, or

resulting from any breach or default in the performance of any obligation to be performed by Developer hereunder or for which Developer is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, or to the extent arising from any act, neglect, fault or omission of Developer or any of Developer's officers, employees, agents, servants, subdevelopers, concessionaires, licensees, contractors or invitees, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Site or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the Developer, except and to the extent as may arise out of the gross negligence or willful misconduct of the City and/or its agents, employees or contractors.

(ii) City, as a material part of the consideration to be rendered to Developer, hereby indemnifies and agrees to defend and hold Developer and Site harmless from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent as a result of the City's or the City's employees, agents, or contractors, gross negligence or willful misconduct, or resulting from any breach or default in the performance of any obligation to be performed by the City hereunder or for which the City is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Developer and/or Premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the City, except and to the extent as may arise out of the gross negligence or willful misconduct of Developer and/or its officers, agents, employees, assignees, subdevelopers, concessionaires, licensees, contractors, or invitees.

(iii) In no event shall the City, its agents, employees and/or contractors be liable for any personal injury or death or property damage caused by other lessees or persons in or about Site and/or the Project, as the case may be, or caused by public or quasi-public work, or for consequential damages arising out of any loss of the use of Site or any equipment or facilities therein by Developer or any person claiming through or under Developer.

8. Liens. Developer shall promptly file and/or record, as applicable, all notices of completion provided for by law, and shall pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Developer or at the request of the City on behalf of Developer, and shall keep the Site and the Site free and clear of all mechanics' and materialmen's liens in connection therewith. The City shall have the right, and shall be given ten (10) business days written notice by Developer prior to commencement of the work, to post or keep posted on the Site, or in the immediate vicinity thereof, any notices of non-responsibility for any construction, alteration, or repair of the Site by Developer. If any such lien is filed, Developer shall cause same to be discharged of record

within thirty (30) days following written notice thereof, or if Developer disputes the correctness or validity of any claim of lien, the City may, in its reasonable discretion, permit Developer to post or provide security in a form and amount acceptable to the City to insure that title to the Site remains free from the lien claimed. If said lien is not timely discharged the City may, but shall not be required to, take such action or pay such amount as may be necessary to remove such lien and Developer shall pay to the City any such amounts expended by the City, together with interest thereon.

9. Hazardous Materials.

(a) Defined Terms.

(i) "Hazardous Materials" means, among other things, any of the following, in any amount: (a) any petroleum or petroleum derived or derivative product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls and medical wastes; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation or court decisions now existing or hereafter existing as the same may be interpreted by government offices and agencies.

(ii) "Hazardous Materials Laws" means any federal, state or local statutes, laws, ordinances or regulations or court decisions now existing or hereafter existing that control, classify, regulate, list or define Hazardous Materials or require remediation of Hazardous Materials contamination.

(iii) "Recognized Environmental Conditions" means the presence or likely presence of hazardous Substance on the Site under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Site or into the ground, ground water, or surface water of the Site, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

(iv) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

(v) "Unforeseen Environmental Condition" means the presence of a Hazardous Substance on the Site that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by applicable law.

(b) Developer Compliance with Hazardous Materials Laws. Developer will not cause any Hazardous Material to be brought upon, kept, generated or used on the Site in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Developer, at its sole cost and expense, will comply with (and obtain all permits required under) all Hazardous Materials Laws, groundwater wellhead protection laws, storm water management laws, fire protection provisions, and prudent industry practice relating to the presence, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Site that Developer brings upon, keeps, generates or uses on the Site and in no event shall Developer allow any liens or encumbrances pertaining to Developer's use of Hazardous Materials to attach to any portion of the Site. On or before the expiration or earlier termination of this Lease, Developer, at its sole cost and expense, will completely remove from the Site (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Developer causes to be present in, on, under or about the Site. Developer will not take any remedial action in response to the presence of any Hazardous Materials in on, under or about the Site, nor enter into (or commence negotiations with respect to) any settlement agreement, consent decree or other compromise with respect to any claims relating to or in any way connected with Hazardous Materials in, on, under or about the Site, without first notifying the City of Developer's intention to do so and affording the City reasonable opportunity to investigate, appear, intervene and otherwise assert and protect the City's interest in the Site. The City shall have the right from time to time to inspect the Project to determine if Developer is in compliance with this Section 9.

(c) Phase I Environmental Assessment. Within thirty (30) days after the date of the execution of this Lease, Developer shall undertake a Phase I Environmental Assessment ("Assessment") of the Site in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). Developer shall provide a copy of the Assessment to the City promptly after Developer's receipt thereof. Upon receipt and after review of the Assessment the City may, at its sole cost and expense, undertake further environmental testing of the Site.

10. Reconstruction. If the Project is damaged or destroyed during the Term, the Developer shall, except as hereinafter provided, diligently repair or rebuild it to substantially the condition in which it existed immediately prior to such damage or destruction. If the Developer is obligated or elects to repair or restore as herein provided, the Developer shall be obligated to make repair or restoration only to the extent of available insurance proceeds.

11. Ownership of Property.

(a) Site. The City warrants and represents to Developer that it is the owner of the fee simple title to the Site, and has full right and authority to enter into this Lease and perform the obligations arising hereunder. The City further represents and warrants that neither the City's interest in this Lease nor the City's fee title to the Site are, as of the date hereof, encumbered by any mortgage.

(b) The City hereby covenants and agrees that from and after the date hereof, and for the entire Term of this Lease, the City shall not transfer, assign, mortgage or otherwise

encumber its interest in this Lease or its fee title to the Site or any part thereof or any interest therein.

(c) Improvements. Developer shall, during the entire Term of this Lease, own the Residential/Commercial Improvements constructed or placed upon the Site. The City agrees that the Developer or any approved sub-developer while not in default thereof shall have the right at any time and from time to time to remove any and all fixtures, furniture, furnishings, equipment and other property installed in or upon the Site.

12. Intentionally Omitted.

13. Use. Developer shall use and develop the Site in conformity with the DDA, and for no other use without first obtaining the City's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. At all times Developer's use of the Site shall comply with all rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities and fire insurance rating organizations or similar bodies.

14. Maintenance. Developer, at its cost, shall promptly following the completion of the Project, record a Declaration of Condominium for the Project (the "Declaration") which shall create a condominium association to maintain in good condition and repair and replace all structural and non-structural portions of the Project, and all Improvements thereon, including but not limited to the building, and all fixtures, equipment and personal property therein. The Declaration shall obligate the condominium association to keep the Project in a clean and developable condition and permit no waste to be committed therein. Upon vacating the Site, Developer shall leave the Site in the condition existing at the commencement of this Lease, ordinary wear and tear excepted.

15. Utilities.

(a) Utility Easements. The City shall grant to Developer such easements on the adjoining property owned by the City as the Developer, any utility company or companies, and/or the municipal authorities having jurisdiction thereof, may reasonably require to install, provide and maintain all utilities to the Project and grant and/or use its best efforts to obtain such modifications of existing utility easements as Developer may reasonably request so as to remove any existing easements from their present locations to the perimeter or boundaries of the Site to avoid or reduce interference with the construction of the Project Improvements and the continued use thereof. The City shall, promptly upon request, execute in recordable form such instruments granting such easements and/or modifications thereof as may be reasonably requested by any of the aforesaid parties. Utility easements between the Parking Structure Improvements and Residential/Commercial Improvements shall be contained in the Declaration.

(b) Utility Charges. Developer agrees to pay all charges for water, gas, electricity and all other utilities services used by the Developer on the Project when due, which charges shall be apportioned between the Parking Structure Improvements and Residential/Commercial Improvements pursuant to the Declaration.

16. City's Interest in the Site to Developer's Financing.

(a) City acknowledges and agrees that it will not be possible for the Developer to construct the Project Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the construction of said Improvements and the development of the Project. However, it is recognized that these loans or financial arrangements must not require the City's fee simple interest in the real property described in the attached Exhibit A to secure or guarantee payment of the loans or financial arrangements undertaken by the Developer.

17. Quiet Enjoyment. The City covenants and agrees with Developer that upon Developer paying the Rent and observing and performing all the terms, covenants and conditions on Developer's part to be observed and performed, Developer may peaceably and quietly enjoy the Site.

18. Option to Purchase. Developer shall have the right and option to purchase the Commercial Improvements and Residential Improvements (but not the Parking Structure) (collectively, the "Purchase Option") for the purchase price of One Hundred Dollars (\$100.00) plus the amount, if any, outstanding on Developer's Three Hundred Seventy-Five Thousand Dollar payment obligation under Section 5 of this Lease (collectively, the "Purchase Price"). Provided all payments to the City under this Lease are current, Developer may exercise the Purchase Option upon the expiration of the Initial Term unless otherwise agreed by the City and Developer, by written notice to the City, in which event the closing shall occur within sixty (60) days thereafter. At closing, the City shall convey the Commercial Improvements and/or Residential Improvements to Developer subject only to matters which existed upon the Lease Commencement Date and any encumbrances (including approved subleases permitted hereunder) approved by Developer, Developer shall pay all closing and recording expenses. Developer's rights with respect to the Purchase Option hereunder shall be assignable to and exercisable by any Leasehold Mortgagee, without requiring any consent or approval by the City. The Parties agree to execute a Memorandum of Purchase Option, which may be recorded at Developer's option in the Land Records of Ward County, North Dakota. The Lease and Memorandum of Purchase Option shall be prepared by Developer and subject to the City's approval, which shall not be unreasonably withheld, conditioned or delayed.

19. Miscellaneous Provisions.

(a) Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

To the City: City of Minot  
P.O. Box 5006  
515 2nd Ave SW  
Minot, North Dakota 57802

To Developer: Minot Development Group, LLC  
105 First Street SE, Suite 301  
Minot, North Dakota 58701

(b) Applicable Law. This Lease shall be governed and construed in accordance with the laws of the State of North Dakota, and any and all actions, suits, or proceedings between the parties hereto shall only be brought in the county in which the Sites are located. In no event shall either party ever commence an action or seek to remove a pending action between the parties hereto in or to any United States Federal District Court, except in the case of a bankruptcy proceeding.

(c) Short Form Lease. Either Party shall have the right to record this Lease or, alternatively, either party shall, at the request of the other execute, acknowledge and deliver at any time after the date of this Lease a memorandum or short form of lease prepared by the requesting party, which memorandum or short form of lease shall include a notice to all persons with respect to the provisions hereof restricting the right of persons dealing with the Developer to a mechanic's lien upon the Site, in compliance with other requirements of applicable law

(d) Net Lease. The City shall not have or incur any expense or cost in its ownership of the Site during the Term of this Lease, and all such expenses including, without limitation, including real estate and possessory interest taxes, insurance, utilities, repairs and maintenance shall be solely the responsibility of Developer.

(e) Binding Effect of Lease. The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

(f) Waiver. Any waiver of any covenant or condition by the City shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition.

(g) Definitions. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation of this Lease. Each and every term and provision of this Lease which requires any performance (whether affirmative or negative) by Developer shall be deemed to be both a covenant and a condition. The words "reenter" and "reentry" as used herein are not restricted to their technical legal meaning.

(h) Integration. No oral statement or prior written matter shall have any force or effect. No waiver of any provision of this instrument shall be effective unless in writing,

signed by the waiving party. Each party agrees that it is not relying on any representations or agreements other than those contained in this Lease.

(i) Invalidity of Certain Provisions. If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the remainder of this Lease shall not be affected thereby and each and every remaining provisions of this Lease shall be enforceable to the fullest extent permitted by law.

(j) Option to Cancel for Financing Reasons. The City acknowledges that it has been advised that Developer may procure some part or all of the funds to finance on an interim and long-term basis, the construction of Improvements from state or local governmental sources. If any such financing institution, agency or entity requires any modification of the terms and provisions of this Lease as a condition to such financing (including the issuance of a commitment) as Developer may desire, then the City agrees to approve and execute such modifications within thirty (30) days after Developer's request therefor, provided such modification is lawful and shall not materially modify the terms and conditions hereof or impose any liability on the City.

(k) Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by the City or Developer, such party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, Act of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such party. Financial inability shall not be a cause outside of such party's control.

(l) Amendment of Lease. Neither this Lease nor any provision hereof may be changed, modified, waived, discharged or terminated except by an instrument dated subsequent to the date hereof duly executed by the parties hereto.

(m) Termination. This Lease shall be terminated upon conversion to Condominium of the Project Improvements, and recordation of the Declaration.

**[SIGNATURES TO FOLLOW]**

[SIGNATURE PAGE FOR LEASE]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:

*Lee Jewel*  
Print Name: Lee Jewel

Print Name: \_\_\_\_\_

CITY:

**THE CITY OF MINOT**, a North Dakota  
municipal corporation

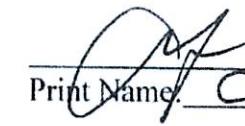
By: *Ed Kiel*  
Mayor  
Date: *10/7/13*

[SIGNATURE PAGE FOR LEASE]

WITNESSES:

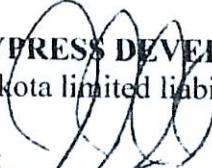


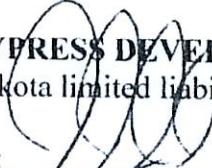
Print Name: Dominic O'Dromo



Print Name: Cristina DeLeon

DEVELOPER:

  
**CYPRESS DEVELOPMENT, LLC**, a North  
Dakota limited liability company

By: 

Name: Steve Larson

Title: Managing Member

Date: 9/27/13

STATE OF OREGON  
County of Washington

On this 27<sup>th</sup> day of September, in the year 2013 before me Scott R Taylor,  
personally appeared Steve Larson, known to me (or proved to me on oath of \_\_\_\_\_)  
to be Managing Member of the limited liability company that is described in and that  
has executed the within instrument, and acknowledgement to me that such  
limited liability company executed the same.

  
(Signature of Notary Public)  
(Printed Name of Notary Public)

Notary Public, State of Oregon  
Commission No. 472193  
My commission expires: 9-30-16

(Seal)



**EXHIBIT A**

**Legal Description**

Bremer Bank (east across street) 5 Central Ave

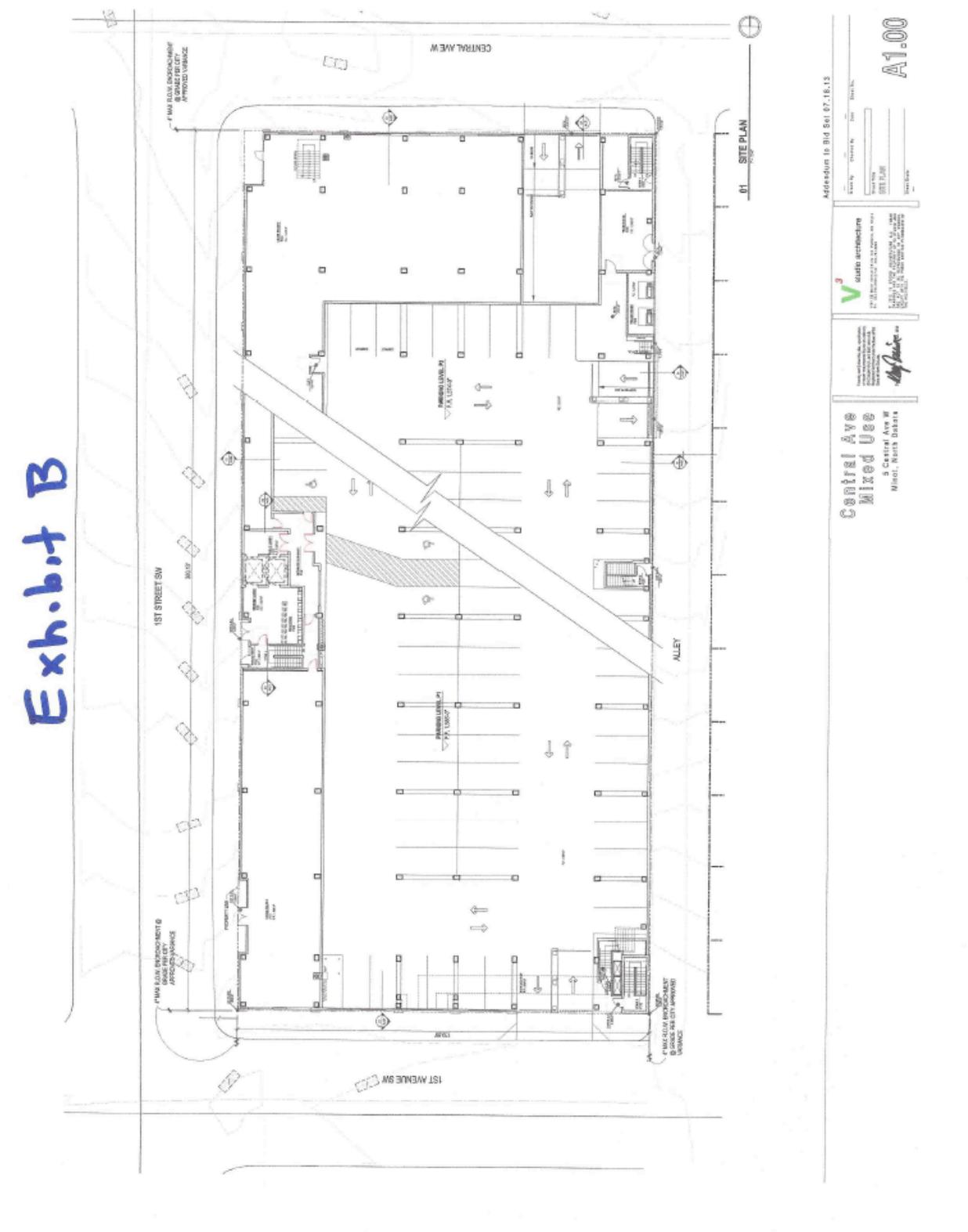
MI 24 238 030 0240

Original Minot Addition

All of West 1/2 of Block

**EXHIBIT B**  
Project Site Plan

## Exhibit B



Cypress Development Management Agreement

**Exhibit D**  
**Work Letter**

## **WORK LETTER**

**THIS WORK LETTER** (“Work Letter”) is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the “City”), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company, whose principal address is 105 First Street SE, Suite 301, Minot, ND 58701 (“Developer”). The City and Developer are hereinafter sometimes individually referred to as a “Party” and collectively, as the “Parties.”

### **RECITALS:**

**WHEREAS**, the City is the owner of certain real property located in the City of Minot, North Dakota, more particularly described on Exhibit A-1 (Site #1), and certain real property located in the City of Minot, North Dakota, more particularly described on Exhibit A-2 (Site #2) attached hereto and made a part hereof; and

**WHEREAS**, pursuant to that certain Disposition and Development Agreement between the City and Developer (the “DDA”), Developer has entered into a lease with the City, which permits Developer to develop Site #1 and construct thereon a mixed-use residential / commercial development (the “Site #1 Project”) consisting of two (2) phases (collectively, the “Site #1 Project Improvements”), which Site #1 Project shall be developed and constructed substantially in accordance with the Scope of Development attached here to and made a part hereof as Exhibit B, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA; and

**WHEREAS**, Developer also agreed to develop Site #2 pursuant to the DDA and a lease executed with the City, to construct a mixed-use residential / commercial development (the “Site #2 Project”) consisting of two (2) phases (collectively, the “Site #2 Project Improvements”), which Project shall be developed and constructed substantially in accordance with the Scope of Development attached here to and made a part hereof as Exhibit B, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA; and

**WHEREAS**, an integral component to each of the Site #1 Project Improvements and the Site #2 Project Improvements is the construction of a multi-level parking structure (the “Site #1 Parking Structure” and the “Site #2 Parking Structure”), which will form the ground levels and base upon which the remaining Site #1 Project Improvements and Site #2 Project Improvements will be constructed; and

**WHEREAS**, the City and Developer desire to enter into this Work Letter to memorialize certain agreements pertaining to the construction of the Site #1 Parking Structure and the Site #2 Parking Structure, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Work Letter and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated into the body of this Work Letter as if recited herein in their entirety. All capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in that certain Development Agreement dated as of the date hereof between the City and Developer (the “Development Agreement”).

2. Purpose. The purpose of this Work Letter is to set forth: (a) the manner in which the Site #1 Parking Structure and the Site #2 Parking Structure will be designed, permitted and constructed; and (b) the mechanics and procedures by which the City will pay for the construction thereof. The parties acknowledge and agree the Site #1 Parking Structure and Site #2 Parking Structure are intended to be similar to each other (aside from the applicable legal descriptions and addresses of each site), and constructed in similar fashion, using identical plans, specifications and materials. Accordingly, and unless otherwise expressly stated herein, this Work Letter shall apply equally to, and govern the construction of the Site #1 Parking Structure and the Site #2 Parking Structure (hereinafter, for ease of description, the "Parking Structure Improvements"). In addition, Site #1 and Site #2 are hereinafter sometimes collectively referred to as the "Site."

3. Parking Structure Development Plan. Developer shall cause to be prepared by Developer's architect and submitted to the City for its approval, a comprehensive development plan for each of Site #1 and Site #2 (each, a "Development Plan"), which Development Plan will be generally based upon the DDA, and which will encompass the elements comprising the Scope of Development attached to the DDA. The Development Plan shall consist of design development drawings which accurately reflect the Parking Structure Improvements to be constructed (including, architectural, mechanical, electrical and engineering drawings), the location of the same in relation to the boundaries of Site #1 and Site #2, the schematic exterior materials and appearance of the Parking Structure Improvements (for which a not-to-exceed line item cost allowance will be included in the budget), elevation drawings (except for parking layout and lighting), driveways, signs, ingress and egress designs, curb cuts, if any, traffic flow, sanitary and storm drainage systems, other utilities and curbing and graded area of Site #1 and Site #2 upon which the Parking Structure Improvements are to be constructed. Once all elements of the Development Plan have approved by both Parties, Developer's architect shall (to the extent necessary) convert said elements into final plans and specifications ("Final Plans") to be submitted to the appropriate governing bodies for the issuance of permits. The Final Plans shall not be modified by either Party, except as set forth herein.

4. Standards of Design and Construction. All work done in or upon the Site by Developer or at Developer's direction shall be done according to the standards set forth in this Section, except as the same may be modified in the Final Plans. Developer has retained W&B Construction Management Services (the "Construction Manager") for the purposes of monitoring the bid process and overseeing construction of the Parking Structure Improvements upon the Site.

(a) The Final Plans and all design and construction of the Parking Structure Improvements shall comply with all applicable statutes, ordinances, regulations, laws, codes and industry standards.

(b) Developer shall, at City's cost and expense, obtain all required building permits and occupancy permits.

(c) All contractors or subcontractors supervised or contracted by Developer (and/or Developer's construction management team) for the construction of the Parking Structure Improvements shall be licensed contractors, possessing good labor relations, capable of performing quality workmanship.

(d) Developer shall permit access to the Site, and the Parking Structure Improvements shall be subject to inspection, by City and City's architects, engineers, contractors and other representatives, at all reasonable times during the period in which the Parking Structure Improvements are being constructed and installed. City shall use commercially reasonable efforts not to interfere with Developer's performance of the construction work in connection with any such inspections.

(e) Developer shall notify City upon completion of the Parking Structure Improvements and shall furnish City with such further documentation as may be reasonably requested by City from time to time.

(f) All changes to the Final Plans must be requested in writing, and approved by Developer or the City, as applicable, in advance of the implementation of such changes as part of the Parking Structure Improvements, in conformity with the initial approval process set forth in Paragraph 3 above. Each Party agrees to use commercially reasonable efforts to advise of its approval and additional changes, if any, within ten (10) days of written request; provided, however, the City's approval of change orders to the Final Plans is not required for changes that do not (i) affect the roof, the foundation, the exterior walls or the structural components of the Parking Structure Improvements or the utility lines serving the Site; (ii) materially affect the configuration of the Project Improvements; and/or (iii) cause the estimated cost of the Parking Structure Improvements to increase by more than fifteen percent (15%).

5. Community Development Block Grant – Disaster Recovery (CDBG DR) Requirements, Davis Bacon, Bonding, Section 3, etc., for Parking Structure only. The Developer will insure that all contractors comply with the labor laws that may apply to CDBG-DR funded construction work include the following:

(a) The Davis-Bacon Act (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) is triggered when construction work over \$2,000 is financed in whole or in part with CDBG-DR funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area.

(b) The Copeland Anti-Kickback Act (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be verified by the worker, and that contractors maintain and submit weekly payrolls.

(c) The Contract Work Hours and Safety Standards Act (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).

(d) Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area.

(e) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(f) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

i. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

ii. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

iii. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## 6. Cost of Construction; Payments.

(a) The City shall be responsible for all costs and expenses associated with the Parking Structure Improvements, up to and including Four Million Nine Hundred Thirty-Seven Thousand Five Hundred Dollars (\$4,937,500.00) per Site, and the design and construction thereof, utilizing (a) a grant in the amount of Five Million Three Hundred Seventy-Five Thousand and 00/100 Dollars (\$5,375,000.00), comprised of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program – Disaster Recovery (“CDBG-DR”) funds, which the City has approved for funding assistance in connection with the construction of the Parking Structure Improvements, and (b) a grant from the City of Minot MAGIC Fund, as applied for by Minot Area Development Corporation Magic Fund (“MADC”) in the amount of Three Million and 00/100 Dollars (\$3,000,000.00) (the “MAGIC Funds”), which shall be used to offset the cost of constructing each Parking Structure, and \$750,000.00 in City funds, which shall be repaid pursuant to the Leases in three installment payments of \$125,000.00 each per Site (during years 2, 3 and 4 of the Initial Term), plus interest at the rate of one percent (1%) per annum, on the then outstanding amount of \$375,000.00 per Site (which amount shall be reduced by each One Hundred Twenty Five Thousand Dollar payment). Any costs exceeding the grant amounts per Site are the sole responsibility of the Developer.

(b) Costs of construction shall be disbursed on a percentage of completion basis, as follows: Not more than once during each calendar month, between the first (1st) day and the tenth (10th) day of such calendar month, the Construction Manager shall submit, or cause to be submitted, to City a payment request, seeking disbursement to the contractors (as designated in the payment request, or if no designation is made, then payment shall be made to Developer) of that percentage of the cost of construction (less retainage of ten percent (10%) of each disbursement) which corresponds to the percentage of completion which has been achieved as of the date of such payment request. Each such payment request shall be accompanied by all (in the case of the final or single payment) or some of the following items (in the case of an interim payment), as indicated:

i. A certificate from the Architect to City and any other party reasonably designated by City specifying the percentage of completion of the Parking Structure Improvements in accordance with the Final Plans which has been achieved as of the date of such certificate, which shall in no event be less than the sum of (1) the percentage of the total Project Cost to be disbursed (exclusive of the holdback amount), plus (2) the percentage of the total Project Cost which has theretofore been disbursed in connection with any and all prior payment requests submitted to City. In any payment request seeking final or single payment, such certificate shall include a certification by the Architect that the work has been substantially completed in accordance with the Final Plans;

ii. A copy of the certificate of occupancy (final or temporary) issued by the applicable governmental authority with respect to the entire Parking Structure Improvements to occupy the same (final or single payment only);

iii. One (1) copy of complete as-built which may be field-generated plans and specifications for the Parking Structure Improvements in AutoCAD format (final or single payment only); and

iv. A duly executed conditional lien release (each interim payment) and a contractor's payment affidavit and waiver of lien (final or single payment) executed by the contractor or applicable subcontractor in the form prescribed by applicable law, certifying that all lienors who have timely served a notice to owner have been paid in full, or certifying payment of the applicable percentage of the total Project Cost (as the case may be) (as to each interim payment) and in full (final or single payment) for such labor and/or materials, and fully and forever waiving any and all statutory and/or common law liens which might otherwise be asserted by them against the Site, or the Parking Structure Improvements in connection therewith.

v. City shall have no obligation to pay any interim installment or the final installment unless (and not until twenty-one (21) days (interim payment) or thirty (30) days (final payment) after) City has received a payment request with all required attachments properly supplied. Notwithstanding anything herein to the contrary, City shall be obligated to disburse only ninety percent (90%) of the amount requested pursuant to any payment request, other than the final payment request, and to hold back and impound the remaining ten percent (10%) of the amount of such payment request as retainage, until such time as the following conditions have been satisfied: (A) one-half of such holdback amount shall be released and disbursed to Developer within thirty (30) days after City's receipt of (1) a certificate from the Architect that the Parking Structure Improvements have been substantially completed in accordance with the Final Plans, and (2) the items described in subparagraphs 5(b) (i) – (iv) above, and (B) the remaining one-half portion of such holdback amount shall be released within thirty (30) days after City's receipt of Developer's final payment request, accompanied by all of the items listed in subparagraphs 5(b) (i) – (iv) above (to the extent not previously supplied to City).

(c) Notwithstanding subparagraph 6(b) above, MADC shall have the authority to review construction draw requests for payments made from the MAGIC Fund, which will be submitted to the City of Minot for disbursement of the MAGIC Funds.

**7. Insurance.** The City shall cause its contractors to secure, pay for and maintain during the continuance of construction of the Parking Structure Improvements, insurance in the following minimum coverage amounts and the following minimum limits of liability.

(a) Worker's Compensation and Employer's Liability Insurance with limits of not less than \$500,000.00, or such higher amounts as may be required from time to time by any Employee Benefit Acts or other statutes applicable where the work is to be performed, and in any event sufficient to protect Developer's Contractors from liability under the aforementioned acts.

(b) Comprehensive General Liability Insurance (including Contractors' Protective Liability) in an amount not less than \$1,000,000.00 per occurrence, whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with a minimum aggregate limit of \$2,000,000.00. Such insurance shall provide for explosion and collapse, completed operations coverage and broad form blanket contractual liability coverage and shall insure against any and all claims for bodily injury, including death resulting therefrom, and damage to the

property of others and arising from its operations under the contracts whether such operations are performed by anyone directly or indirectly employed by any of them.

(c) "All-risk" builder's risk insurance upon the Parking Structure Improvements to the full insurable value thereof. This insurance shall include the interests of City and Developer individually (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the Parking Structure Improvements and shall insure against the perils of fire and extended coverage and shall include "all-risk" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief.

(d) The Comprehensive General Liability policy shall be endorsed to include as additional insured parties the parties listed on, or required by, Developer's mortgagee. The waiver of subrogation provisions contained in the Lease shall apply to all insurance policies (except the worker's compensation policy) to be obtained by Developer pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (excluding cancellation for nonpayment of premium, when ten (10) days' prior written notice will be acceptable) and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause.

## 7. Miscellaneous.

(a) No waiver by any party of any provision of this Work Letter shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by any other party of the same, or any other provision or the enforcement thereof. A Party's consent to or approval of any act by any other Party requiring the other Party's consent or approval shall not be deemed to render unnecessary the obtaining of such Party's or any other Party's consent to or approval of any subsequent consent or approval of any party, whether or not similar to the act so consented to or approved.

(b) This Work Letter or any portion hereof shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Developer shall be permitted to transfer its interest in and to this Work Letter to any entity which is wholly-owned by or under common control of the Developer, or an affiliate of Developer, their respective successors, heirs and assigns.

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) All of the terms and provisions of this Work Letter shall be binding upon and inure to the benefit of the Parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

(f) This Work Letter may not be changed, except in writing signed by the parties. No waiver of any rights or obligations hereunder shall be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver shall be deemed a waiver of any other or subsequent right or obligations.

(g) The Parties hereby acknowledge and agree that (i) each Party hereto is of equal bargaining strength, (ii) each such Party has actively participated in the drafting, preparation and

negotiation of this Work Letter, (iii) each such Party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Work Letter, (iv) each such Party and its counsel and advisors have reviewed this Work Letter, (v) each such Party has agreed to enter into this Work Letter following such review and the rendering of such advice and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Work Letter, or any portions hereof, or any amendments hereto.

(h) Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party, the Parties agree to confirm facsimile or electronically transmitted signatures by signing an original document. This Work Letter may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(i) In the event any provision of this Work Letter, or any instrument to be delivered pursuant to this Work Letter, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

(j) If the time for performance of any of the terms, conditions and provisions of this Work Letter shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter. As used in this Work Letter, the expression (i) "business day" means every day other than a nonbusiness day, and (ii) "nonbusiness day" means a Saturday, Sunday or legal holiday in the State of North Dakota. Whenever a payment is due, an act is to be performed, a notice is to be delivered or a period expires under this Work Letter on a nonbusiness day, such occurrence shall be deferred until the next succeeding business day.

(k) No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Work Letter is executed.

(l) Captions and paragraph headings contained in this Work Letter are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Work Letter, nor the intent of any provisions hereof.

(m) All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

(n) Whenever a period of time is herein prescribed for the taking of any action by the City or Developer, such Party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, Act of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such party (hereinafter "Force Majeure"). Except as specifically provided to the contrary under the terms of this Work Letter, neither Party shall be required to perform any covenant or obligation set forth in this Work Letter, nor be liable in damages to the other Party, so long as the performance or nonperformance of the covenant or obligation is delayed, caused or prevented by an Act of God or Force Majeure or by the other Party. Any time periods provided in this Work Letter shall be extended by the number of days of delay caused by such Act of God or Force Majeure.

(o) This Work Letter shall be governed and construed in accordance with the laws of the State of North Dakota. Any action to enforce any provision of the same shall be exclusively venued in the State District Court for Ward County North Dakota.

(p) Time is of the essence of this Work Letter.

(q) The "Effective Date" of this Work Letter shall be the date immediately below the City's signature.

\*\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK \*\*\*

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the City and Developer as of the Effective Date.

Executed in the presence of:

Signature of Witness

Print Name

Signature of Witness

Print Name

Executed in the presence of:

Scott R Taylor

Signature of Witness

Scott R Taylor

Print Name

Al

Signature of Witness

Cristina DeLeon

Print Name

**THE CITY OF MINOT**, a North Dakota municipal corporation

By: C. Larson

Mayor

10/2/13

Date:

**CYPRESS DEVELOPMENT, LLC**, a North Dakota limited liability company

By: Steve Larson

Name: Steve Larson  
Title: Managing Member

Date: 9/27/13

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the City and Developer as of the Effective Date.

Executed in the presence of:

Lisa Jundt  
Signature of Witness

Lisa Jundt city clerk  
Print Name

Cindy K. Hemphill  
Signature of Witness

Cindy K. Hemphill  
Print Name

**THE CITY OF MINOT**, a North Dakota municipal corporation

By: P. J. Jundt  
Mayor

Date: 10/7/13

Executed in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A-1**  
**(Work Letter)**

Site #1 Legal Description

Wells Fargo Bank (west of Bank) 205 1st St SW

MI 24 238 110 0240

Original Minot Addition

Lots 13 thru 24 Block 11

**Exhibit A-2**  
**(Work Letter)**

Site #2 Legal Description

Bremer Bank (east across street) 5 Central Ave

MI 24 238 030 0240

Original Minot Addition

All of West ½ of Block 3

Cypress Development Management Agreement

**Schedule D-1:** Amendment to the

**WORK LETTER**

Between

Cypress Development, LLC and the City of Minot

Effective October 7, 2013

Whereas, Cypress Development, LLC and the City of Minot (the Parties) entered into that certain Work Letter (the "Work Letter") dated October 7, 2013, and

Whereas, certain conditions have changed and the parties wish to amend the Work Letter as follows:

**AMENDMENT:**

1. The last line of the introduction to Section 4 is amended as follows:

Developer has retained Gallagher Consulting (the "Construction Manager") for the purposes of monitoring the bid process and overseeing construction of the Parking Structure Improvements upon the Site.

2. Section 6 (a) is amended to be consistent with the updated Development Agreement as follows:

6. Cost of Construction; Payments.

(a) The City shall be responsible for all costs and expenses associated with the Parking Structure Improvements, up to and including the first Four Million Nine Hundred Thirty-Seven Thousand Five Hundred Dollars (\$4,937,500.00) per Site (\$9,875,000 for both Projects), and the design and construction thereof, utilizing (a) a grant in the amount of Five Million Three Hundred Seventy-Five Thousand and 00/100 Dollars (\$5,375,000.00), comprised of U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant Program – Disaster Recovery ("CDBG-DR") funds, which the City has approved for funding assistance in connection with the construction of the Parking Structure Improvements, and (b) a grant from the City of Minot MAGIC Fund, as applied for by Minot Area Development Corporation Magic Fund ("MADC") in the amount of Three Million and 00/100 Dollars (\$3,000,000.00) (the "MAGIC Funds"), which shall be used to offset the cost of constructing each Parking Structure, and \$1,500,000.00 in City funds, of which \$750,000 shall be repaid pursuant to the Leases in three installment payments of \$128,750, \$127,500, and \$126,250 each per Site (respectively during years 3, 4 and 5 of the Initial Term). Any costs exceeding the grant amounts per Site are the sole responsibility of the Developer, subject to adjustment from future grants or loans that may be provided to Developer after the execution of this Agreement.

IN WITNESS WHEREOF, the parties do execute this Amendment, effective as of the 19<sup>th</sup> day of January, 2015.

Executed in the presence of:

Lisa Jundt

Signature of Witness

Lisa Jundt

Print Name

**THE CITY OF MINOT**, a North Dakota  
municipal corporation

By: Oliver Karp

Mayor

Date: 1/15/15

Executed in the presence of:

Dominic O'Dierno

Signature of Witness

Dominic O'Dierno

Print Name

**CYPRESS DEVELOPMENT, LLC**, a North  
Dakota limited liability company

By: Steve Larson

Name: Steve Larson

Title: Managing Member

Date: 1-19-15

Cypress Development Management Agreement

**Exhibit E1**  
**E{rtgur'Renaissance 9; -Year Lease**

## CYPRESS RENAISSANCE LEASE

THIS CYPRESS RENAISSANCE LEASE (this "Lease") is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and Cypress Development, LLC, a North Dakota limited liability company, whose principal address is 9 Caprington Road, Henderson, Nevada, 89052, its successors and/or assigns ("Developer"). The City and Developer are hereinafter sometimes individually referred to as a "Party" and collectively, as the "Parties."

### WITNESSETH:

**WHEREAS**, the City is the owner of certain real property located in the City of Minot, North Dakota (the "Site"); and

**WHEREAS**, pursuant to that certain Disposition and Development Agreement between the City and Developer (the "Developer"), Developer agreed to develop the Site and construct thereon a mixed-use residential/commercial development (the "Project") consisting of two (2) phases, the Parking Structure Improvements and the Residential & Commercial Improvements (collectively, the "Project Improvements"), which Project shall be developed and constructed substantially in accordance with the Scope of Development approved by the City, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA;

**WHEREAS**, the City and Developer entered into a lease effective October 7, 2013 (the "Original Cypress Renaissance Lease"); and

**WHEREAS**, the City and Developer desire to enter into this Lease in order to memorialize certain agreements pertaining to the development and long term lease of the Site, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Lease and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

**1. INCORPORATION OF RECITALS.** The parties hereby ratify and confirm the foregoing recitals as being true and correct, and hereby incorporate said recitals into the body of this Lease.

**2. SITE.** The City hereby leases to Developer and Developer hereby leases from the City the following described real property and Parking Ramp Improvements located in the City of Minot, Ward County, North Dakota, more particularly described in Exhibit A attached hereto; together with all licenses, rights, privileges and easements appurtenant thereto.

**3. TERM.** This Lease replaces and supersedes the Original Cypress Renaissance Lease in its entirety. Accordingly, upon full execution of this Lease, the Original Cypress Renaissance Lease will automatically terminate and neither party shall have any further obligations thereunder except those obligations that expressly survive expiration or termination thereof. The term of this Lease ("Term") commences upon full execution hereof, (the "Commencement Date") and continues for ninety-nine (99) years after the Commencement Date.

(a) **Force Majeure.** Upon the occurrence of a significant condition beyond the control of the City or the Developer that precludes the satisfaction of any condition set forth in this Article, the City or

the Developer may, by providing written notice to the other, extend all contractual dates by one (1) day for every day of the delay, plus a reasonable mobilization period. If Developer delays Project contractual dates for more than two (2) years, the City shall have the right to terminate this Lease in its entirety, without penalty or damages. Upon the occurrence of a condition beyond the control of the City that precludes or reasonably prohibits the completion of the Project for more than two (2) years, Developer shall have the right to terminate this Lease in its entirety, without penalty or damages.

(b) Quiet Enjoyment; Public Parking Spaces. At all times during the Term, Developer shall have the right to peacefully and quietly have, hold and enjoy the Premises and the Improvements, subject to the terms of this Lease. Notwithstanding the foregoing, Developer agrees to provide up to 129 monthly parking passes (Public Parking Passes) to local residents and commercial businesses as follows: i) 114 passes valid for access to the Parking Structure Monday-Friday from 7 am to 6 pm and, ii) 15 spaces valid for parking 24 hours per day, 7 days per week. The Public Parking Passes shall be available at a cost determined by the Developer in Developer's sole discretion. The Developer shall also have the right to sell other parking passes to residential tenants and the public in its sole discretion. Developer agrees to offer such parking passes at reasonable rates, as required by applicable law.

#### **4. PROJECT IMPROVEMENTS.**

(a) Construction and Completion. Developer shall construct and complete the Project described in the Construction Drawings and Technical Specifications, which shall constitute the Project Improvements for the Site (the "Project Improvements"). Developer has commenced construction of the Project Improvements. The Project shall be developed in the following two (2) phases (collectively, the "Project Improvements"): (a) 225-space, multi-level parking structure to be constructed by contractors hired by the City and managed by Developer (the "Parking Structure Improvements"); and (b) 13,543 square feet of commercial space and approximately 175 units of residential to be constructed by Developer (the "Residential & Commercial Improvements"). The Parking Structure Improvements are to be substantially completed on or before the later of i) the 3<sup>rd</sup> anniversary of the Original Lease, or ii) ten (10) months after the revised construction substantial completion date provided to the City by the general contractor under contract to complete the Parking Structure Improvement ("Parking Structure Completion Date"). The Residential and Commercial Improvements are to be substantially completed as soon as practicable, but no later than the 9<sup>th</sup> anniversary of the Original Lease (October 6, 2022), the "Residential and Commercial Improvement Completion Date". These substantial completion dates are subject to extension to the extent permitted by the applicable construction contract, due to unforeseen conditions, force majeure, commercial impracticability or other delays requested of and approved by the City, or upon mutual agreement of the parties, should it be determined that it is in the best interest to delay the improvements or to significantly modify the scope of the improvements currently planned. The Project Site attached hereto as Exhibit B shall not constitute a representation or warranty by either the City or Developer to be the final plan of the development of the Site or Project Improvements. After approval of the Project by the City as set forth in the Work Letter, Developer may change the square footage of individual components or the number of commercial or residential units up to a cumulative total of 20% of the approximately square footage and units described herein without the consent of the City, provided that such actions lawfully comply with existing city zoning ordinances.

(b) Ownership of Residential & Commercial Improvements. City acknowledges and agrees that the Residential and Commercial Improvements, and all additions, alterations and improvements thereto or replacements thereof and all appurtenant thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely and exclusively by Developer. Developer acknowledges and agrees that the land and the Parking Structure improvements, and all additions, alterations and improvements thereto or replacements thereof and all appurtenant thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely and exclusively by the City. During the Term

and for the tax years during which the Term begins and ends, Developer alone shall be entitled to any and all tax attributes of ownership of the Project Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions, and the like, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Residential and Commercial Improvements.

**5. RENT.** During the Term, Developer agrees to pay rent ("Rent") to the City as follows: (a) each year on January 1, Developer pays the City One Hundred Dollars (\$100) as a lease payment to the City for the land ("Land Lease"); (b) upon completion of all Project Improvements and after commencement of the Ninety-Nine Year Term, \$100 per year for a lease on the Parking Structure Improvements, payable on January 1 of each year ("Parking Structure Lease"); and (c) in addition on October 15, 2016, Developer shall pay the City One Hundred Twenty Eight Thousand Seven Hundred Fifty Dollars (\$128,750); on October 15, 2017, the Developer shall pay the City One Hundred Twenty Thousand Seven Five Hundred Dollars (\$127,500) and on October 15, 2018, Developer shall pay the City One Hundred Twenty Six Thousand Two Hundred Fifty Dollars (\$126,250.) Developer shall pay Rent to the City at the City's address for notices, or to such other person or such other place as directed written notice to Developer from the City. In the event that the payments under (b) herein have not all been paid and this Lease is superseded by the Lease described in Exhibit C, then Developer shall remain liable for the remaining balance until such balance is paid to the City.

(a) Program Income. In addition to the Rent due to the City, Income received from the use of the Parking structures, and costs incidental to the maintenance thereof, must be reported to the City on a quarterly basis. For purposes of such Federal reporting requirements, "Program Income" shall be defined as annual revenue generated from Public Parking Passes (net of fifty percent (50%) of the operating expenses, maintenance and replacement reserves) in excess of \$25,000.00. Program Income must be returned to the City on an annual basis for use by the City on eligible CDBG activities.

**6. PREMISES TAXES.** In addition to Rent and other sums payable by Developer under this Lease, Developer shall be responsible for taxes, possessory interest and assessments on the Site as set forth below:

(a) Real Property Taxes. Developer shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes and assessments imposed upon the portions of the Site leased or owned by Developer. Notwithstanding the foregoing, the City has confirmed the Site is included in the "Renaissance Zone". It is further understood that the City may levy property taxes on the portion of the Site owned by the City (the land and the Parking Ramp), according to applicable law, subject to any exemptions such as a Renaissance Zone designation.

## **7. INSURANCE.**

(a) City's Insurance. During the Term, the City shall procure and maintain in full force and effect with respect to the Site: (i) a policy or policies of property insurance as available through the North Dakota Insurance Reserve Fund (including, to the extent required, sprinkler leakage, vandalism and malicious mischief coverage, and any other endorsements required by the holder of any fee mortgage and earthquake, flood and terrorism insurance to the extent the City reasonably deems prudent); and (ii) a policy of commercial liability insurance, in the form and content acceptable to the City, insuring the City's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site or Common

Areas. If said policies of insurance are not available through the North Dakota Insurance Reserve Fund, the Developer may obtain a policy or policies of insurance from third party providers.

(b) Developer's Public Liability. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site by Developer, a policy or policies of commercial liability insurance, written by a reputable insurance company authorized to do business in the State of North Dakota in commercially reasonable form and content acceptable to the City insuring Developer's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site in an amount of not less than Two Million Dollars (\$2,000,000). The policy shall insure the hazards of Site and Developer's operations therein, shall include independent contractor and contractual liability coverage and shall: (a) name the City and the City's managing agent as an additional insured; (b) contain a cross liability provision and; (c) contain a provision that the insurance provided hereunder shall be primary and non-contributing with any other insurance available to the City.

(c) Developer's Property and Other Insurance. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site, a policy or policies of standard form property insurance insuring against the perils of fire, extended coverage, vandalism, malicious mischief, special extended coverage and sprinkler leakage. This insurance policy shall be upon the Project Improvements all property owned by Developer, for which Developer is legally liable or that was installed at Developer's expense, and which is located in Site, including without limitation, furniture, fittings, installations, cabling, fixtures (other than the Project Improvements installed by the City), and any other personal property, in the amount of not less than one hundred percent (100%) of the full replacement costs thereof. This insurance policy shall also insure direct or indirect loss of Developer's earning attributable to Developer's inability to use fully or obtain access to Site.

(d) Form of Insurance/Certificates. All policies shall be written in a form satisfactory to the City and shall be taken out with insurance companies licensed in the state in which the State of North Dakota and holding a General Policy Holder's Rating of "A" and a financial rating of "A" or better, as set forth in the most current issues of A.M. Best's Insurance Guide. Developer shall furnish to the City, prior to Developer's entry into Site and thereafter within ten (10) days prior to the expiration of each such policy, a certificate of insurance (or renewal thereof) issued by the insurance carrier of each policy of insurance carried by Developer pursuant hereto and, upon request by the City, a copy of each such policy of insurance. Said certificates shall expressly provide that such policies shall not be cancelable or subject to reduction of coverage below the minimum amounts required by this Lease or required by any lender having an interest in the Site or otherwise be subject to modification except after thirty (30) days prior written notice to the parties named as insured herein.

(e) Developer's Failure. If Developer fails to maintain any insurance required in the Lease, Developer shall be liable for any loss or cost resulting from said failure, and the City shall have the right to obtain such insurance on Developer's behalf and at Developer's sole expense. This Section 7(e) shall not be deemed to be a waiver of any of the City's rights and remedies under any other section of this Lease. If the City obtains any insurance which is the responsibility of Developer to obtain under this Article 7, the City shall deliver to Developer a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Developer shall promptly remit said amount as additional Rent to the City.

(f) Intentionally Omitted.

(g) Indemnification. To the extent allowed under North Dakota law and subject to available insurance, Developer, as a material part of the consideration to be rendered to the City, hereby indemnifies and agrees to defend and hold the City, the City's officers, employees and agents and Lender

and Site harmless for, from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent caused by the negligence of Developer's or Developers' officers, employees, agents, assignees, sub-developers, concessionaires, licensees, contractors or invitees' use, maintenance, occupation, operation or control of Site during the Term, or resulting from any breach or default in the performance of any obligation to be performed by Developer hereunder or for which Developer is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, or to the extent arising from any act, neglect, fault or omission of Developer or any of Developer's officers, employees, agents, servants, sub-developers, concessionaires, licensees, contractors or invitees, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Site or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the Developer, except and to the extent as may arise out of the negligence or willful misconduct of the City and/or its agents, employees or contractors.

(i) To the extent allowed under North Dakota law and subject to available insurance, City, as a material part of the consideration to be rendered to Developer, hereby indemnifies and agrees to defend and hold Developer and Site harmless from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent caused by the negligence of the City's or the City's employees, agents, or contractors, gross negligence or willful misconduct, or resulting from any breach or default in the performance of any obligation to be performed by the City hereunder or for which the City is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Developer and/or Premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the City, except and to the extent as may arise out of the negligence or willful misconduct of Developer and/or its officers, agents, employees, assignees, sub-developers, concessionaires, licensees, contractors, or invitees.

(ii) In no event shall the City, its agents, employees and/or contractors be liable for any personal injury or death or property damage caused by other lessees or persons in or about Site and/or the Project, as the case may be, or caused by public or quasi-public work, or for consequential damages arising out of any loss of the use of Site or any equipment or facilities therein by Developer or any person claiming through or under Developer.

**8. LIENS.** Developer shall promptly file and/or record, as applicable, all notices of completion provided for by law, and shall pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Developer or at the request of the City on behalf of Developer, and shall keep the Site and the Site free and clear of all mechanics' and materialmen's liens in connection therewith. The City shall have the right, and shall be given ten (10) business days written notice by Developer prior to commencement of the work, to post or keep posted on the Site, or in the immediate vicinity thereof, any notices of non-responsibility for any construction, alteration, or repair of the Site by Developer. If any such lien is filed, Developer shall cause same to be discharged of record within thirty (30) days following written notice thereof, or if Developer disputes the correctness or validity of any claim of lien, the City may, in its reasonable discretion, permit Developer to post or provide security in a form and amount acceptable to the City to insure that title to the Site remains free from the lien claimed. If said lien is not timely discharged the City may, but shall not be required to, take

such action or pay such amount as may be necessary to remove such lien and Developer shall pay to the City any such amounts expended by the City, together with interest thereon.

## **9. HAZARDOUS MATERIALS.**

### **(a) Defined Terms**

(i) "Hazardous Materials" means, among other things, any of the following, in any amount: (a) any petroleum or petroleum derived or derivative product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls and medical wastes; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation or court decisions now existing or hereafter existing as the same may be interpreted by government offices and agencies.

(ii) "Hazardous Materials Laws" means any federal, state or local statutes, laws, ordinances or regulations or court decisions now existing or hereafter existing that control, classify, regulate, list or define Hazardous Materials or require remediation of Hazardous Materials contamination.

(iii) "Recognized Environmental Conditions" means the presence or likely presence of hazardous Substance on the Site under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Site or into the ground, ground water, or surface water of the Site, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

(iv) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

(v) "Unforeseen Environmental Condition" means the presence of a Hazardous Substance on the Site that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by applicable law.

(b) Developer Compliance with Hazardous Materials Laws. Developer will not cause any Hazardous Material to be brought upon, kept, generated or used on the Site in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Developer, at its sole cost and expense, will comply with (and obtain all permits required under) all Hazardous Materials Laws, groundwater wellhead protection laws, storm water management laws, fire protection provisions, and prudent industry practice relating to the presence, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Site that Developer brings upon, keeps, generates or uses on the Site and in no event shall Developer allow any liens or encumbrances pertaining to Developer's use of Hazardous Materials to attach to any portion of the Site. On or before the expiration or earlier termination of this Lease, Developer, at its sole cost and expense, will completely remove from the Site (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Developer causes to be present in, on, under or about the Site. Developer will not take any remedial action in response to the presence of any Hazardous

Materials in on, under or about the Site, nor enter into (or commence negotiations with respect to) any settlement agreement, consent decree or other compromise with respect to any claims relating to or in any way connected with Hazardous Materials in, on, under or about the Site, without first notifying the City of Developer's intention to do so and affording the City reasonable opportunity to investigate, appear, intervene and otherwise assert and protect the City's interest in the Site. The City shall have the right from time to time to inspect the Project to determine if Developer is in compliance with this Section 9.

(c) Phase I Environmental Assessment. Developer has undertaken a Phase I Environmental Assessment ("Assessment") of the Site in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). Developer has provided a copy of the Assessment to the City. The City may, at its sole cost and expense, undertake further environmental testing of the Site.

**10. RECONSTRUCTION.** If the Project is damaged or destroyed during the Term, the Developer shall, except as hereinafter provided, diligently repair or rebuild it to substantially the condition in which it existed immediately prior to such damage or destruction. If the Developer is obligated or elects to repair or restore as herein provided, the Developer shall be obligated to make repair or restoration only to the extent of available insurance proceeds.

## **11. OWNERSHIP OF PROPERTY.**

(a) Site. The City warrants and represents to Developer that it is the owner of the fee simple title to the Site, and has full right and authority to enter into this Lease and perform the obligations arising hereunder. The City further represents and warrants that neither the City's interest in this Lease nor the City's fee title to the Site are, as of the date hereof, encumbered by any mortgage.

(b) The City hereby covenants and agrees that from and after the date hereof, and for the entire Term of this Lease, the City shall not transfer, assign, mortgage or otherwise encumber its interest in this Lease or its fee title to the Site or any part thereof or any interest therein.

(c) Improvements. Developer shall own all Commercial and Residential Improvements constructed or placed upon the Site. The City agrees that the Developer shall have the right at any time and from time to time to remove any and all fixtures, furniture, furnishings, equipment and other property installed in or upon the Site. Developer acknowledges and agrees that the land and the Parking Structure improvements, and all additions, alterations and improvements thereto or replacements thereof and all appurtenant thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely and exclusively by the City.

**12. TERMINATION FOR CAUSE.** City has the right to terminate this Lease if the Developer is found to be in Material Breach of contract under Section 12 of this Agreement, if Developer is unable to cure such Material Breach within 120 days of written notice by the City to Developer. For purposes of this Section 12, Material Breach includes:

- (a) Failure to pay amounts due under this Lease, including Rent or Program Income;
- (b) Failure to maintain required Insurance;
- (c) After the one hundred and eightieth (180<sup>th</sup>) day following the Commencement Date, Developer's failure to remove from title to the Premises, pay, or post acceptable security on account of, any lien filed by a mechanic, workman, or materialmen in accordance with Section 8 of this Lease, within a reasonable period of time; or

(d) Other Material Breach as that term is defined in Section 21 below.

**13. COMPLETION DATE DEFAULT.** Developer fully intends to complete the Improvements in a timely manner; however, events beyond the control of Developer may make it difficult or impossible to do so.

(a) Failure to meet Residential and Commercial Improvement Completion Date: In addition to section 12 above, if Developer does not meet the Residential and Commercial Improvement Completion Date described in Section 4(a), Developer will be considered in default unless the parties have either i) agreed to extend the Residential and Commercial Improvement Completion Date, or ii) agreed to remove the obligation to complete the Commercial or Residential Improvements in the best interests of the parties, such as for changing market conditions. Should Developer fail to substantially complete the Commercial and Residential Improvements prior to the Residential and Commercial Improvement Completion Date, the City will have the right to impose liquidated damages upon Developer at the rate of \$1,000 per week until the Residential and Commercial Improvements reach substantial completion.

(b) Failure to meet Parking Ramp Improvement Completion Date: City's general contractor has the responsibility to complete the Parking Ramp Improvement and Developer shall not be responsible for delay to completion of the Parking Ramp Improvement, except to the extent the general contractor's failure to achieve substantial completion is directly caused by the acts or omissions of Developer (e.g. Developer's interference with the general contractor).

**14. USE.** Developer shall use and develop the Site in conformity with the DDA, and for no other use without first obtaining the City's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. At all times Developer's use of the Site shall comply with all rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities and fire insurance rating organizations or similar bodies.

**15. MAINTENANCE.** Developer, at its cost, shall maintain in good condition and repair and replace all structural and non-structural portions of the Project Improvements, and all Project Improvements thereon, including but not limited to the building, and all fixtures, equipment and personal property therein. The Developer shall keep the Project Improvements in a clean and developable condition and permit no waste to be committed therein.

## **16. UTILITIES**

(a) Utility Easements. The City shall grant to Developer such easements on the adjoining property owned by the City as the Developer, any utility company or companies, and/or the municipal authorities having jurisdiction thereof, may reasonably require to install, provide and maintain all utilities to the Project and grant and/or use its best efforts to obtain such modifications of existing utility easements as Developer may reasonably request so as to remove any existing easements from their present locations to the perimeter or boundaries of the Site to avoid or reduce interference with the construction of the Project Improvements and the continued use thereof. The City shall, promptly upon request, execute in recordable form such instruments granting such easements and/or modifications thereof as may be reasonably requested by any of the aforesaid parties.

(b) Utility Charges. Developer agrees to pay all charges for water, gas, electricity and all other utilities services used by the Developer on the Project when due.

## **17. CITY'S INTEREST IN THE SITE TO DEVELOPER'S FINANCING.**

City acknowledges and agrees that it will not be possible for the Developer to construct the Project Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the construction of said Improvements and the development of the Project. However, it is recognized that these loans or financial arrangements must not require the City's fee simple interest in the real property described in the attached Exhibit A to secure or guarantee payment of the loans or financial arrangements undertaken by the Developer. Further, Developer agrees to secure a financing commitment of at least Two Million One Hundred Fifty Thousand Dollars (\$2,150,000; \$2.5 million less \$350,000 in expenses already paid toward improvement costs) ("Financing") for this Site's Parking Structure Improvements on or before the later of i) February 12, 2015, or ii) thirty (30) days after City Council approval and execution of all documents between Developer and City currently being revised, with closing to occur within sixty (60) days thereafter, to be payable into an escrow account or other account as mutually agreed between the parties to provide additional funding for the construction costs of the Parking Structure Improvements as agreed by the parties.

## **18. CONDEMNATION.**

(a) Total Condemnation. If the whole of the Premises and the Improvements, (or such portion of the Premises and Improvements as renders it infeasible, in Developer's sole discretion, for Developer to continue to operate and maintain the Premises and Improvements), shall be appropriated or condemned under power of eminent domain during the Term, Developer reserves unto itself the right to prosecute Developer's claim for an award for damages for the termination of this Lease caused by such appropriation or taking, together with damages based on the value of Developer's Improvements on the Premises and damages Developer may sustain caused by such appropriation and taking of, or the injury to, Developer's leasehold interest. City shall be entitled to prosecute City's claim for the fee interest in the Premises, subject to the Lease and damages City may sustain caused by such appropriation and taking of, or the injury to, City's fee interest. In such event, this Lease shall terminate when Developer can no longer use the Premises in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not preclude nor restrict Developer's right to an award as herein before provided.

(b) Partial Condemnation. In the event that a part of the Premises shall be taken or condemned under circumstances in which Developer desires to continue the Lease, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In that event Developer shall, at Developer's own cost and expense, make all repairs to the buildings and Improvements on the Premises affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Compensation available or paid to City or Developer upon such a partial taking or condemnation shall be paid (i) to Developer to the extent that such compensation is attributable the taking of Developer's leasehold interest and the Improvements and (ii) the remainder shall be paid to City.

(c) Temporary Taking. If there shall be a temporary taking with respect to all or any part of the Premises or of Developer's interest in this Lease, then the Term shall not be reduced and Developer shall continue to pay in full all rents, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Developer shall not be required to perform such obligations that Developer is prevented from performing by reason of such temporary taking. In the

event of any Temporary Taking, Developer shall be entitled to receive the entire amount of any award made for the Taking, whether paid by way of damages, rent or otherwise, unless the period of temporary use or occupancy shall extend to or beyond the end of the Term, in which case the award shall be prorated between City and the Developer as of the last day of the Term.

(d) Joinder. If a Leasehold Mortgage exists, the Leasehold Mortgagees, to the extent permitted by law, shall be made parties to any taking proceeding and all rights of Developer shall be subject to the terms of the Leasehold Mortgages.

## **19. SUBLETTING AND ASSIGNMENT.**

(a) Subletting. Developer shall have the right to sublease all or any part of the Premises for any time or times during the Term with the consent of City, such consent not to be unreasonably withheld. All subleases shall be in writing and shall be expressly subject to the terms of this Lease.

(b) Assignment. Developer may Transfer this Lease, including, without implied limitation, to any Affiliate of Developer with City's consent, such consent not to be unreasonably withheld, and as a result of (a) sale or exchange of Developer's stock on a national exchange; (b) merger or consolidation; (c) exchange of stock between Developer's parent company, if any, and a subsidiary; or (d) the sale of substantially all of Developer's stock or assets. Any assignee, purchaser or transferee of Developer's interest in this Lease (each a "Transferee") shall assume Developer's obligations under this Lease occurring after the date of the Transfer. Developer shall give City written notice of Transfer within thirty (30) days after to the effective date of the Transfer.

## **20. PERMITTED MORTGAGES.**

(a) Leasehold Mortgage Provisions. Developer intends that the development of the Improvements be financed with various private and public loans and other financing. All parties that provide financing to Developer for development of the Improvements are referred to collectively herein as "Lenders." For purposes of this Lease, a "Leasehold Mortgage" is any mortgage, deed of trust, security agreement or collateral assignment in favor of a Lender that encumbers Developer's interest in this Lease. A "Leasehold Mortgagee" is a holder of a Leasehold Mortgage. Any Leasehold Mortgagee or designee thereof that acquires title to the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Leasehold Mortgagee, is referred to as a "Lender Transferee". Each Leasehold Mortgagee and Lender Transferee is an intended beneficiary of the terms of this Lease.

(b) Leasehold Mortgages and Transfers Authorized. City acknowledges that Developer's financing for the Improvements will require Developer to provide security interests in Developer's leasehold interest in the Premises, and Developer's interests in the Improvements (such security interests, and any assignments of rents, issues or profits derived from the ownership, use or operation of the Improvements approved by City, shall also be considered Leasehold Mortgages). Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder or any part thereof and Developer's interest in the Improvements and other rights hereunder, or any part thereof, to any Leasehold Mortgagee or other person through, or in lieu of, foreclosure, trustee's sale or other proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under the Lease, and upon such foreclosure, sale or conveyance City shall

recognize the purchaser or other direct or indirect transferee in connection therewith as the Developer hereunder to the extent of the interest so transferred.

(c) Notice to Leasehold Mortgagee. During any period in which a Leasehold Mortgage is in place, City shall give each Leasehold Mortgagee at the address set forth in this Lease or at the last address of such Leasehold Mortgagee provided in a written notice to City pursuant to the terms hereof, a duplicate copy of all notices of default or other notices that City may give to or serve in writing upon Developer pursuant to the terms of the Lease, at the same time as such notice is given to or served upon Developer, provided that such notice shall be duly given when sent to the Leasehold Mortgagee at the notice address set forth herein (or the last address of such Leasehold Mortgagee provided in a written notice to City pursuant to the terms hereof), by US Mail, registered , return receipt requested or by a recognized overnight commercial delivery service; and provided, further, that the failure of City to send a copy of such notice to Leasehold Mortgagee shall not subject City to any liability hereunder. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to City.

(d) Right of Leasehold Mortgagee to Cure. Any Leasehold Mortgagee, at its option at any time within thirty (30) days, or such longer period as may be applicable as provided below, following the expiration of the right of Developer to cure any default under the Lease, may pay any amount or do any act or thing required of Developer by the terms of the Lease. Payments made and acts performed by such Leasehold Mortgagee within such thirty (30) day period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Developer hereunder, if such payments and acts conform to the terms of such notice from City or if, together with any performance by Developer or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Developer's right to cure that so expired, but in order to prevent termination of the Lease, a Leasehold Mortgagee shall not be required to cure (A) default on obligations of Developer to satisfy or otherwise discharge any lien, charge, or encumbrance against Developer's interest in the Lease caused by a wrongful act of Developer; or (B) defaults on obligations of Developer under any indemnity provision in this Lease arising from acts or omissions of Developer ; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (it being understood that the lack of funds of the Developer or the Leasehold Mortgage shall not excuse performance by Developer or Leasehold Mortgagee); or (D) any default resulting from the acts or omissions of the City (collectively, "Excluded Defaults"). For purposes of clarification and illustration, it is the intention of the parties hereto that Excluded Defaults shall include (but not as an exclusive list) claims, damages, liability and expenses, including personal injury and property damage arising or alleged to be arising from actions or inactions of Developer such as failure to pay insurance premiums, allowing dangerous conditions to exist at the Premises or failure to operate the Premises in accordance with regulatory restrictions. Accordingly, in such event Leasehold Mortgagee shall not be required to cure such Excluded Defaults to avoid termination of the Lease, but Leasehold Mortgagee would be required to remediate, ameliorate, or eliminate such continuing conditions to City's reasonable satisfaction to avoid such termination. If the default by Developer is of such nature that it cannot practicably be cured without possession of the Premises, then the thirty-day period set forth above shall be extended for so long as a Leasehold Mortgagee shall be proceeding with reasonable diligence to foreclose on the Developer's interest or otherwise obtain possession of the Premises for itself or a receiver.

Prior to the expiration of the cure rights of Leasehold Mortgagees, the City shall not effect or cause any purported termination of the Lease nor take any action to deny Developer or any agent, possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

Without limiting the rights of Leasehold Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Leasehold Mortgagee shall have the right, but not the

obligation, at any time prior to termination of the Lease to pay all of the rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Developer hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of the Lease as the same would have been if done by Developer.

(e) Right to New Lease. If the Lease terminates for any reason, including the rejection of the Lease in a bankruptcy proceeding, then City shall give written notice of such fact to each Leasehold Mortgagee, and if one or more Leasehold Mortgagees gives written notice to City within thirty (30) days following delivery of such notice of termination by City, City agrees in such case to enter into a new ground lease for the Premises (a "New Lease") with the most senior Leasehold Mortgagee or its affiliated designee providing such notice for the remainder of the term of the Lease (including any option terms) effective as of the date of such termination, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in the Lease and with equal priority thereto, on the conditions set forth in this Article 17. Notwithstanding anything to the contrary contained herein, no termination of the Lease shall become effective until, and the lien of each Leasehold Mortgage on the Premises shall remain effective until, either a New Lease has been made pursuant to this Article 17 or no Leasehold Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Leasehold Mortgagee or its affiliated designee shall cure any monetary default by Developer hereunder, except Excluded Defaults.

The Developer under the New Lease shall have the same right, title and interest in and to all Improvements and all obligations as Developer had under the terminated Lease (other than with respect to Excluded Defaults) and the City and the new Developer shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

Nothing in this Article or the Lease shall be construed to imply that the Lease may be terminated by reason of rejection in any bankruptcy proceeding of the Developer. The parties intend, for the protection of Leasehold Mortgagees, that any such rejection shall not cause a termination of the Lease.

If the City shall, without termination of the Lease, evict the Developer, or if the Developer shall abandon the Premises, then any reletting thereof shall be subject to the liens and rights of Leasehold Mortgagees, and in any event City shall not relet the Premises or any part thereof, other than renewal of occupancies of residential Developers and leases or other occupancy agreements with new residential Developers consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Leasehold Mortgagees of the intended reletting and the terms thereof, and if any Leasehold Mortgagee shall, within thirty days of receipt of such notice, give notice to the City of such Leasehold Mortgagee's intent to pursue proceedings to foreclose on the Premises or otherwise cause the transfer thereof, then so long as the Leasehold Mortgagee shall diligently pursue such proceedings the City shall not proceed with such reletting without the written consent of such Leasehold Mortgagee.

If a Leasehold Mortgagee shall elect to demand a New Lease under this Article and only in the event that such Leasehold Mortgagee is not recognized as a proper plaintiff, City agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Developer from the Premises, and those subtenants actually occupying the Premises, or any part thereof, as designated by the Leasehold Mortgagee, subject to the rights of non-defaulting residential Developers in occupancy of

apartment units at the Premises. Leasehold Mortgagees shall cooperate with City in connection with any such actions.

Nothing herein contained shall require any Leasehold Mortgagee to accept a New Lease.

(f) Limitation on Liability of Leasehold Mortgagee. No Leasehold Mortgagee shall be liable to City unless it expressly assumes such liability in writing. In the event any Leasehold Mortgagee or other Transferee becomes the Developer under the Lease or under any new lease obtained pursuant to this Article, the Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Developer under the Lease that do not accrue during the period of time that the Leasehold Mortgagee or such other Transferee, as the case may be, remains the actual Developer under the Lease or new lease, holding record title to the leasehold interest thereunder. In no event shall any Leasehold Mortgagee or other Transferee be (i) liable for the erection, completion or restoration of any improvements; (ii) liable for any condition of the Improvements that existed prior to the date of its acquisition of Developer's interest in the Improvements, or for any damage, loss, or injury caused by such preexisting condition, or for the correction thereof or the compliance with any Law related thereto; (iii) bound by any amendment of the Lease made without the prior written consent of the Leasehold Mortgagee; or (iv) liable for any act or omission of any prior Developer of any portion of the Improvements (including Developer). Any liability of any Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Premises, and shall be enforceable solely against those interests.

(g) Estoppel Certificates; Non-disturbance Agreements. City and Developer agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or a permitted assignee, City or Developer will execute, acknowledge and deliver to the other party or to such Leasehold Mortgagee a statement in writing certifying (a) that the Lease is unmodified and in full force and effect if such be the case or, if not, the extent to which the Lease has been modified; (b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against City or Developer, as applicable, other than those, if any, so specified under the provisions of the Lease or such statement. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of City, Developer or any Leasehold Mortgagee, as the case may be, in the Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage.

(h) Actions not Effective Without Leasehold Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Developer's rights thereunder, shall be effective as to any Leasehold Mortgagee unless consented to in writing by each Leasehold Mortgagee. No subordination of the Developer's interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by City, and no joinder by Developer in any such encumbrance or assignment, shall be valid without the express written consent of each Leasehold Mortgagee. No consent or waiver of any Lender as Leasehold Mortgagee shall be effective for purposes of the Lease unless it is made in writing.

(i) No Merger. Any acquisition of the fee interest in the Premises by Developer (or any fee interest in the Improvements by City), or other event by which the leasehold estate hereunder or any part thereof and the fee interest in the Improvements shall come into common ownership, shall not cause a merger of the leasehold interest hereunder or the fee interest in the Improvements with the fee interest in Premises, without the express written consent of each Leasehold Mortgagee. Any merger of fee and leasehold estates that may occur, whether voluntary or involuntary, in whole or in part, shall not result in termination of this Lease or extinguishment of any Leasehold Mortgage, in whole or in part, without the express written consent of each Leasehold Mortgagee.

(j) Bankruptcy of City. If the Lease is rejected by City or City's trustee in bankruptcy following the bankruptcy of City under the United States Bankruptcy Code (Title 11 U.S.C.), as now or hereafter in effect, Developer shall not have the right to treat the Lease as terminated except with the prior written consent of all Leasehold Mortgagees, and the right to treat the Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Developer and each Leasehold Mortgagee shall be required as a condition to treating the Lease as terminated in connection with any such bankruptcy proceeding.

(k) Encumbrances by City. City shall not encumber the fee interest in the Land, nor assign or encumber City's interest in the Lease, unless the assignment or encumbrance is required or imposed by law or by its express terms is subject and subordinate to this Lease and the rights and interests of the Developer and Leasehold Mortgagees hereunder.

(I) Registration of Leasehold Mortgagees. Developer shall provide written notice to City of the name and address of each Leasehold Mortgagee under this Lease.

## **21. MISCELLANEOUS PROVISIONS.**

(a) Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

To the City: **City of Minot  
P.O. Box 5006  
515 2nd Ave SW  
Minot, North Dakota 57802**

To Developer: Cypress Development, LLC  
9 Caprington Road  
Henderson, Nevada 89052

(b) Applicable Law. This Lease shall be governed and construed in accordance with the laws of the State of North Dakota, and any and all actions, suits, or proceedings between the parties hereto shall only be brought in the county in which the Sites are located. In no event shall either party ever commence an action or seek to remove a pending action between the parties hereto in or to any United States Federal District Court, except in the case of a bankruptcy proceeding.

(c) Short Form Lease. Either Party shall have the right to record this Lease or, alternatively, either party shall, at the request of the other execute, acknowledge and deliver at any time after the date of this Lease a memorandum or short form of lease prepared by the requesting party, which memorandum or short form of lease shall include a notice to all persons with respect to the provisions hereof restricting the right of persons dealing with the Developer to a mechanic's lien upon the Site, in compliance with other requirements of applicable law

(d) Net Lease. The City shall not have or incur any expense or cost in its ownership of the Site during the Term of this Lease, and all such expenses including, without limitation, including real

estate and possessory interest taxes, insurance, utilities, repairs and maintenance shall be solely the responsibility of Developer.

(e) Binding Effect of Lease. The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

(f) Waiver. Any waiver of any covenant or condition by the City shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition.

(g) Definitions. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation of this Lease. Each and every term and provision of this Lease which requires any performance (whether affirmative or negative) by Developer shall be deemed to be both a covenant and a condition. The words "reenter" and "reentry" as used herein are not restricted to their technical legal meaning.

(h) Integration. No oral statement or prior written matter shall have any force or effect. No waiver of any provision of this instrument shall be effective unless in writing, signed by the waiving party. Each party agrees that it is not relying on any representations or agreements other than those contained in this Lease.

(i) Invalidity of Certain Provisions. If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the remainder of this Lease shall not be affected thereby and each and every remaining provisions of this Lease shall be enforceable to the fullest extent permitted by law.

(j) Option to Cancel for Financing Reasons. The City acknowledges that it has been advised that Developer may procure some part or all of the funds to finance on an interim and long-term basis, the construction of Improvements. If any such financing institution, agency or entity requires any modification of the terms and provisions of this Lease as a condition to such financing (including the issuance of a commitment) as Developer may desire, then the City agrees to approve and execute such modifications within thirty (30) days after Developer's request therefor, provided such modification is lawful and shall not materially modify the terms and conditions hereof or impose any liability on the City.

(k) Amendment of Lease. Neither this Lease nor any provision hereof may be changed, modified, waived, discharged or terminated except by an instrument dated subsequent to the date hereof duly executed by the parties hereto.

(l) Termination. This Lease shall be terminated as provided for herein.

(m) Material Breach. Means a default in a party's performance obligation specified in this Lease that goes to the heart of the bargain and is so significant that it destroys the value of the contract and renders the Lease irreparably broken.

(n) Covenants Binding On Successors And Assigns. All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors of the respective Parties.

(o) Captions. The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

(p) Meaning Of Terms. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

(q) Lease Construed As A Whole. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. City and Developer acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party shall not be used in the interpretation of this Lease or any exhibit or amendment hereto.

(r) Severability. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

(s) Survival. Each provision of this Lease, the full performance of which is not required prior to the expiration of the Term hereof or its earlier termination shall survive expiration or earlier termination, and be fully enforceable thereafter, including, without limitation, all indemnity obligation hereunder.

(t) Memorandum Of Lease. The Parties shall execute and acknowledge a Memorandum of this Lease in the form attached as Exhibit C for public recordation purposes, so that public notice of the Term of the Lease be given; however, this Lease shall not be recorded.

(u) Amendment. This Lease may be amended, or modified, only in writing, signed by both City and Developer.

(v) No Personal Liability. No stockholder, director, officer, member, or employee of City shall be personally liable to Developer or any successor in interest to Developer in the event of any default or breach by City or for any amount which may become due to Developer or such successor with respect to any obligations under the terms of this Lease. No officer or employee of Developer shall be personally liable to City or any successor in interest to City in the event of any default or breach by Developer or for any amount which may become due to City or such successor with respect to any obligations under the terms of this Lease.

(w) Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

(x) Entire Agreement. This Lease contains the final and complete expression of the Parties relating in any manner to the leasing, use and occupancy of the Premises and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by City and Developer.

(y) Counterparts. This Lease may be executed in several counterparts, each of which shall be

deemed an original, and all such counterparts together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:

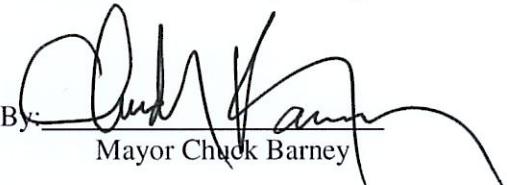
*Lisa Jundt*  
*Lisa Jundt*

Print Name: L

Print Name: \_\_\_\_\_

CITY:

**THE CITY OF MINOT,**  
a North Dakota municipal corporation

By:   
Mayor Chuck Barney

Date: 1/15/15

STATE OF NORTH DAKOTA  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me \_\_\_\_\_,  
personally appeared \_\_\_\_\_, known to me (or proved to me on oath of \_\_\_\_\_) to be  
\_\_\_\_\_ of the limited liability company that is described in and that \_\_\_\_\_  
executed the within instrument, and acknowledgement to me that such limited liability company executed  
the same.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Notary Public, State of North Dakota  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
(Seal)

[DEVELOPER SIGNATURE PAGE FOR CYPRESS RENAISSANCE LEASE]

WITNESSES:



Print Name: Dominic O'Dierno

Print Name: \_\_\_\_\_

DEVELOPER:

**CYPRESS DEVELOPMENT, LLC,**  
a North Dakota limited liability company

By: 

Name: Steve Larson  
Title: Managing Member

Date: 1-19-15

STATE OF NORTH DAKOTA  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me \_\_\_\_\_,  
personally appeared \_\_\_\_\_, known to me (or proved to me on oath of \_\_\_\_\_) to be  
\_\_\_\_\_ of the limited liability company that is described in and that \_\_\_\_\_  
executed the within instrument, and acknowledgement to me that such limited liability company executed  
the same.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Notary Public, State of North Dakota  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
(Seal)

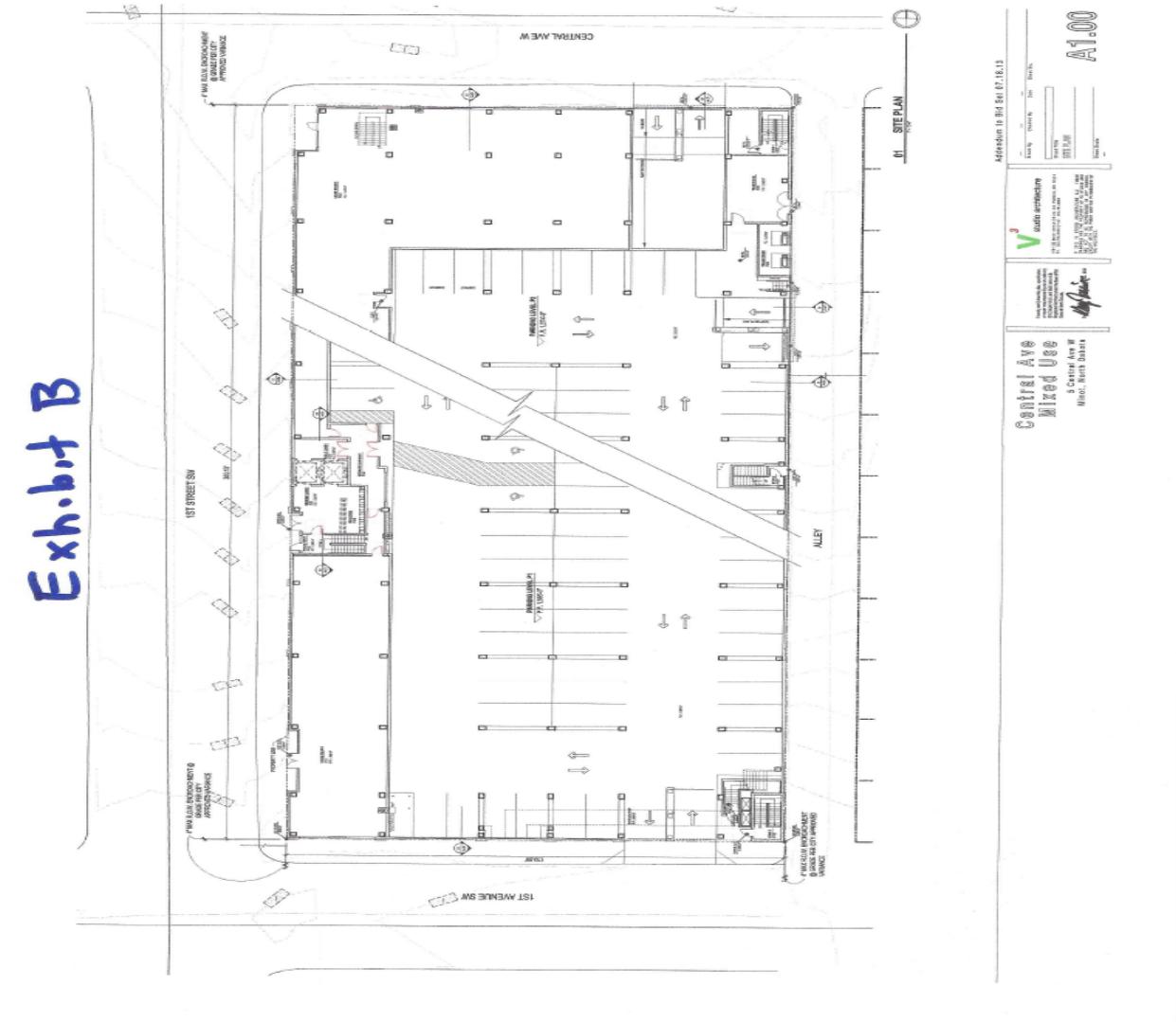
**EXHIBIT A**

**Legal Description**

- Address: 205 1<sup>st</sup> St. SW, Minot, ND 58701
- Legal Description: LOTS 13 THRU 24, BLOCK 11, ORIGINAL MINOT ADDITION
- Parcel #: MI242381100240
- Includes the property (land) and all Parking Ramp Improvements thereon.

**EXHIBIT B**  
Project Site Plan

## Exhibit B



## **EXHIBIT C**

### **MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease Agreement (the "Memorandum") is entered into this 19<sup>th</sup> day of January, 2015, by and between The CITY OF MINOT, a North Dakota municipal corporation ("Landlord"), whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company, whose principal address is 9 Caprington Road, Henderson, Nevada, 89052, its successors and/or assigns ("Developer").

#### **Recitals**

A. Landlord and Tenant have entered into a Lease Agreement (the "Lease") dated as of January 19, 2015 (the "Commencement Date") pursuant to which Landlord has demised and let to Tenant the property and improvements thereon at 205 1<sup>st</sup> St. SW, Minot, ND 58701, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Leased Premises").

B. Landlord and Tenant desire to execute this Memorandum, which is to be recorded in the Public Records of Ward County, North Dakota, in order that third parties may have notice of the estate of Tenant in the Leased Premises and of the Lease.

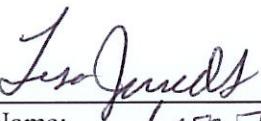
#### **Agreement**

NOW, THEREFORE, in consideration of the rents and covenants provided for in the Lease to be paid and performed by Tenant, Landlord does hereby demise and let unto Tenant the Leased Premises on the terms, and subject to the conditions set forth in the Lease, among which are the following:

1. TERM. The term of this Lease ("Term") begins on the Commencement Date and continues for ninety-nine (99) years after the Commencement Date.
2. INCORPORATION OF LEASE TERMS BY REFERENCE. All of the terms, conditions, provisions and covenants of the Lease are incorporated in this Memorandum by reference as though written out at length herein, including all licenses, rights, privileges and easements appurtenant thereto. In the event of any inconsistency between the provisions of this Memorandum and those of the Lease, the provisions of the Lease shall control. Copies of the Lease are held by both Landlord and Tenant at their respective addresses first set forth above.

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Memorandum to be executed by their respective duly authorized representatives as of the date first above written.

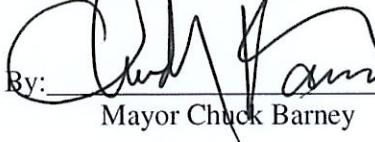
**WITNESSES:**

  
Print Name: Lisa Jundt

Print Name: \_\_\_\_\_

**CITY:**

**THE CITY OF MINOT,**  
a North Dakota municipal corporation

  
By: Chuck Barney  
Mayor Chuck Barney

Date: 1/15/15

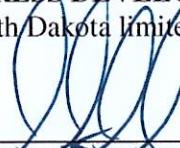
**WITNESSES:**

  
Print Name: Dominic O'Dierno

Print Name: \_\_\_\_\_

**DEVELOPER:**

**CYPRESS DEVELOPMENT, LLC,**  
a North Dakota limited liability company

  
By: \_\_\_\_\_  
Name: Steve Larson  
Title: Managing Member

Date: 1-19-15

STATE OF NORTH DAKOTA  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me \_\_\_\_\_,  
personally appeared \_\_\_\_\_, known to me (or proved to me on oath of \_\_\_\_\_) to be  
\_\_\_\_\_ of the limited liability company that is described in and that \_\_\_\_\_  
executed the within instrument, and acknowledgement to me that such limited liability company executed  
the same.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Notary Public, State of North Dakota

Commission No. \_\_\_\_\_

My commission expires: \_\_\_\_\_

(Seal)

## MEMORANDUM OF LEASE

### Exhibit A – Legal Description

- Address: 205 1<sup>st</sup> St. SW, Minot, ND 58701
- Legal Description: LOTS 13 THRU 24, BLOCK 11, ORIGINAL MINOT ADDITION
- Parcel #: MI242381100240
- Includes the property (land) and all Parking Ramp Improvements thereon.

Cypress Development Management Agreement

**Exhibit E2**  
"Central Avenue 9; -Year Lease

## CYPRESS CENTRAL LEASE

THIS CYPRESS CENTRAL LEASE (this "Lease") is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and Cypress Development, LLC, a North Dakota limited liability company, whose principal address is 9 Caprington Road, Henderson, Nevada, 89052, its successors and/or assigns ("Developer"). The City and Developer are hereinafter sometimes individually referred to as a "Party" and collectively, as the "Parties."

### WITNESSETH:

**WHEREAS**, the City is the owner of certain real property located in the City of Minot, North Dakota (the "Site"); and

**WHEREAS**, pursuant to that certain Disposition and Development Agreement between the City and Developer (the "Developer"), Developer agreed to develop the Site and construct thereon a mixed-use residential/commercial development (the "Project") consisting of two (2) phases, the Parking Structure Improvements and the Residential & Commercial Improvements (collectively, the "Project Improvements"), which Project shall be developed and constructed substantially in accordance with the Scope of Development approved by the City, and certain Design Documents and Construction Documents approved (or to be approved) by the City in accordance with the DDA;

**WHEREAS**, the City and Developer entered into a lease effective October 7, 2013 (the "Original Cypress Central Lease"); and

**WHEREAS**, the City and Developer desire to enter into this Lease in order to memorialize certain agreements pertaining to the development and long term lease of the Site, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Lease and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

**1. INCORPORATION OF RECITALS.** The parties hereby ratify and confirm the foregoing recitals as being true and correct, and hereby incorporate said recitals into the body of this Lease.

**2. SITE.** The City hereby leases to Developer and Developer hereby leases from the City the following described real property and Parking Ramp Improvements located in the City of Minot, Ward County, North Dakota, more particularly described in Exhibit A attached hereto; together with all licenses, rights, privileges and easements appurtenant thereto.

**3. TERM.** This Lease replaces and supersedes the Original Cypress Central Lease in its entirety. Accordingly, upon full execution of this Lease, the Original Cypress Central Lease will automatically terminate and neither party shall have any further obligations thereunder except those obligations that expressly survive expiration or termination thereof. The term of this Lease ("Term") commences upon full execution hereof, (the "Commencement Date") and continues for ninety-nine (99) years after the Commencement Date.

(a) **Force Majeure.** Upon the occurrence of a significant condition beyond the control of the City or the Developer that precludes the satisfaction of any condition set forth in this Article, the City or

the Developer may, by providing written notice to the other, extend all contractual dates by one (1) day for every day of the delay, plus a reasonable mobilization period. If Developer delays Project contractual dates for more than two (2) years, the City shall have the right to terminate this Lease in its entirety, without penalty or damages. Upon the occurrence of a condition beyond the control of the City that precludes or reasonably prohibits the completion of the Project for more than two (2) years, Developer shall have the right to terminate this Lease in its entirety, without penalty or damages.

(b) Quiet Enjoyment; Public Parking Spaces. At all times during the Term, Developer shall have the right to peacefully and quietly have, hold and enjoy the Premises and the Improvements, subject to the terms of this Lease. Notwithstanding the foregoing, Developer agrees to provide up to 129 monthly parking passes (Public Parking Passes) to local residents and commercial businesses as follows: i) 114 passes valid for access to the Parking Structure Monday-Friday from 7 am to 6 pm and, ii) 15 spaces valid for parking 24 hours per day, 7 days per week. The Public Parking Passes shall be available at a cost determined by the Developer in Developer's sole discretion. The Developer shall also have the right to sell other parking passes to residential tenants and the public in its sole discretion. Developer agrees to offer such parking passes at reasonable rates, as required by applicable law.

#### **4. PROJECT IMPROVEMENTS.**

(a) Construction and Completion. Developer shall construct and complete the Project described in the Construction Drawings and Technical Specifications, which shall constitute the Project Improvements for the Site (the "Project Improvements"). Developer has commenced construction of the Project Improvements. The Project shall be developed in the following two (2) phases (collectively, the "Project Improvements"): (a) 225-space, multi-level parking structure to be constructed by contractors hired by the City and managed by Developer (the "Parking Structure Improvements"); and (b) 13,543 square feet of commercial space and approximately 175 units of residential to be constructed by Developer (the "Residential & Commercial Improvements"). The Parking Structure Improvements are to be substantially completed on or before the later of i) the 3<sup>rd</sup> anniversary of the Original Lease, or ii) ten (10) months after the revised construction substantial completion date provided to the City by the general contractor under contract to complete the Parking Structure Improvement ("Parking Structure Completion Date"). The Residential and Commercial Improvements are to be substantially completed as soon as practicable, but no later than the 9<sup>th</sup> anniversary of the Original Lease (October 6, 2022), the "Residential and Commercial Improvement Completion Date". These substantial completion dates are subject to extension to the extent permitted by the applicable construction contract, due to unforeseen conditions, force majeure, commercial impracticability or other delays requested of and approved by the City, or upon mutual agreement of the parties, should it be determined that it is in the best interest to delay the improvements or to significantly modify the scope of the improvements currently planned. The Project Site attached hereto as Exhibit B shall not constitute a representation or warranty by either the City or Developer to be the final plan of the development of the Site or Project Improvements. After approval of the Project by the City as set forth in the Work Letter, Developer may change the square footage of individual components or the number of commercial or residential units up to a cumulative total of 20% of the approximately square footage and units described herein without the consent of the City, provided that such actions lawfully comply with existing city zoning ordinances.

(b) Ownership of Residential & Commercial Improvements. City acknowledges and agrees that the Residential and Commercial Improvements, and all additions, alterations and improvements thereto or replacements thereof and all appurtenant thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely and exclusively by Developer. Developer acknowledges and agrees that the land and the Parking Structure improvements, and all additions, alterations and improvements thereto or replacements thereof and all appurtenant thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely and exclusively by the City. During the Term

and for the tax years during which the Term begins and ends, Developer alone shall be entitled to any and all tax attributes of ownership of the Project Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions, and the like, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Residential and Commercial Improvements.

**5. RENT.** During the Term, Developer agrees to pay rent ("Rent") to the City as follows: (a) each year on January 1, Developer pays the City One Hundred Dollars (\$100) as a lease payment to the City for the land ("Land Lease"); (b) upon completion of all Project Improvements and after commencement of the Ninety-Nine Year Term, \$100 per year for a lease on the Parking Structure Improvements, payable on January 1 of each year ("Parking Structure Lease"); and (c) in addition on October 15, 2016, Developer shall pay the City One Hundred Twenty Eight Thousand Seven Hundred Fifty Dollars (\$128,750); on October 15, 2017, the Developer shall pay the City One Hundred Twenty Thousand Seven Five Hundred Dollars (\$127,500) and on October 15, 2018, Developer shall pay the City One Hundred Twenty Six Thousand Two Hundred Fifty Dollars (\$126,250.) Developer shall pay Rent to the City at the City's address for notices, or to such other person or such other place as directed written notice to Developer from the City. In the event that the payments under (b) herein have not all been paid and this Lease is superseded by the Lease described in Exhibit C, then Developer shall remain liable for the remaining balance until such balance is paid to the City.

(a) Program Income. In addition to the Rent due to the City, Income received from the use of the Parking structures, and costs incidental to the maintenance thereof, must be reported to the City on a quarterly basis. For purposes of such Federal reporting requirements, "Program Income" shall be defined as annual revenue generated from Public Parking Passes (net of fifty percent (50%) of the operating expenses, maintenance and replacement reserves) in excess of \$25,000.00. Program Income must be returned to the City on an annual basis for use by the City on eligible CDBG activities.

**6. PREMISES TAXES.** In addition to Rent and other sums payable by Developer under this Lease, Developer shall be responsible for taxes, possessory interest and assessments on the Site as set forth below:

(a) Real Property Taxes. Developer shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes and assessments imposed upon the portions of the Site leased or owned by Developer. Notwithstanding the foregoing, the City has confirmed the Site is included in the "Renaissance Zone". It is further understood that the City may levy property taxes on the portion of the Site owned by the City (the land and the Parking Ramp), according to applicable law, subject to any exemptions such as a Renaissance Zone designation.

## **7. INSURANCE.**

(a) City's Insurance. During the Term, the City shall procure and maintain in full force and effect with respect to the Site: (i) a policy or policies of property insurance as available through the North Dakota Insurance Reserve Fund (including, to the extent required, sprinkler leakage, vandalism and malicious mischief coverage, and any other endorsements required by the holder of any fee mortgage and earthquake, flood and terrorism insurance to the extent the City reasonably deems prudent); and (ii) a policy of commercial liability insurance, in the form and content acceptable to the City, insuring the City's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site or Common

Areas. If said policies of insurance are not available through the North Dakota Insurance Reserve Fund, the Developer may obtain a policy or policies of insurance from third party providers.

(b) Developer's Public Liability. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site by Developer, a policy or policies of commercial liability insurance, written by a reputable insurance company authorized to do business in the State of North Dakota in commercially reasonable form and content acceptable to the City insuring Developer's activities with respect to Site and the Common Areas for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about Site in an amount of not less than Two Million Dollars (\$2,000,000). The policy shall insure the hazards of Site and Developer's operations therein, shall include independent contractor and contractual liability coverage and shall: (a) name the City and the City's managing agent as an additional insured; (b) contain a cross liability provision and; (c) contain a provision that the insurance provided hereunder shall be primary and non-contributing with any other insurance available to the City.

(c) Developer's Property and Other Insurance. Developer shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of Site, a policy or policies of standard form property insurance insuring against the perils of fire, extended coverage, vandalism, malicious mischief, special extended coverage and sprinkler leakage. This insurance policy shall be upon the Project Improvements all property owned by Developer, for which Developer is legally liable or that was installed at Developer's expense, and which is located in Site, including without limitation, furniture, fittings, installations, cabling, fixtures (other than the Project Improvements installed by the City), and any other personal property, in the amount of not less than one hundred percent (100%) of the full replacement costs thereof. This insurance policy shall also insure direct or indirect loss of Developer's earning attributable to Developer's inability to use fully or obtain access to Site.

(d) Form of Insurance/Certificates. All policies shall be written in a form satisfactory to the City and shall be taken out with insurance companies licensed in the state in which the State of North Dakota and holding a General Policy Holder's Rating of "A" and a financial rating of "A" or better, as set forth in the most current issues of A.M. Best's Insurance Guide. Developer shall furnish to the City, prior to Developer's entry into Site and thereafter within ten (10) days prior to the expiration of each such policy, a certificate of insurance (or renewal thereof) issued by the insurance carrier of each policy of insurance carried by Developer pursuant hereto and, upon request by the City, a copy of each such policy of insurance. Said certificates shall expressly provide that such policies shall not be cancelable or subject to reduction of coverage below the minimum amounts required by this Lease or required by any lender having an interest in the Site or otherwise be subject to modification except after thirty (30) days prior written notice to the parties named as insured herein.

(e) Developer's Failure. If Developer fails to maintain any insurance required in the Lease, Developer shall be liable for any loss or cost resulting from said failure, and the City shall have the right to obtain such insurance on Developer's behalf and at Developer's sole expense. This Section 7(e) shall not be deemed to be a waiver of any of the City's rights and remedies under any other section of this Lease. If the City obtains any insurance which is the responsibility of Developer to obtain under this Article 7, the City shall deliver to Developer a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Developer shall promptly remit said amount as additional Rent to the City.

(f) Intentionally Omitted.

(g) Indemnification. To the extent allowed under North Dakota law and subject to available insurance, Developer, as a material part of the consideration to be rendered to the City, hereby indemnifies and agrees to defend and hold the City, the City's officers, employees and agents and Lender

and Site harmless for, from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent caused by the negligence of Developer's or Developers' officers, employees, agents, assignees, sub-developers, concessionaires, licensees, contractors or invitees' use, maintenance, occupation, operation or control of Site during the Term, or resulting from any breach or default in the performance of any obligation to be performed by Developer hereunder or for which Developer is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, or to the extent arising from any act, neglect, fault or omission of Developer or any of Developer's officers, employees, agents, servants, sub-developers, concessionaires, licensees, contractors or invitees, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Site or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the Developer, except and to the extent as may arise out of the negligence or willful misconduct of the City and/or its agents, employees or contractors.

(i) To the extent allowed under North Dakota law and subject to available insurance, City, as a material part of the consideration to be rendered to Developer, hereby indemnifies and agrees to defend and hold Developer and Site harmless from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property to the extent caused by the negligence of the City's or the City's employees, agents, or contractors, gross negligence or willful misconduct, or resulting from any breach or default in the performance of any obligation to be performed by the City hereunder or for which the City is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, and (ii) from and against all reasonable legal costs and charges, including reasonable attorneys' and other reasonable professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging Developer and/or Premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the City, except and to the extent as may arise out of the negligence or willful misconduct of Developer and/or its officers, agents, employees, assignees, sub-developers, concessionaires, licensees, contractors, or invitees.

(ii) In no event shall the City, its agents, employees and/or contractors be liable for any personal injury or death or property damage caused by other lessees or persons in or about Site and/or the Project, as the case may be, or caused by public or quasi-public work, or for consequential damages arising out of any loss of the use of Site or any equipment or facilities therein by Developer or any person claiming through or under Developer.

**8. LIENS.** Developer shall promptly file and/or record, as applicable, all notices of completion provided for by law, and shall pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Developer or at the request of the City on behalf of Developer, and shall keep the Site and the Site free and clear of all mechanics' and materialmen's liens in connection therewith. The City shall have the right, and shall be given ten (10) business days written notice by Developer prior to commencement of the work, to post or keep posted on the Site, or in the immediate vicinity thereof, any notices of non-responsibility for any construction, alteration, or repair of the Site by Developer. If any such lien is filed, Developer shall cause same to be discharged of record within thirty (30) days following written notice thereof, or if Developer disputes the correctness or validity of any claim of lien, the City may, in its reasonable discretion, permit Developer to post or provide security in a form and amount acceptable to the City to insure that title to the Site remains free from the lien claimed. If said lien is not timely discharged the City may, but shall not be required to, take

such action or pay such amount as may be necessary to remove such lien and Developer shall pay to the City any such amounts expended by the City, together with interest thereon.

## **9. HAZARDOUS MATERIALS.**

### **(a) Defined Terms**

(i) "Hazardous Materials" means, among other things, any of the following, in any amount: (a) any petroleum or petroleum derived or derivative product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls and medical wastes; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation or court decisions now existing or hereafter existing as the same may be interpreted by government offices and agencies.

(ii) "Hazardous Materials Laws" means any federal, state or local statutes, laws, ordinances or regulations or court decisions now existing or hereafter existing that control, classify, regulate, list or define Hazardous Materials or require remediation of Hazardous Materials contamination.

(iii) "Recognized Environmental Conditions" means the presence or likely presence of hazardous Substance on the Site under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Site or into the ground, ground water, or surface water of the Site, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

(iv) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

(v) "Unforeseen Environmental Condition" means the presence of a Hazardous Substance on the Site that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by applicable law.

(b) Developer Compliance with Hazardous Materials Laws. Developer will not cause any Hazardous Material to be brought upon, kept, generated or used on the Site in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Developer, at its sole cost and expense, will comply with (and obtain all permits required under) all Hazardous Materials Laws, groundwater wellhead protection laws, storm water management laws, fire protection provisions, and prudent industry practice relating to the presence, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Site that Developer brings upon, keeps, generates or uses on the Site and in no event shall Developer allow any liens or encumbrances pertaining to Developer's use of Hazardous Materials to attach to any portion of the Site. On or before the expiration or earlier termination of this Lease, Developer, at its sole cost and expense, will completely remove from the Site (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Developer causes to be present in, on, under or about the Site. Developer will not take any remedial action in response to the presence of any Hazardous

Materials in on, under or about the Site, nor enter into (or commence negotiations with respect to) any settlement agreement, consent decree or other compromise with respect to any claims relating to or in any way connected with Hazardous Materials in, on, under or about the Site, without first notifying the City of Developer's intention to do so and affording the City reasonable opportunity to investigate, appear, intervene and otherwise assert and protect the City's interest in the Site. The City shall have the right from time to time to inspect the Project to determine if Developer is in compliance with this Section 9.

(c) Phase I Environmental Assessment. Developer has undertaken a Phase I Environmental Assessment ("Assessment") of the Site in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). Developer has provided a copy of the Assessment to the City. The City may, at its sole cost and expense, undertake further environmental testing of the Site.

**10. RECONSTRUCTION.** If the Project is damaged or destroyed during the Term, the Developer shall, except as hereinafter provided, diligently repair or rebuild it to substantially the condition in which it existed immediately prior to such damage or destruction. If the Developer is obligated or elects to repair or restore as herein provided, the Developer shall be obligated to make repair or restoration only to the extent of available insurance proceeds.

## **11. OWNERSHIP OF PROPERTY.**

(a) Site. The City warrants and represents to Developer that it is the owner of the fee simple title to the Site, and has full right and authority to enter into this Lease and perform the obligations arising hereunder. The City further represents and warrants that neither the City's interest in this Lease nor the City's fee title to the Site are, as of the date hereof, encumbered by any mortgage.

(b) The City hereby covenants and agrees that from and after the date hereof, and for the entire Term of this Lease, the City shall not transfer, assign, mortgage or otherwise encumber its interest in this Lease or its fee title to the Site or any part thereof or any interest therein.

(c) Improvements. Developer shall own all Commercial and Residential Improvements constructed or placed upon the Site. The City agrees that the Developer shall have the right at any time and from time to time to remove any and all fixtures, furniture, furnishings, equipment and other property installed in or upon the Site. Developer acknowledges and agrees that the land and the Parking Structure improvements, and all additions, alterations and improvements thereto or replacements thereof and all appurtenant thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely and exclusively by the City.

**12. TERMINATION FOR CAUSE.** City has the right to terminate this Lease if the Developer is found to be in Material Breach of contract under Section 12 of this Agreement, if Developer is unable to cure such Material Breach within 120 days of written notice by the City to Developer. For purposes of this Section 12, Material Breach includes:

- (a) Failure to pay amounts due under this Lease, including Rent or Program Income;
- (b) Failure to maintain required Insurance;
- (c) After the one hundred and eightieth (180<sup>th</sup>) day following the Commencement Date, Developer's failure to remove from title to the Premises, pay, or post acceptable security on account of, any lien filed by a mechanic, workman, or materialmen in accordance with Section 8 of this Lease, within a reasonable period of time; or

(d) Other Material Breach as that term is defined in Section 21 below.

**13. COMPLETION DATE DEFAULT.** Developer fully intends to complete the Improvements in a timely manner; however, events beyond the control of Developer may make it difficult or impossible to do so.

(a) Failure to meet Residential and Commercial Improvement Completion Date: In addition to section 12 above, if Developer does not meet the Residential and Commercial Improvement Completion Date described in Section 4(a), Developer will be considered in default unless the parties have either i) agreed to extend the Residential and Commercial Improvement Completion Date, or ii) agreed to remove the obligation to complete the Commercial or Residential Improvements in the best interests of the parties, such as for changing market conditions. Should Developer fail to substantially complete the Commercial and Residential Improvements prior to the Residential and Commercial Improvement Completion Date, the City will have the right to impose liquidated damages upon Developer at the rate of \$1,000 per week until the Residential and Commercial Improvements reach substantial completion.

(b) Failure to meet Parking Ramp Improvement Completion Date: City's general contractor has the responsibility to complete the Parking Ramp Improvement and Developer shall not be responsible for delay to completion of the Parking Ramp Improvement, except to the extent the general contractor's failure to achieve substantial completion is directly caused by the acts or omissions of Developer (e.g. Developer's interference with the general contractor).

**14. USE.** Developer shall use and develop the Site in conformity with the DDA, and for no other use without first obtaining the City's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. At all times Developer's use of the Site shall comply with all rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities and fire insurance rating organizations or similar bodies.

**15. MAINTENANCE.** Developer, at its cost, shall maintain in good condition and repair and replace all structural and non-structural portions of the Project Improvements, and all Project Improvements thereon, including but not limited to the building, and all fixtures, equipment and personal property therein. The Developer shall keep the Project Improvements in a clean and developable condition and permit no waste to be committed therein.

## **16. UTILITIES**

(a) Utility Easements. The City shall grant to Developer such easements on the adjoining property owned by the City as the Developer, any utility company or companies, and/or the municipal authorities having jurisdiction thereof, may reasonably require to install, provide and maintain all utilities to the Project and grant and/or use its best efforts to obtain such modifications of existing utility easements as Developer may reasonably request so as to remove any existing easements from their present locations to the perimeter or boundaries of the Site to avoid or reduce interference with the construction of the Project Improvements and the continued use thereof. The City shall, promptly upon request, execute in recordable form such instruments granting such easements and/or modifications thereof as may be reasonably requested by any of the aforesaid parties.

(b) Utility Charges. Developer agrees to pay all charges for water, gas, electricity and all other utilities services used by the Developer on the Project when due.

## **17. CITY'S INTEREST IN THE SITE TO DEVELOPER'S FINANCING.**

City acknowledges and agrees that it will not be possible for the Developer to construct the Project Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the construction of said Improvements and the development of the Project. However, it is recognized that these loans or financial arrangements must not require the City's fee simple interest in the real property described in the attached Exhibit A to secure or guarantee payment of the loans or financial arrangements undertaken by the Developer. Further, Developer agrees to secure a financing commitment of at least Two Million One Hundred Fifty Thousand Dollars (\$2,150,000; \$2.5 million less \$350,000 in expenses already paid toward improvement costs) ("Financing") for this Site's Parking Structure Improvements on or before the later of i) February 12, 2015, or ii) thirty (30) days after City Council approval and execution of all documents between Developer and City currently being revised, with closing to occur within sixty (60) days thereafter, to be payable into an escrow account or other account as mutually agreed between the parties to provide additional funding for the construction costs of the Parking Structure Improvements as agreed by the parties.

## **18. CONDEMNATION.**

(a) Total Condemnation. If the whole of the Premises and the Improvements, (or such portion of the Premises and Improvements as renders it infeasible, in Developer's sole discretion, for Developer to continue to operate and maintain the Premises and Improvements), shall be appropriated or condemned under power of eminent domain during the Term, Developer reserves unto itself the right to prosecute Developer's claim for an award for damages for the termination of this Lease caused by such appropriation or taking, together with damages based on the value of Developer's Improvements on the Premises and damages Developer may sustain caused by such appropriation and taking of, or the injury to, Developer's leasehold interest. City shall be entitled to prosecute City's claim for the fee interest in the Premises, subject to the Lease and damages City may sustain caused by such appropriation and taking of, or the injury to, City's fee interest. In such event, this Lease shall terminate when Developer can no longer use the Premises in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not preclude nor restrict Developer's right to an award as herein before provided.

(b) Partial Condemnation. In the event that a part of the Premises shall be taken or condemned under circumstances in which Developer desires to continue the Lease, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In that event Developer shall, at Developer's own cost and expense, make all repairs to the buildings and Improvements on the Premises affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Compensation available or paid to City or Developer upon such a partial taking or condemnation shall be paid (i) to Developer to the extent that such compensation is attributable the taking of Developer's leasehold interest and the Improvements and (ii) the remainder shall be paid to City.

(c) Temporary Taking. If there shall be a temporary taking with respect to all or any part of the Premises or of Developer's interest in this Lease, then the Term shall not be reduced and Developer shall continue to pay in full all rents, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Developer shall not be required to perform such obligations that Developer is prevented from performing by reason of such temporary taking. In the event of any Temporary Taking, Developer shall be entitled to receive the entire amount of any award made for the Taking, whether paid by way of damages, rent or otherwise, unless the period of temporary

use or occupancy shall extend to or beyond the end of the Term, in which case the award shall be prorated between City and the Developer as of the last day of the Term.

(d) Joinder. If a Leasehold Mortgage exists, the Leasehold Mortgagees, to the extent permitted by law, shall be made parties to any taking proceeding and all rights of Developer shall be subject to the terms of the Leasehold Mortgages.

## **19. SUBLETTING AND ASSIGNMENT.**

(a) Subletting. Developer shall have the right to sublease all or any part of the Premises for any time or times during the Term with the consent of City, such consent not to be unreasonably withheld. All subleases shall be in writing and shall be expressly subject to the terms of this Lease.

(b) Assignment. Developer may Transfer this Lease, including, without implied limitation, to any Affiliate of Developer with City's consent, such consent not to be unreasonably withheld, and as a result of (a) sale or exchange of Developer's stock on a national exchange; (b) merger or consolidation; (c) exchange of stock between Developer's parent company, if any, and a subsidiary; or (d) the sale of substantially all of Developer's stock or assets. Any assignee, purchaser or transferee of Developer's interest in this Lease (each a "Transferee") shall assume Developer's obligations under this Lease occurring after the date of the Transfer. Developer shall give City written notice of Transfer within thirty (30) days after to the effective date of the Transfer.

## **20. PERMITTED MORTGAGES.**

(a) Leasehold Mortgage Provisions. Developer intends that the development of the Improvements be financed with various private and public loans and other financing. All parties that provide financing to Developer for development of the Improvements are referred to collectively herein as "Lenders." For purposes of this Lease, a "Leasehold Mortgage" is any mortgage, deed of trust, security agreement or collateral assignment in favor of a Lender that encumbers Developer's interest in this Lease. A "Leasehold Mortgagee" is a holder of a Leasehold Mortgage. Any Leasehold Mortgagee or designee thereof that acquires title to the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Leasehold Mortgagee, is referred to as a "Lender Transferee". Each Leasehold Mortgagee and Lender Transferee is an intended beneficiary of the terms of this Lease.

(b) Leasehold Mortgages and Transfers Authorized. City acknowledges that Developer's financing for the Improvements will require Developer to provide security interests in Developer's leasehold interest in the Premises, and Developer's interests in the Improvements (such security interests, and any assignments of rents, issues or profits derived from the ownership, use or operation of the Improvements approved by City, shall also be considered Leasehold Mortgages). Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder or any part thereof and Developer's interest in the Improvements and other rights hereunder, or any part thereof, to any Leasehold Mortgagee or other person through, or in lieu of, foreclosure, trustee's sale or other proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under the Lease, and upon such foreclosure, sale or conveyance City shall recognize the purchaser or other direct or indirect transferee in connection therewith as the Developer hereunder to the extent of the interest so transferred.

(c) Notice to Leasehold Mortgagee. During any period in which a Leasehold Mortgage is in place, City shall give each Leasehold Mortgagee at the address set forth in this Lease or at the last address of such Leasehold Mortgagee provided in a written notice to City pursuant to the terms hereof, a duplicate copy of all notices of default or other notices that City may give to or serve in writing upon Developer pursuant to the terms of the Lease, at the same time as such notice is given to or served upon Developer, provided that such notice shall be duly given when sent to the Leasehold Mortgagee at the notice address set forth herein (or the last address of such Leasehold Mortgagee provided in a written notice to City pursuant to the terms hereof), by US Mail, registered , return receipt requested or by a recognized overnight commercial delivery service; and provided, further, that the failure of City to send a copy of such notice to Leasehold Mortgagee shall not subject City to any liability hereunder. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to City.

(d) Right of Leasehold Mortgagee to Cure. Any Leasehold Mortgagee, at its option at any time within thirty (30) days, or such longer period as may be applicable as provided below, following the expiration of the right of Developer to cure any default under the Lease, may pay any amount or do any act or thing required of Developer by the terms of the Lease. Payments made and acts performed by such Leasehold Mortgagee within such thirty (30) day period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Developer hereunder, if such payments and acts conform to the terms of such notice from City or if, together with any performance by Developer or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Developer's right to cure that so expired, but in order to prevent termination of the Lease, a Leasehold Mortgagee shall not be required to cure (A) default on obligations of Developer to satisfy or otherwise discharge any lien, charge, or encumbrance against Developer's interest in the Lease caused by a wrongful act of Developer; or (B) defaults on obligations of Developer under any indemnity provision in this Lease arising from acts or omissions of Developer ; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (it being understood that the lack of funds of the Developer or the Leasehold Mortgage shall not excuse performance by Developer or Leasehold Mortgagee); or (D) any default resulting from the acts or omissions of the City (collectively, "Excluded Defaults"). For purposes of clarification and illustration, it is the intention of the parties hereto that Excluded Defaults shall include (but not as an exclusive list) claims, damages, liability and expenses, including personal injury and property damage arising or alleged to be arising from actions or inactions of Developer such as failure to pay insurance premiums, allowing dangerous conditions to exist at the Premises or failure to operate the Premises in accordance with regulatory restrictions. Accordingly, in such event Leasehold Mortgagee shall not be required to cure such Excluded Defaults to avoid termination of the Lease, but Leasehold Mortgagee would be required to remediate, ameliorate, or eliminate such continuing conditions to City's reasonable satisfaction to avoid such termination. If the default by Developer is of such nature that it cannot practicably be cured without possession of the Premises, then the thirty-day period set forth above shall be extended for so long as a Leasehold Mortgagee shall be proceeding with reasonable diligence to foreclose on the Developer's interest or otherwise obtain possession of the Premises for itself or a receiver.

Prior to the expiration of the cure rights of Leasehold Mortgagees, the City shall not effect or cause any purported termination of the Lease nor take any action to deny Developer or any agent, possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

Without limiting the rights of Leasehold Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all of the rent due hereunder, with all due

interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Developer hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of the Lease as the same would have been if done by Developer.

(e) Right to New Lease. If the Lease terminates for any reason, including the rejection of the Lease in a bankruptcy proceeding, then City shall give written notice of such fact to each Leasehold Mortgagee, and if one or more Leasehold Mortgagees gives written notice to City within thirty (30) days following delivery of such notice of termination by City, City agrees in such case to enter into a new ground lease for the Premises (a "New Lease") with the most senior Leasehold Mortgagee or its affiliated designee providing such notice for the remainder of the term of the Lease (including any option terms) effective as of the date of such termination, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in the Lease and with equal priority thereto, on the conditions set forth in this Article 17. Notwithstanding anything to the contrary contained herein, no termination of the Lease shall become effective until, and the lien of each Leasehold Mortgage on the Premises shall remain effective until, either a New Lease has been made pursuant to this Article 17 or no Leasehold Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Leasehold Mortgagee or its affiliated designee shall cure any monetary default by Developer hereunder, except Excluded Defaults.

The Developer under the New Lease shall have the same right, title and interest in and to all Improvements and all obligations as Developer had under the terminated Lease (other than with respect to Excluded Defaults) and the City and the new Developer shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

Nothing in this Article or the Lease shall be construed to imply that the Lease may be terminated by reason of rejection in any bankruptcy proceeding of the Developer. The parties intend, for the protection of Leasehold Mortgagees, that any such rejection shall not cause a termination of the Lease.

If the City shall, without termination of the Lease, evict the Developer, or if the Developer shall abandon the Premises, then any reletting thereof shall be subject to the liens and rights of Leasehold Mortgagees, and in any event City shall not relet the Premises or any part thereof, other than renewal of occupancies of residential Developers and leases or other occupancy agreements with new residential Developers consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Leasehold Mortgagees of the intended reletting and the terms thereof, and if any Leasehold Mortgagee shall, within thirty days of receipt of such notice, give notice to the City of such Leasehold Mortgagee's intent to pursue proceedings to foreclose on the Premises or otherwise cause the transfer thereof, then so long as the Leasehold Mortgagee shall diligently pursue such proceedings the City shall not proceed with such reletting without the written consent of such Leasehold Mortgagee.

If a Leasehold Mortgagee shall elect to demand a New Lease under this Article and only in the event that such Leasehold Mortgagee is not recognized as a proper plaintiff, City agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Developer from the Premises, and those subtenants actually occupying the Premises, or any part thereof, as designated by the Leasehold Mortgagee, subject to the rights of non-defaulting residential Developers in occupancy of apartment units at the Premises. Leasehold Mortgagees shall cooperate with City in connection with any such actions.

Nothing herein contained shall require any Leasehold Mortgagee to accept a New Lease.

(f) Limitation on Liability of Leasehold Mortgagee. No Leasehold Mortgagee shall be liable to City unless it expressly assumes such liability in writing. In the event any Leasehold Mortgagee or other Transferee becomes the Developer under the Lease or under any new lease obtained pursuant to this Article, the Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Developer under the Lease that do not accrue during the period of time that the Leasehold Mortgagee or such other Transferee, as the case may be, remains the actual Developer under the Lease or new lease, holding record title to the leasehold interest thereunder. In no event shall any Leasehold Mortgagee or other Transferee be (i) liable for the erection, completion or restoration of any improvements; (ii) liable for any condition of the Improvements that existed prior to the date of its acquisition of Developer's interest in the Improvements, or for any damage, loss, or injury caused by such preexisting condition, or for the correction thereof or the compliance with any Law related thereto; (iii) bound by any amendment of the Lease made without the prior written consent of the Leasehold Mortgagee; or (iv) liable for any act or omission of any prior Developer of any portion of the Improvements (including Developer). Any liability of any Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Premises, and shall be enforceable solely against those interests.

(g) Estoppel Certificates; Non-disturbance Agreements. City and Developer agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or a permitted assignee, City or Developer will execute, acknowledge and deliver to the other party or to such Leasehold Mortgagee a statement in writing certifying (a) that the Lease is unmodified and in full force and effect if such be the case or, if not, the extent to which the Lease has been modified; (b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against City or Developer, as applicable, other than those, if any, so specified under the provisions of the Lease or such statement. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of City, Developer or any Leasehold Mortgagee, as the case may be, in the Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage.

(h) Actions not Effective Without Leasehold Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Developer's rights thereunder, shall be effective as to any Leasehold Mortgagee unless consented to in writing by each Leasehold Mortgagee. No subordination of the Developer's interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by City, and no joinder by Developer in any such encumbrance or assignment, shall be valid without the express written consent of each Leasehold Mortgagee. No consent or waiver of any Lender as Leasehold Mortgagee shall be effective for purposes of the Lease unless it is made in writing.

(i) No Merger. Any acquisition of the fee interest in the Premises by Developer (or any fee interest in the Improvements by City), or other event by which the leasehold estate hereunder or any part thereof and the fee interest in the Improvements shall come into common ownership, shall not cause a merger of the leasehold interest hereunder or the fee interest in the Improvements with the fee interest in Premises, without the express written consent of each Leasehold Mortgagee. Any merger of fee and leasehold estates that may occur, whether voluntary or involuntary, in whole or in part, shall not result in termination of this Lease or extinguishment of any Leasehold Mortgage, in whole or in part, without the express written consent of each Leasehold Mortgagee.

(j) Bankruptcy of City. If the Lease is rejected by City or City's trustee in bankruptcy following the bankruptcy of City under the United States Bankruptcy Code (Title 11 U.S.C.), as now or

hereafter in effect, Developer shall not have the right to treat the Lease as terminated except with the prior written consent of all Leasehold Mortgagees, and the right to treat the Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Developer and each Leasehold Mortgagee shall be required as a condition to treating the Lease as terminated in connection with any such bankruptcy proceeding.

(k) Encumbrances by City. City shall not encumber the fee interest in the Land, nor assign or encumber City's interest in the Lease, unless the assignment or encumbrance is required or imposed by law or by its express terms is subject and subordinate to this Lease and the rights and interests of the Developer and Leasehold Mortgagees hereunder.

(l) Registration of Leasehold Mortgagees. Developer shall provide written notice to City of the name and address of each Leasehold Mortgagee under this Lease.

## 21. MISCELLANEOUS PROVISIONS.

(a) Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

To the City: **City of Minot  
P.O. Box 5006  
515 2nd Ave SW  
Minot, North Dakota 57802**

To Developer: Cypress Development, LLC  
9 Caprington Road  
Henderson, Nevada 89052

(b) Applicable Law. This Lease shall be governed and construed in accordance with the laws of the State of North Dakota, and any and all actions, suits, or proceedings between the parties hereto shall only be brought in the county in which the Sites are located. In no event shall either party ever commence an action or seek to remove a pending action between the parties hereto in or to any United States Federal District Court, except in the case of a bankruptcy proceeding.

(c) Short Form Lease. Either Party shall have the right to record this Lease or, alternatively, either party shall, at the request of the other execute, acknowledge and deliver at any time after the date of this Lease a memorandum or short form of lease prepared by the requesting party, which memorandum or short form of lease shall include a notice to all persons with respect to the provisions hereof restricting the right of persons dealing with the Developer to a mechanic's lien upon the Site, in compliance with other requirements of applicable law

(d) Net Lease. The City shall not have or incur any expense or cost in its ownership of the Site during the Term of this Lease, and all such expenses including, without limitation, including real estate and possessory interest taxes, insurance, utilities, repairs and maintenance shall be solely the responsibility of Developer.

(e) Binding Effect of Lease. The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

(f) Waiver. Any waiver of any covenant or condition by the City shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition.

(g) Definitions. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation of this Lease. Each and every term and provision of this Lease which requires any performance (whether affirmative or negative) by Developer shall be deemed to be both a covenant and a condition. The words "reenter" and "reentry" as used herein are not restricted to their technical legal meaning.

(h) Integration. No oral statement or prior written matter shall have any force or effect. No waiver of any provision of this instrument shall be effective unless in writing, signed by the waiving party. Each party agrees that it is not relying on any representations or agreements other than those contained in this Lease.

(i) Invalidity of Certain Provisions. If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the remainder of this Lease shall not be affected thereby and each and every remaining provisions of this Lease shall be enforceable to the fullest extent permitted by law.

(j) Option to Cancel for Financing Reasons. The City acknowledges that it has been advised that Developer may procure some part or all of the funds to finance on an interim and long-term basis, the construction of Improvements. If any such financing institution, agency or entity requires any modification of the terms and provisions of this Lease as a condition to such financing (including the issuance of a commitment) as Developer may desire, then the City agrees to approve and execute such modifications within thirty (30) days after Developer's request therefor, provided such modification is lawful and shall not materially modify the terms and conditions hereof or impose any liability on the City.

(k) Amendment of Lease. Neither this Lease nor any provision hereof may be changed, modified, waived, discharged or terminated except by an instrument dated subsequent to the date hereof duly executed by the parties hereto.

(l) Termination. This Lease shall be terminated as provided for herein.

(m) Material Breach. Means a default in a party's performance obligation specified in this Lease that goes to the heart of the bargain and is so significant that it destroys the value of the contract and renders the Lease irreparably broken.

(n) Covenants Binding On Successors And Assigns. All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors of the respective Parties.

(o) Captions. The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

(p) Meaning Of Terms. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

(q) Lease Construed As A Whole. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. City and Developer acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party shall not be used in the interpretation of this Lease or any exhibit or amendment hereto.

(r) Severability. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

(s) Survival. Each provision of this Lease, the full performance of which is not required prior to the expiration of the Term hereof or its earlier termination shall survive expiration or earlier termination, and be fully enforceable thereafter, including, without limitation, all indemnity obligation hereunder.

(t) Memorandum Of Lease. The Parties shall execute and acknowledge a Memorandum of this Lease in the form attached as Exhibit C for public recordation purposes, so that public notice of the Term of the Lease be given; however, this Lease shall not be recorded.

(u) Amendment. This Lease may be amended, or modified, only in writing, signed by both City and Developer.

(v) No Personal Liability. No stockholder, director, officer, member, or employee of City shall be personally liable to Developer or any successor in interest to Developer in the event of any default or breach by City or for any amount which may become due to Developer or such successor with respect to any obligations under the terms of this Lease. No officer or employee of Developer shall be personally liable to City or any successor in interest to City in the event of any default or breach by Developer or for any amount which may become due to City or such successor with respect to any obligations under the terms of this Lease.

(w) Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

(x) Entire Agreement. This Lease contains the final and complete expression of the Parties relating in any manner to the leasing, use and occupancy of the Premises and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by City and Developer.

(y) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

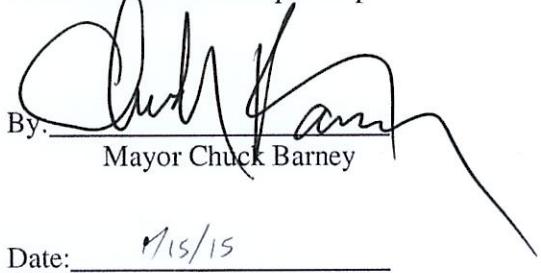
IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:

Lise Jundt  
Print Name: Lise Jundt  
\_\_\_\_\_  
Print Name: \_\_\_\_\_

CITY:

**THE CITY OF MINOT,**  
a North Dakota municipal corporation

By.   
Mayor Chuck Barney  
\_\_\_\_\_  
Date: 11/15

STATE OF NORTH DAKOTA  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me \_\_\_\_\_,  
personally appeared \_\_\_\_\_, known to me (or proved to me on oath of \_\_\_\_\_) to be  
\_\_\_\_\_ of the limited liability company that is described in and that \_\_\_\_\_  
executed the within instrument, and acknowledgement to me that such limited liability company executed  
the same.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Notary Public, State of North Dakota  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
(Seal)

[DEVELOPER SIGNATURE PAGE FOR CYPRESS CENTRAL LEASE]

WITNESSES:

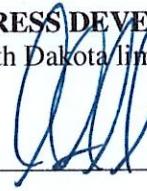


Print Name: Dominic O'Dierno

Print Name: \_\_\_\_\_

DEVELOPER:

CYPRESS DEVELOPMENT, LLC,  
a North Dakota limited liability company

By: 

Name: Steve Larson  
Title: Managing Member

Date: 1-19-15

STATE OF NORTH DAKOTA  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me \_\_\_\_\_,  
personally appeared \_\_\_\_\_, known to me (or proved to me on oath of \_\_\_\_\_) to be  
\_\_\_\_\_ of the limited liability company that is described in and that \_\_\_\_\_  
executed the within instrument, and acknowledgement to me that such limited liability company executed  
the same.

(Signature of Notary Public)

(Printed Name of Notary Public)

Notary Public, State of North Dakota  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

(Seal)

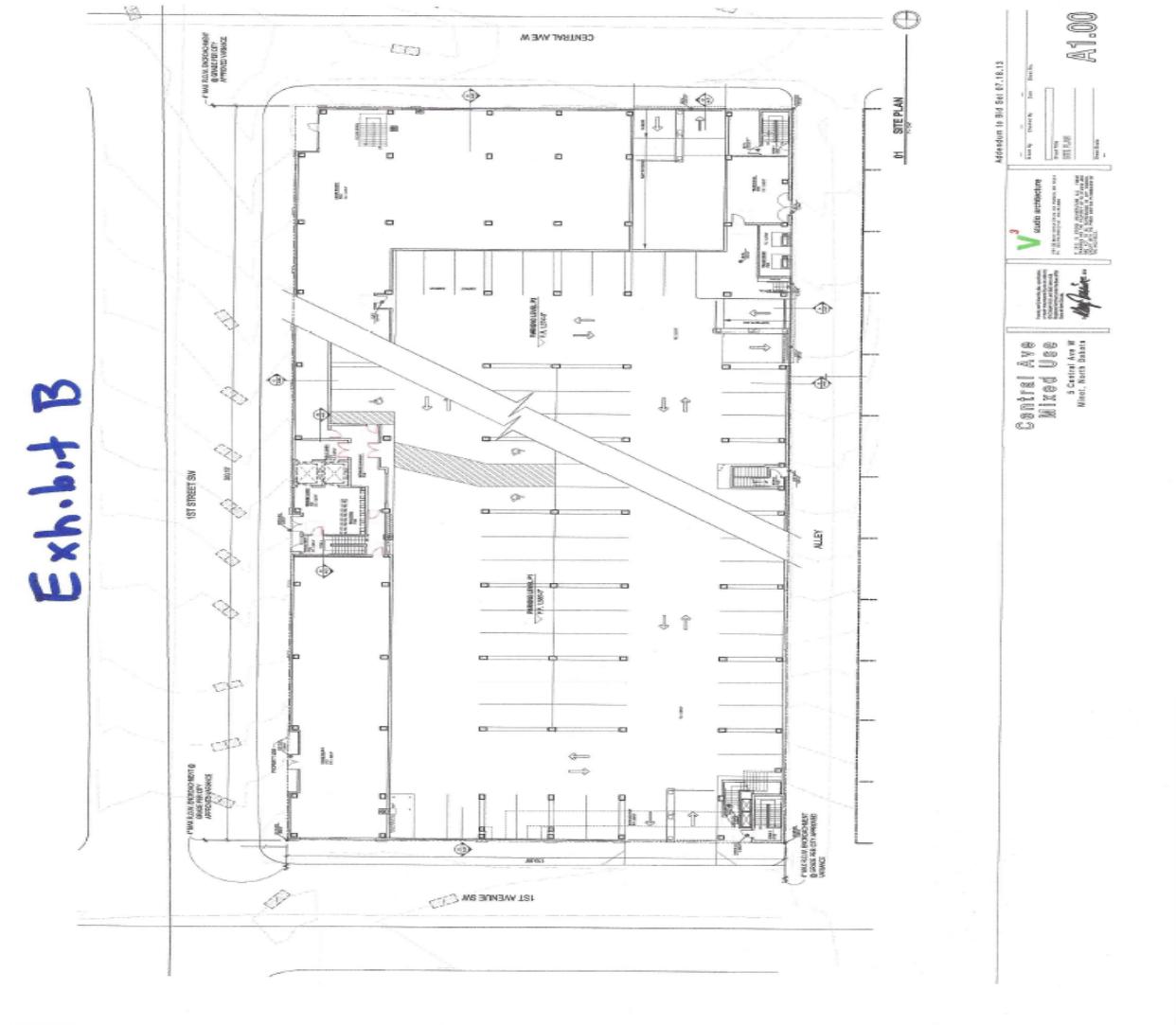
## **EXHIBIT A**

### **Legal Description**

- Address: the property and all improvements thereon owned by the City of Minot located at 5 Central Avenue West, Minot, ND 58701
- Legal Description: LOTS 13 THRU 24, BLOCK 3, ORIGINAL MINOT ADDITION AKA “ALL OF WEST ½ OF BLOCK 3, ORIGINAL MINOT ADDITION”
- Parcel #: MI242380300240
- Includes the property (land) and all Parking Ramp Improvements thereon.

## Exhibit B

### EXHIBIT B Project Site Plan



## **EXHIBIT C**

### **MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease Agreement (the "Memorandum") is entered into this 19<sup>th</sup> day of January, 2015, by and between The CITY OF MINOT, a North Dakota municipal corporation ("Landlord"), whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and CYPRESS DEVELOPMENT, LLC, a North Dakota limited liability company, whose principal address is 9 Caprington Road, Henderson, Nevada, 89052, its successors and/or assigns ("Developer").

#### **Recitals**

A. Landlord and Tenant have entered into a Lease Agreement (the "Lease") dated as of January 19, 2015 (the "Commencement Date") pursuant to which Landlord has demised and let to Tenant the property and improvements thereon at 5 Central Avenue West, Minot, ND 58701, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Leased Premises").

B. Landlord and Tenant desire to execute this Memorandum, which is to be recorded in the Public Records of Ward County, North Dakota, in order that third parties may have notice of the estate of Tenant in the Leased Premises and of the Lease.

#### **Agreement**

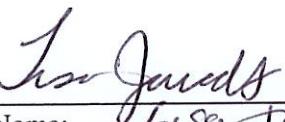
NOW, THEREFORE, in consideration of the rents and covenants provided for in the Lease to be paid and performed by Tenant, Landlord does hereby demise and let unto Tenant the Leased Premises on the terms, and subject to the conditions set forth in the Lease, among which are the following:

1. TERM. The term of this Lease ("Term") begins on the Commencement Date and continues for ninety-nine (99) years after the Commencement Date.

2. INCORPORATION OF LEASE TERMS BY REFERENCE. All of the terms, conditions, provisions and covenants of the Lease are incorporated in this Memorandum by reference as though written out at length herein, including all licenses, rights, privileges and easements appurtenant thereto. In the event of any inconsistency between the provisions of this Memorandum and those of the Lease, the provisions of the Lease shall control. Copies of the Lease are held by both Landlord and Tenant at their respective addresses first set forth above.

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Memorandum to be executed by their respective duly authorized representatives as of the date first above written.

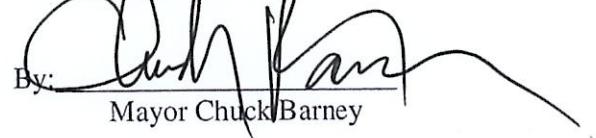
**WITNESSES:**

  
Print Name: Lisa Jundt

Print Name: \_\_\_\_\_

**CITY:**

**THE CITY OF MINOT,**  
a North Dakota municipal corporation

  
By: Chuck Barney  
Mayor Chuck Barney

Date: 1/15/15

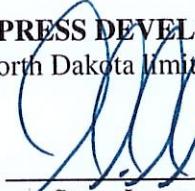
**WITNESSES:**

  
Print Name: Dominic O'Dievo

Print Name: \_\_\_\_\_

**DEVELOPER:**

**CYPRESS DEVELOPMENT, LLC,**  
a North Dakota limited liability company

  
By: \_\_\_\_\_  
Name: Steve Larson  
Title: Managing Member

Date: 1-19-15

STATE OF NORTH DAKOTA  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me \_\_\_\_\_,  
personally appeared \_\_\_\_\_, known to me (or proved to me on oath of \_\_\_\_\_) to be  
\_\_\_\_\_ of the limited liability company that is described in and that \_\_\_\_\_  
executed the within instrument, and acknowledgement to me that such limited liability company executed  
the same.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Notary Public, State of North Dakota

Commission No. \_\_\_\_\_

My commission expires: \_\_\_\_\_

(Seal)

## MEMORANDUM OF LEASE

### Exhibit A – Legal Description

- Address: 205 1<sup>st</sup> St. SW, Minot, ND 58701
- Legal Description: LOTS 13 THRU 24, BLOCK 11, ORIGINAL MINOT ADDITION
- Parcel #: MI242381100240
- Includes the property (land) and all Parking Ramp Improvements thereon.

## EXHIBIT F to the Management Agreement

### Parking Management Agreement Proposed Terms:

- Developer shall manage and maintain parking structures in a manner that will maximize the benefit to both the public and to residents of the Project
- Developer will offer a minimum of 129 parking passes on each of Site #1 and Site #2 to the public (the “Public Parking Passes”):
  - 114 of the Public Parking Passes will be available Monday through Friday during the hours of 7am and 6pm (Weekday Public Parking Passes)
  - 15 of the Public Parking Passes will be available all hours and all days (All Hours Public Parking Passes)
- Developer will offer Short-Term Parking Passes for guests of the Residents and commercial shoppers for the Retail businesses in the Project and other local businesses. A system will be installed to determine how many such Short-Term Passes can be made available to Residential and Retail Tenant guests and commercial shoppers. Up to 50 Short-Term Parking Passes will be available between 9am to 9pm Mondays through Fridays and up to 100 will be available from 9am to 1am on Weekends, subject to availability.
- Developer will offer up to 200 All Hours Tenant Passes to Residential Tenants (175 Passes) and Retail tenants (25 Passes) of the building
- Developer may impose a reasonable charge for the issuance of Parking Passes, where such pricing may be evaluated by the Developer annually for revision. Initial Parking Pass pricing is anticipated as follows:
  - Weekday Public Parking Passes: \$55 per month
  - All Hours Public Parking Passes: \$65 per month
  - Short-Term Parking: \$1.50 per hour, maximum of \$6.00 per day (subject to availability)
  - Weekday Tenant Parking Passes: \$55 per month
  - All Hours Tenant Parking Passes: \$65 per month

For purposes of Income allocation between the Developer and the City, all revenues from the Weekday and All Hours Public Parking Passes will be used to determine Program Income for the City of Minot (less applicable expenses and deductions as further described in the Lease Agreements between Cypress Development and the City). All other income will be for the benefit of the Developer as manager of the Parking Ramps and owner of the Retail and Residential Improvements.

## Exhibit F

### Estimated Weekday Parking Structure Usage

Monday thru Friday Time	Commercial Monthly	Short Term	Tenant	Special Event	Buffer	Total
7:00 AM	40	0	170	0	15	225
8:00 AM	70	0	150	0	5	225
9:00 AM	90	10	110	0	15	225
10:00 AM	110	25	80	0	10	225
11:00 AM	120	30	70	0	5	225
12:00 PM	110	50	60	0	5	225
1:00 PM	110	50	60	0	5	225
2:00 PM	120	50	50	0	5	225
3:00 PM	120	50	50	0	5	225
4:00 PM	100	50	70	0	5	225
5:00 PM	90	50	80	0	5	225
6:00 PM	60	50	100	0	15	225
7:00 PM	15	50	140	0	20	225
8:00 PM	15	35	155	0	20	225
9:00 PM	15	20	170	0	20	225
10:00 PM	10	0	180	0	35	225
11:00 PM	10	0	190	0	25	225
12:00 AM	10	0	200	0	15	225
1:00 AM	5	0	200	0	20	225
2:00 AM	5	0	200	0	20	225
3:00 AM	5	0	200	0	20	225
4:00 AM	5	0	200	0	20	225
5:00 AM	10	0	200	0	15	225
6:00 AM	25	0	185	0	15	225

Commercial Monthly - 129 monthly rentals, including 15 all-time rentals  
(estimate maximum of 120 at any one time)

Short Term - Assume demand will fill most available spaces as shown above

Assumes:

Tenant - Assumes 1 per Apartment (175) plus 25 for Retail Tenants

Special Event - Buffer to be used for special events as needed

Buffer - Spaces not expected to be used at any given time

## Exhibit F

### Estimated Weekend Parking Structure Usage

Saturday and Sunday Time	Commercial Monthly	Short Term	Tenant	Special Event	Buffer	Total
7:00 AM	10	0	190	0	25	225
8:00 AM	15	0	175	0	35	225
9:00 AM	15	40	150	0	20	225
10:00 AM	15	50	125	0	35	225
11:00 AM	15	60	125	0	25	225
12:00 PM	15	70	110	0	30	225
1:00 PM	15	80	110	0	20	225
2:00 PM	15	90	110	0	10	225
3:00 PM	15	100	100	0	10	225
4:00 PM	15	100	100	0	10	225
5:00 PM	15	100	100	0	10	225
6:00 PM	15	100	100	0	10	225
7:00 PM	15	70	125	0	15	225
8:00 PM	15	70	135	0	5	225
9:00 PM	15	70	130	0	10	225
10:00 PM	15	60	140	0	10	225
11:00 PM	15	40	160	0	10	225
12:00 AM	10	30	175	0	10	225
1:00 AM	5	20	190	0	10	225
2:00 AM	5	0	200	0	20	225
3:00 AM	5	0	200	0	20	225
4:00 AM	5	0	190	0	30	225
5:00 AM	5	0	180	0	40	225
6:00 AM	10	0	175	0	40	225

Commercial Monthly - 129 monthly rentals, including 15 all-time rentals  
(estimate maximum of 120 at any one time)

Assumes:  
Short Term - Assume demand will fill most available spaces as shown  
above

Tenant - Assumes 1 per Apartment (175) plus 25 for Retail Tenants

Special Event - Buffer to be used for special events as needed

Buffer - Spaces not expected to be used at any given time