

TAX INCREMENT FINANCING DEVELOPMENT AGREEMENT

This tax increment financing development agreement (the “Agreement”), made and entered into this ___ day of _____, 2021, by and between **EPIC HOLDINGS II, LLC**, a North Dakota limited liability company whose address is 400 10th Street SE, Minot, North Dakota 58701, **BEACON LANDHOLDINGS, LLC**, a North Dakota limited liability company whose address is 400 10th Street SE, Minot, North Dakota 58701, and **EPIC MANAGEMENT, LLC**, a North Dakota limited liability company whose address is 400 10th Street SE, Minot, North Dakota 58701 (collectively referred to herein as the “Developer”) and the **CITY OF GRAND FORKS**, a North Dakota municipal corporation whose principal office and mailing address is 255 North 4th Street, Grand Forks, ND 58201 (hereinafter the “City”).

RECITALS

1. The City, pursuant to its policy for tax increment financing projects, has had the Beacon Development Project reviewed and analyzed by a third-party which found that without the assistance of tax increment financing, the Beacon Development would not be deemed financially feasible.
2. The City, pursuant to its policy for tax increment financing projects, has had the Beacon Development Project reviewed by its Local Government Advisory Committee, which provided a consensus and non-binding recommendation to move forward with the Beacon Development Project, with the proposed tax increment financing as more particularly described herein.
3. The City, pursuant to N.D.C.C. §§ 40-05-24 and 40-58-20.2(2), has obtained the consent of the Grand Forks Public School District and Grand Forks County to participate in the property tax incentive that will be in the form of tax increment financing for the Beacon Development Project.
4. The City has conducted public hearings on the Beacon Development, the proposed tax increment financing described herein and this Agreement, and pursuant to the City’s policy and N.D.C.C. ch. 40-58 has made the necessary findings and determinations, and approved of the Beacon Development Plan, the Beacon Development Project, the Beacon TIF District and the related herein described tax increment financing and this Agreement.

NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

SECTION 1 – DEFINITIONS

The following defined terms and definitions apply to this Agreement:

- 1.1 “**Agreement**” means this Tax Increment Financing Development Agreement.

1.2. “Beacon Development Plan” means the general plan for the development, rehabilitation, construction and operation of the Beacon Development Project, described as the “City of Grand Forks Renewal and Development Plan 2021-01 for Beacon Development Property,” a copy of which is attached hereto as Exhibit 1.2 and by this reference incorporated herein.

1.3 “Beacon Development Project” means the development and redevelopment of the Beacon Development Property pursuant to the Beacon Development Plan and this Agreement, (as may be amended) and shall include the demolition of the existing building located on the Beacon Development Property and the construction of the Private Components, the Public Components, and the connective features to the broader City downtown area. A depiction of the Beacon Development Project is set forth on Exhibit “1.3,” attached hereto.

1.4. “Beacon Development Property” means the following described parcel of real property having a street address of 710 1st Avenue North, Grand Forks, ND 58201 and more particularly described as follows:

Lot Two (2), in Block Two (2), Renewal Resubdivision No. 5 to the City of Grand Forks, according to the plat thereof on file in the Office of the County Recorder within and for Grand Forks County, N.D., and recorded in Book “152” of Deeds page 253.

1.5. “Beacon Tax Increment” means the tax increments resulting from the Beacon Development Project and as calculated under Section 4.2.

1.6. “Beacon TIF Bonds” means the revenue bonds to be issued by the City pursuant to N.D.C.C. § 40-58-10, upon satisfaction of the conditions described in Section 4.6.3, in the total principal amount that shall not exceed the Total Reimbursable Public Costs, and the proceeds of which shall be used for the payment to the Developer of Total Reimbursable Public Costs. It is acknowledged the bonds may be taxable.

1.7. “Beacon TIF District” means the Beacon Development Property, that is the subject of the City’s Tax Increment District No. 2021-01 as described in the TIF Resolution.

1.8. “Beacon TIF District Fund” means the fund of the City into which the City will deposit the Beacon Tax Increment funds.

1.9. “Building 1” means the seven-story mixed-use building to contain apartments, condominiums, commercial space, and underground parking and other improvements, fixtures and appurtenances related thereto, to be constructed by the Developer on the Beacon Development Property, containing a total building footprint of approximately 12,991 square feet. Building 1 is designated and depicted on Exhibit 1.3 as Building 1.

1.10. “Building 2” means the seven-story mixed-use building to contain apartments, condominiums, commercial space, and underground parking and other improvements, fixtures and appurtenances related thereto, to be constructed by the Developer on the Beacon

Development Property, containing a total building footprint of approximately 12,603 square feet. Building 2 is designated and depicted on Exhibit 1.3 as Building 2.

1.11. “Building 3” means the seven-story mixed-use building to contain apartments, condominiums, commercial space, and underground parking and other improvements, fixtures and appurtenances related thereto, to be constructed by the Developer on the Beacon Development Property, containing a total building footprint of approximately 12,789 square feet. Building 3 is designated and depicted on Exhibit 1.3 as Building 3.

1.12. “Business Day” shall mean a day other than a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

1.13. “Calendar Day” shall mean Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday. When this Agreement requires a calculation of the number of Calendar Days, each day is counted, regardless of whether it is a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

1.14. “Certificate of Occupancy” means a certificate of occupancy applied for under City Code § 18-0507 and to be subsequently issued to the Developer for any part of the Private Components upon the City finding the terms, conditions and requirements under the City Code for such certificate of occupancy have been satisfied.

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

1.16. “City” means the City of Grand Forks, North Dakota.

1.17. “City Administrator” means the Person appointed and acting as the city administrator for the City.

1.18. “City Attorney” means the Person appointed and acting as the city attorney for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0401.

1.19. “City Auditor” means the Person appointed and acting as the city auditor for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0301.

1.20. “City Assessor” means the Person appointed and acting as the city assessor for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0601.

1.21. “City Building Space” means the two separate designated spaces within Building 1, Building 2 or Building 3 which are depicted and designated on Exhibit 1.3. The Parties acknowledge and agree the one of designated spaces will be located within Building 1 and the second designated space will located within either Building 2 or Building 3.

1.22. “City Code” means Grand Forks City Code of 1987.

1.23. “City Council” means the city council of the City, which is composed of the Mayor and council members.

1.24. “City Engineer” means the Person appointed and acting as the city engineer for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0501.

1.25. “City Inspector” means the Person appointed and acting as the city inspector and head of the City inspection department.

1.26. “City Parking Area” means the area depicted in green on Exhibit 1.3 to be constructed and installed by the Developer on the Beacon Development Property.

1.27. [Intentionally Omitted]

1.28. “City Planner” means the Person appointed and acting as the city planner for the City.

1.29. “Components” means, individually and collectively, Building 1, Building 2, Building 3, the Public Plaza, and City Parking Area.

1.30. “Construction” or “Construction Services” means erecting, building, assembling, constructing, installing and/or performing any services or work to erect, build, assemble, construct and/or install any portion of the Components.

1.31 “Construction Stoppage” means there has been no Construction Services performed for a period of 30 consecutive Calendar Days.

1.32. “Developer” means collectively EPIC Holdings II, LLC, a North Dakota limited liability company, Beacon Landholdings, LLC, a North Dakota limited liability company, and Epic Management, LLC, a North Dakota limited liability company and each of their respective employees, agents, representatives and contractors.

1.33. “Developer Engineer and Architect” means the Person who is a professional engineer licensed in North Dakota under N.D.C.C. ch. 43-19.1 and the Person who is an architect licensed in North Dakota under N.D.C.C. ch. 43-03 engaged by the Developer to prepare the Public Component Plans and Private Component Plans.

1.34. “Effective Date” means _____, 2021.

1.35. “Exhibit” means the documents designated as an exhibit and attached to this Agreement. Any reference to an Exhibit in this Agreement shall mean such document and all information contained on the document is incorporated into this Agreement as if fully set forth herein. In the event of any conflict of any provision of an Exhibit and the provisions of this Agreement, the provisions of the Agreement shall prevail.

1.36. “Finally Completed” means the date the Public Components have been finally and fully completed to the satisfaction of and accepted by the City, as determined by the City Engineer, City Planner and City Inspector in the exercise of their discretion. The City Engineer, City Planner and City Inspector shall provide written notice to the Developer upon determining the Public Components are Finally Completed.

1.37. “Good Faith” means observance of reasonable commercial standards of fair dealing in a given trade or business.

1.38. “Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, contractor, operator, or maintenance provider engaged in the same kind of undertakings or under similar circumstances.

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

1.40. “Guaranty” means the Guaranty attached hereto as Exhibit 1.40 and by this reference incorporated herein, with such changes, renewals, modifications or amendments thereto as the City shall deem reasonably necessary.

1.41. “Letter of Credit” means the irrevocable and unconditional letter of credit obtained by the Developer from Bank Forward and for the benefit of the City, in a form acceptable to the City Attorney in an amount equal to the Total Reimbursable Public Costs, as determined under Section 1.63.

1.42. “Non-Profit Management Entity” means the non-profit entity to be formed (and for which an application shall be submitted for exempt status under Internal Revenue Code § 501(c)(3)) to manage and operate the Public Components pursuant to the Public Plaza and City Parking Area Management Agreement.

1.43. “Other Beacon TIF Agreements” mean the Private Component Plans, Guaranty, Letter of Credit, Overall Component Plans, Private Component Plans, Public Component Plans, Public Plaza and City Parking Area Management Agreement , and any and all other agreements or instruments now or hereafter executed and delivered by the Developer and/or any other Person in connection with the performance of this Agreement, as such agreements may be amended or supplemented from time to time.

1.44. “Overall Component Plans” means, collectively, the Public Component Plans and the Private Component Plans. The Parties understand and acknowledge the Public Component Plans and Private Component Plans may not be separate documents but rather may be incorporated into and made a part of the single documented Overall Component Plans, provided, however, in that case, the Public Component Plans and Private Component Plans shall be appropriated designated and identified therein.

1.45. “Parties” means the City and the Developer.

1.46. “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

1.47. “Private Components” means, individually and collectively, Building 1, Building 2 and Building 3 and the parking area depicted on Exhibit 1.3 and described as the “Proposed Parking Lot 100 Spaces.”

1.48. “Private Component Plans” means the detailed and specific agreement, plans and specifications and budget prepared, developed and created for the construction and installation of the Private Components.

1.49. “Property Value” means the true and full value, as determined by the City Assessor pursuant to N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for property tax purposes, of the Private Components from and after the last Certificate of Occupancy being issued for the Private Components.

1.50. “Public Components” means, individually and collectively, the Public Plaza and the City Parking Area.

1.51. “Public Component Plans” means the detailed and specific agreement, plans and specifications and budget prepared, developed and created for the construction and installation of the Public Components.

1.52. “Public Costs” means a cost and expense item that the City, by and through the City Engineer, City Administrator and City Attorney, in the exercise of the respective discretion, has determined meets each of the following requirements:

1.52.1. The cost and expense item is described in N.D.C.C. § 40-58-20.1(3)(a)-(d). For purposes of this Section 1.52.1, the City agrees an allocable portion of the costs and expenses of demolition of the existing building located on the Beacon Development Property and costs and expenses to install and construct the Public Components are described in N.D.C.C. § 40-58-20.1(3).

1.52.2. The Developer has provided the City with a written certification, with sufficient invoices, receipts and other documentation as may be requested by the City attached thereto, representing the Developer has incurred such costs and expenses.

1.52.3. The cost and expense item was necessarily incurred by the Developer for the purpose of preparing the Beacon Development Property for private development by the Developer.

1.53. “**Public Plaza**” means the areas designated as “Plaza,” and depicted in orange on Exhibit 1.3 to be constructed and installed by the Developer on the Beacon Development Property.

1.54. “**Public Plaza CAM**” means common area maintenance fee or charge that is assessed per square foot of ~~occupied~~ rented or owned commercial space within the Private Components, provided, however, the City Building Space shall be excluded from the square footage that is subject to this fee or charge. The Parties estimate the initial Public Plaza CAM shall be \$1.50 per ~~occupied~~ square foot of commercial space. On or before the 1st day of November of each year, the City shall provide notice to the Developer of the annual Public Plaza CAM (reported on a per square foot basis) that is payable on the 15th day of January of the year immediately following the date of such notice. The Public Plaza CAM shall be based on the City’s budget for its operation and maintenance and repairs of the Public Components.

1.55. “**Public Plaza and City Parking Area Management Agreement**” means the agreement attached hereto as Exhibit 1.55 by and between the City, the Developer and the Non-Profit Management Entity for the management of the Public Plaza and City Parking Area, (as described in Section 3.3) to be executed at prior to the time ~~this~~ the City is conveyed fee simple title of the Public Components pursuant to Section 3.1 below.

1.56. “**PUD**” means a planned unit development district described in City Code § 18-0223.

1.57. “**Substantially Completed**” means the time at which the Public Components, as the case may be, have progressed to the point where, in the opinion of City, as determined by the City Engineer, City Planner and City Inspector in the exercise of their discretion, the respective Public Components (or a specified part thereof) are sufficiently complete, in accordance with the terms hereof, so that the Public Components (or a specified part thereof) can be utilized for the purposes for which the Public Components are intended. The City Engineer, City Planner and City Inspector shall provide written notice to the Developer upon determining the Public Components are Substantially Completed.

1.58. “**Targeted Property Value**” means the following Property Values that the Developer estimates will be determined by the City Assessor as of February 1:

1.58.1. February 1, 2022:	\$4,282,800.00
1.58.2. February 1, 2023:	\$19,500,000.00
1.58.3. February 1, 2024:	\$35,750,000.00

1.58.4 February 1, 2025

\$39,000,000.00

1.59. “TIF Resolution” means the Resolution of the City Council of the City of Grand Forks Approving Renewal and Development Plan 2021-01, Tax Increment Finance District No. 2021-01 and Tax Increment Financing Agreement for Beacon Development Property, a copy of which is attached hereto as Exhibit 1.59.

1.60. “Total Reimbursable Public Costs” means the amount of costs and expenses, determined to be Public Costs pursuant to Section 1.52, that is equal to the lower of:

1.60.1. The total sum of all Public Costs, calculated as of November 1, 2022; or

1.60.2. The maximum bond amount (inclusive of the original principal amount plus Usual and Customary fees and other costs, as estimated by the Third-Party Reviewer, for a bond issued by the City pursuant to N.D.C.C. § 40-58-10) that the Third-Party Reviewer determines can be repaid and serviced by the Assumed Beacon Tax Increment. The Third-Party Reviewer shall determine the Assumed Beacon Tax Increment on or ~~before June~~ **before June** 30, 2023. As used herein, the term “Third-Party Reviewer” means Baker Tilly. Further, as used herein, the “Assumed Beacon Tax Increment” is the tax increment, calculated in accordance with N.D.C.C. § 40-58-20 and applying the following variables:

(a) The incremental value, as defined in N.D.C.C. § 40-58-20(3) shall be equal to the difference between the Targeted Property Value described in Section 1.58.4 and \$2,282,800.00.

(b) The bond will require semi-annual payments over a period of 25 years.

(c) Interest rate on the bond that is the prevailing rate of interest at the time of the Third-Party Reviewer makes the determination under this ~~Section~~ **Section** 1.60.2 for bonds the Third-Party Reviewer determines are comparable in type and term as the bond to be issued by the City pursuant to N.D.C.C. § 40-58-10.

1.61. “Usual and Customary” means the reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the Parties or so well established, general, and uniform that they must be presumed to have acted with reference thereto.

SECTION 2 – DEVELOPMENT OF BEACON PROPERTY

2.1. Development/Construction of Public Components.

2.1.1. The Developer, at the Developer’s cost and expense, shall be solely responsible for the design, ~~construction~~ **Construction** and installation of the Public Components.

2.1.2. The Public Component Plans shall be prepared, developed, created and approved by the Developer Engineer and Architect. The appropriate professional engineer and architect endorsement shall be placed on the Public Component Plans, and/or any other documents, plans, or plats relating to or arising from the Public Component Plans.

2.1.3. The City and the Developer agree to negotiate in Good Faith, at a later date, to mutually agree upon the Public Component Plans.

2.1.4. In connection with such Good Faith negotiations described in Section 2.1.3, at least 60 Business Days prior to Construction of any part of the Public Components, preliminary drafts of the Public Component Plans shall be provided by the Developer Engineer and Architect to the City Engineer, City Planner and City Inspector for review. The City Engineer, City Planner, City Inspector and the Developer Engineer and Architect shall meet to discuss and resolve any comments or issues raised by the City Engineer's, City Planner's and City Inspector's review of the preliminary draft of the Public Component Plans.

2.1.5. At least 30 Business Days prior to Construction of any part of the Public Components, the finalized the Public Component Plans shall be provided by the Developer Engineer and Architect to the City Engineer, City Planner and City Inspector for final review and approval.

2.1.6. The City Engineer, City Planner and City Inspector shall determine, in the exercise of their respective discretion, that the Public Component Plans (preliminary drafts and/or final) meet all applicable engineering, construction and land development and planning standards and requirements, including but not limited to standards and requirements of the City Code, other policy or standard of the City and Good Industry Practice. In the event the City Engineer, City Planner and/or City Inspector finds that all, or any part of, the Public Component Plans (preliminary drafts and/or final) do not meet such standards and requirements, the Developer Engineer and Architect shall modify, amend and change the Public Component Plans to remedy the unacceptable provisions. The modified, amended or changed Public Component Plans shall likewise be subject to review by the City Engineer, City Planner and City Inspector, to determine whether such plans do comply with the herein described standards, requirements and specifications.

2.1.7. The Public Components shall be constructed and installed by the Developer under the supervision of the Developer Engineer and Architect and inspected by a Developer Engineer and Architect, and shall not be deemed completed and accepted until having been found to be Finally Completed.

2.1.8. Unless otherwise agreed to by the City in writing, Construction of the Public Components shall commence on or before ~~September~~June 1, ~~2021~~2022.

2.1.9. Unless otherwise agreed to by the City in writing, the Public Components shall be Substantially Completed on or before ~~October~~June 1, ~~2022~~2023 and shall be Finally Completed on or before ~~November~~July 1, ~~2022~~2023.

2.2. Development/Construction of Private Components.

2.2.1. The Developer, at the Developer's cost and expense, shall also be solely responsible for the design, ~~construction~~Construction and installation of the Private Components.

2.2.2. The Private Component Plans shall be prepared, developed, created and approved by the Developer Engineer and Architect. The appropriate professional engineer and architect endorsement shall be placed on the Private Component Plans, and/or any other documents, plans, or plats relating to or arising from the Private Component Plans.

2.2.3. Unless otherwise agreed to by the City in writing, Construction of the Private Components shall commence on or before the following dates:

Building 1: September 1, 2021,

Building 2: October 1, 2021, and

Building 3: September 1, 2022.

2.2.4. Unless otherwise agreed to by the City in writing, a Certificate of Occupancy for the Private Components shall be obtained by the Developer on or before the following dates:

Building 1: August 31, 2023,

Building 2: November 1, 2023, and

Building 3: August 31, 2024.

2.2.5. The Developer shall be solely responsible for any and all operations, maintenance and repairs of the Private Components.

2.3. PUD for Beacon Development Property.

2.3.1. Prior to commencing Construction of any portion of the Components, the Developer, at the Developer's sole cost and expense, shall be solely responsible to prepare, develop, create and gain approval of the Beacon Development Property as a PUD.

2.3.2. Prior to any submission of any document to seek approval of the PUD, the City and the Developer agree to work in Good Faith to prepare, develop and create the terms and conditions of the PUD for the Beacon Development Property.

2.3.3. Without limiting the generality of the Parties' negotiation with respect to the terms and conditions of the PUD, the Parties agree the PUD shall re-plot and re-subdivide the Beacon Development Property into the number of lots that will result in the Plaza, City Parking Area, Building 1, Building 2 and Building 3 each being located on separately identifiable lots.

2.4. General Development/Construction Requirements.

2.4.1. The following shall be applicable to and be complied with by the Developer for the ~~construction~~Construction and installation of the Components:

(a) Construction of all Components shall be in accordance with the Overall Component Plans and in compliance with the City Code and all applicable federal, state and other local laws. Without in any limiting the foregoing, but in addition thereto, the Components shall be constructed in compliance with the City's NDFPDES stormwater permit No. NDR04-0000, and the Developer Engineer and Architect shall provide a written certification to the City of such compliance with said permit and all stormwater discharge limitations.

(b) The Developer shall require all contractors or sub-contractors performing any Construction Services to have a payment and performance bond in the amount not less than the total price of the Construction contract with such contractor or sub-contractor, payable to the Developer and the City and that is enforceable by either the Developer or the City. Such payment and performance bond shall contain all terms and conditions generally contained in the construction contracts that are entered into by the City and contractors for improvement projects in the City, including those conditions described in N.D.C.C. § 48-01.2-10.

(c) The Developer shall obtain, in a timely manner, and pay for all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of the City Code and all other applicable federal, state and local laws and regulations which must be obtained or met before the Construction on any part of the Components may be lawfully commenced. Without limitation to the foregoing, the Developer shall request and obtain from the City all necessary variances, conditional use permits, or zoning changes for the Construction.

(d) The Developer shall require each contractor or subcontractor performing any Construction Services and/or providing any materials, equipment or supplies for Construction to secure any and all required licenses, permits or similar authorizations necessary to perform Construction Services and/or to provide such materials, equipment or supplies.

(e) All Construction Services shall be performed in a competent and professional manner and pursuant to Good Industry Practice. The Developer shall require each contractor or subcontractor performing any Construction Services to employ or contract suitable employees, engineers, contractors and subcontractors, and to extent required, all such employees, engineers, contractors and subcontractors shall have a valid license for the services or work to be performed. If any employee, engineer, architect, contractor or subcontractor appears incompetent, disorderly or disobedient to the City, or do not have the required license, such person or entity shall, upon request of the City Engineer, be immediately discharged, at the sole cost and expense of the Developer.

(f) All contractors and subcontractors performing any Construction Services shall be required to comply with any and all federal, state, county, local and municipal laws, statutes, codes, regulations, resolutions, rules, ordinances and policies effective when the

Construction Services are being or are to be performed (inclusive of the City Code), and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes imposed by any federal, state, county, local or municipal law, statute, code, regulation, resolution, rule or ordinance for any employment insurance, pensions, old age retirement funds or any similar purpose and to furnish all necessary reports and information to the appropriate federal, state, county, local and municipal agencies with respect to all of the foregoing and to hold the City harmless from any and all loss or damage occasioned by the failure to comply with the terms of this Section 2.4.1(f).

(g) Construction of any public streets, water, sanitary, and storm sewer improvements as part of any Component shall be constructed and installed, at the Developer's cost and expense, on property platted as public right of way or easement to the City so as to allow the City to service said infrastructure.

(h) The Public Components shall be warranted by each contractor or subcontractor providing Construction Services thereon for a period of one (1) year commencing from the date the Public Components are determined to be Finally Completed.

(i) All contractors and subcontractors performing any Construction Services shall adequately and properly protect the Construction Services to be performed by it, to be responsible for damages to persons and property occasioned by its failure to do so and to be responsible for any defective or improper work or material caused by its failure to do so. All contractors and subcontractors shall be required to acknowledge and agree that when and as required by the Developer's Engineer and Architect and/or the City Engineer, the contractor and/or subcontractor shall correct, replace and/or re-execute faulty or defective work done and/or materials furnished. Without limiting the foregoing, but in addition thereto, the Developer and each contractor and subcontractor performing any Constructions Services shall be liable and responsible to the City for any damage to any part of the Public Components relating to or in any manner arising from any Construction Services.

(j) All contractors and subcontractors performing any Construction Services shall be required to erect and maintain good and sufficient guards, barricades, signage and signals at or near the Components (including erecting and maintaining such guards, barricades, signage and signals as required under the Manual of Uniform Traffic Control Devices) and shall in all cases maintain a safe passageway at all streets, road crossings, sidewalks, crosswalks and street intersections. In the event safe passageway at any street, road crossing, sidewalk, crosswalk or street intersection cannot be maintained, the respective contractor or subcontractor shall erect and maintain such guards, barricades and signals as required under the Manual of Uniform Traffic Control Devices for the temporary closure thereof. All contractors and subcontractors performing any Construction Services shall be solely responsible for initiating, maintaining and supervising all safety precautions and measures in connection with the performance of Construction Services, and shall take all safety precautions with respect to the Construction Services and shall comply with all applicable laws, ordinances, rules and regulations, and lawful orders of any public or governmental authority for the safety of persons or property. Without limiting the foregoing, but in addition thereto, all

Construction Services shall be conducted and performed in such a manner as to not create any unsafe condition for pedestrians, bicyclists or motorists.

(k) All contractors and subcontractors performing any Construction Services shall be required: (1) to and shall indemnify, save and hold the City, its agents, officers, employees, contractors and other sub-contractors harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with the Construction Services to be performed by said contractor or subcontractor, (2) to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with, their respective Construction Services or occurring or resulting from the use of materials, equipment, instrumentalities or other property, whether the same be owned by the City or third parties, and (3) to indemnify, save and hold the City its agents, officers, employees, contractors and other sub-contractors harmless from all such claims and legal fees and disbursements paid or incurred to enforce such indemnity provisions. Without limiting the foregoing, the indemnification obligation of all contractors and subcontractors shall include the obligation and duty to defend the City, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the contractor's or subcontractor's indemnification obligations.

(l) All contractors and subcontractors performing any Construction Services shall be required to obtain, maintain, and pay for such workers' compensation insurance for all of its employees as may be required by law; comprehensive general liability insurance, builder's risk and comprehensive automobile liability insurance, in amounts requested by the City (with a minimum of \$2,000,000 bodily injury, \$2,000,000 property damage and \$4,000,000 umbrella for general liability policy limits, for builder's risk being in the amount of the Construction Contract Price and \$2,000,000 per person, \$4,000,000 per incident and \$2,000,000 property damage for automobile policy limits) and with reputable insurance companies which policies shall protect the City from and against claims for bodily injury or death, for damage to property occurring upon, in or about the area in which the work is to be performed. In connection, all contractors and subcontractors performing any Construction Services shall cause the City to be named as an additional insured under each of said insurance policies covering the City for all matters arising from or related to their respective Construction Services. All insurance required of a contractor or subcontractor performing Construction Services shall be continuously maintained until the Public Components are Finally Completed and a Certificate of Occupancy for the respective Building 1, Building 2 or Building 3 has been obtained.

2.4.2. Nothing herein shall relieve the Developer from its obligation to prepare and have the Components, the Overall Component Plans and the Construction approved, authorized and permitted in accordance and to comply with the City's construction and building permitting processes, including without limit any process and approvals, authorizations and permits required under Chapters XVIII and XIX of the City Code. The Parties agree and acknowledge that this Agreement does not constitute a review or approval of any permits, authorizations, approvals, or licenses required by the City.

2.4.3. In the event Developer desires to make any material changes to any part of the Overall Component Plans after their approval by the City, including a change order during Construction, the Developer, before initiating such change shall submit the proposed change to the City for its prior review and approval by and through the City Engineer, City Planner, City Inspector and City Assessor. If the City Engineer, City Planner, City Inspector and City Assessor determine such change (a) conforms to the requirements of this Agreement, (b) complies with the City Code and all applicable federal, state and other applicable local laws, and (c) does not materially reduce the Targeted Property Value, the City shall approve the proposed change and notify Developer in writing of its approval. In the event the City does not respond to the proposed change within thirty (30) calendar days the proposed change will be deemed to have been approved by City.

2.4.4. The City, by and through the City Engineer, City Planner, City Inspector, City Assessor and other officer, employee or agent of the City, shall have the right to access, at any time, to the Beacon Development Property to inspect, review and/or oversee the Construction, including but not limited to conducting an inspection or review to determine compliance with the terms of this Agreement whether the Public Components are Substantially Completed and Finally Completed and whether a Certificate of Occupancy for any of the Private Components should be issued.

2.4.5. The City shall approve all proposed costs and expenses for the Public Components-, including but not limited to any proposed change orders by the contractor(s) engaged for the Construction of the Public Components.

2.4.6. Upon the Public Components becoming Substantially Completed, the Developer shall provide the City with lien waivers from any and all of the contractors, subcontractors, and all suppliers who provided any services, work, supplies or materials for any part of the Public Components, provided that the Developer retains the right to challenge any lien. In the event the Developer challenges any such lien, the amount of Total Reimbursable Public Costs to the Developer under Section 4.3 below shall be reduced by the amount equal to 150% of the amount being challenged and not payable to the Developer until such challenge has been finally resolved, whether by agreement or upon a final non-appealable judgment. By way of example, if the amount of the lien being challenged by the Developer is \$10,000.00, then the amount subject to reduction from Total Reimbursable Public Costs shall be equal to \$15,000.00 (\$10,000.00 x 150% = \$15,000.00).

2.4.7. The Overall Component Plans, and all other drawings, prints, plans, and field notes prepared by the Developer Engineer and Architect and other information pertinent to the Construction shall be furnished to the City and become the property of the City.

2.4.8. During Construction, the Developer shall make periodic reports, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of Construction. This reporting requirement by the Developer shall continue until both of the following events have occurred: (a) the Public Components are found to be Finally Completed and (b) a Certificate of Occupancy has been issued for all of the Private Components.

SECTION 3 – TRANSFER/MANAGEMENT/LEASE OF PUBLIC COMPONENTS.

3.1 Transfer of Public Components. Pursuant to and subject to the terms and conditions of a separate agreement, which the City and the Developer will in Good Faith negotiate and execute at a later date, the Developer will sell, convey and transfer to the City fee simple marketable title, free and clear of all liens and encumbrances, in and to the Public Components. The closing on the transfer of the Public Components to the City will be the First Public Cost Closing Date. The consideration payable by the City to the Developer for the transfer of the Public Components shall be the amount described in Section 4.3.2 below.

3.2 Transfer to City of City Building Space. Pursuant to and subject to the terms and conditions of a purchase agreement, which the City and the Developer will in Good Faith negotiate and execute at a later date, the Developer shall sell, convey and transfer to the City fee simple marketable title, free and clear of all liens and encumbrances, in and to City Building Space. The Parties agree the consideration for the transfer of the City Building Space is included within amount payable by the City to the Developer described in Section 4.3.2 below. The terms of the agreement for the sale, conveyance and transfer of the City Building Space shall also contain, at a minimum, the following provisions:

3.2.1. The sale, conveyance and transfer of the respective City Building Space shall be on the first Calendar Day of the month that immediately follows the date the Certificate of Occupancy has been issued for Building 1, Building 2 and Building 3, as the case may be.

3.2.2. It is anticipated City Building Space shall include a public lobby area, locker room, public restrooms (that can also be used a warming facility for those using the ice-skating rink within the Public Plaza), area to store ice-cleaning machine (Zamboni), storage area/facilities and other amenities requested by City and relating to the City's use and operation of the Public Components.

3.2.3. The Developer shall install such furniture, fixtures, lighting, plumbing, infrastructure and other equipment within City Building Space necessary for the anticipated uses thereof, as described in Section 3.2.3. If plans are modified resulting in a reduction in the size, the furniture, fixtures and equipment installed and/or relocation of City Building Space, any such change shall require the prior written consent of the City, which consent shall not be unreasonably withheld. After completion of the ~~construction~~Construction, any change in the location or size of the either City Building Space, shall require the prior written consent of the City.

3.3 Management of Public Plaza and City Parking Area/Public Plaza CAM.

3.3.1. Prior to the conveyance of the Public Components under Section 3.1, the City, the Developer and the Non-Profit Management Entity will execute the Public Plaza and City Parking Area Management Agreement delineating and describing the management of the Public Components.

3.3.2 The Developer shall pay to the City a Public Plaza CAM. The Public Plaza CAM shall be payable by the Developer to the City on a quarterly basis. The City may utilize such Public Plaza CAM for repairs and maintenance thereof, as described in the Public Plaza and City Parking Area Management Agreement.

3.3.3 The Developer agrees that any portion of the Public Plaza CAM billed to the Developer pursuant to the Public Plaza and City Parking Area Management Agreement during a calendar year that remains unpaid on December 31 of such calendar year shall be levied and certified as special assessments against the Private Components, levied and certified as a special assessment. The special assessment that may be imposed under this Section 3.3.2 shall be applied to the ~~occupied~~ rented or owned commercial spaces located within the Private Components, (exclusive of the City Building Space or any other such space owned by the City) on a pro-rata basis based upon square footage basis. The special assessments described in this Section 3.3.23 does and will benefit the property that will be subject to such assessment and that said benefit exceeds the amount of the special assessment by more than fifty percent (50%). The Developer, for itself, and its successors and assigns, waives any objection to any irregularity with regard to the assessment process for such special assessments. This waiver includes a waiver to any objection to the amount of the special assessments levied against the Private Components, including any and all claims that such assessment is excessive, arbitrary, capricious, or unreasonable. Further, the Developer, for itself and its successors and assigns, waives all rights to appeal such action of the City to the court. These waivers are express, and the Developer acknowledges that it is waiving any and all rights of appeal to the assessment and reassessment.

3.3.4 The Developer, to recoup the Public Plaza CAM it pays to the City under Section 3.3.2, may impose an equivalent per square foot fee or charge on any Person, except the City, that rents or owns space within the Private Components, provided, however, the failure of the Developer to impose such fee or charge or to collect the same from said Persons shall not relieve the Developer from making the Public Plaza CAM payment to the City. The City shall have the right to audit the books and records of the Developer to determine the square footage subject to the Public Plaza CAM.

SECTION 4 – TAX INCREMENT FINANCING

4.1 **TIF District.** Pursuant to N.D.C.C. ch. 40-58, ~~the City~~ on _____, 2021, the City, by the TIF Resolution, created the Beacon TIF District.

4.2 **Tax Increment.**

4.2.1. *Tax Increment – 80% of Incremental Value.* The Beacon Tax Increments and the property tax incentive under Beacon TIF District and this Agreement shall be the tax increment, as described in and calculated pursuant to N.D.C.C. § 40-58-20(4), resulting from the Beacon Development Project and based on and applying eighty percent (80%) of the incremental value of the Beacon Development Property that is computed and certified pursuant to N.D.C.C. § 40-58-20(3). For purposes of making this calculation of the Beacon Tax Increment and the incremental value, the original taxable value, as described in N.D.C.C. § 40-58-20(2) shall be the taxable value of the Beacon Development Property, as last assessed and equalized for the

property tax year immediately preceding the date City requests the Grand Forks County Auditor to compute, certify and remit tax increments, pursuant to N.D.C.C. § 40-58-20(1).

4.2.2. *Term of Beacon TIF District.* The Beacon TIF District shall be for a period of twenty-five taxable years, commencing with the taxable year in which the City requests the Grand Forks County Auditor and Treasurer to compute, certify and remit to the City the Beacon Tax Increments, pursuant to N.D.C.C. § 40-58-20(1) and this Section 4, resulting from the Beacon Development Project. By way of example only, if the City makes the request on ~~May~~January 1, ~~2021~~2022, the Beacon TIF District shall commence in the 2021 taxable year and shall terminate on December 31, ~~2045~~2047, with the attendant Beacon Tax Increment for such time period then being due and payable to the City in ~~2022~~2023 and ending in ~~2046~~2048.

4.2.3. *Consent to Beacon TIF District and Beacon TIF Bonds.* The Developer requests, consents to, and approves the creation of the Beacon TIF District and the issuance of the Beacon TIF Bonds to finance the reimbursement of up to, but not exceeding, the Total Reimbursable Public Costs of the Beacon Development Project, as allowed under N.D.C.C. § 40-58-20.1(4), including the installation and the City's acquisition of the Public Components. The Developer expressly waives any objection to any irregularity with regard to the creation of the Beacon TIF District and the issuance of the Beacon TIF Bonds. Further, the Developer waives all rights to appeal (pursuant to N.D.C.C. § 28-34-01 or under any other provision of law) such action of the City to a court. This waiver is express, and the Developer acknowledges that it is waiving any and all rights of appeal regarding any irregularity with regard to the creation of the Beacon TIF District and the issuance of the Beacon TIF Bonds.

4.2.4. *Application of Beacon Tax Increment.*

(a) The Developer agrees that the Beacon Tax Increment generated from the Beacon TIF District and pursuant to this Agreement shall be deposited by the City into the Beacon TIF District Fund and shall be applied to service and pay the costs of Beacon TIF Bonds issued by the City during the term of the Beacon TIF District or until the debt service of the Beacon TIF Bonds is paid in full, whichever occurs first.

(b) Prior to the collection of Beacon Tax Increments, the City may make an inter-fund loan of funds collected from its sales and use tax ("Sales Tax TIF Inter-Fund Loan") to make debt service payments on the Beacon TIF Bonds. Provided, that if the City does not make the Sales Tax TIF Inter-Fund Loan as contemplated in this Section, for the period prior to January 1, 2025, the special assessments authorized to be levied in Section 4.8 shall not be levied until October 1, 2024 for collection in 2025. Following the collection of Beacon Tax Increments by the City, the City shall then reimburse and reduce the Sales Tax TIF Inter-Fund Loan in any given year by the amount in which the Beacon Tax Increments exceeds the amount required to make and pay the debt service costs of the Beacon TIF Bonds until the entire amount of such Sales Tax TIF Inter-Fund Loan has been reduced to zero. By way of example only, if in the year 2032 the Beacon Tax Increment that is collected is \$472,500.00 and the amount required to service the Beacon TIF Bonds is \$462,500.00, the City shall reimburse and pay the Sales Tax TIF Inter-Fund Loan, that may exist, in the amount of \$10,000.00 (\$472,500.00 less \$462,500.00). Nothing herein shall require or obligate the City to make the Sales Tax TIF

Interfund Loan and, except as provided in this section relating to special assessments prior to January 1, 2025, the making of a Sales Tax TIF Inter-Fund Loan does not, in any manner, alter, modify or waive recovery or payment of the Deficiency Amount described in Section 4.8. Further, the City in making such Sales Tax TIF Inter-Fund Loan is not, nor shall it be deemed to be, providing any consent, agreement, any understanding or admission by the City that the Beacon TIF Bonds constitutes a general indebtedness or obligation of the City or a charge, lien or encumbrance, legal or equitable, upon any property of the City, but rather Beacon TIF Bonds, regardless of whether such Sales Tax TIF Inter-Fund Loan is made by the City, shall be continue to be payable solely from the income, proceeds, revenues and funds derived from or held in connection with the Beacon Development Project.

(c) The Parties agree that any lease payments by the Developer to the City for the City Parking Area, in addition to Beacon Tax Increments generated by the Beacon TIF District, will be pledged for repayment of the Beacon TIF Bonds.

4.2.5. The Developer agrees that the City may charge the Beacon TIF District an annual administrative fee of zero percent (0%) of the total proceeds generated by the Beacon TIF District as and for an administrative fee. Such administrative fee is only for costs associated with the Beacon TIF District, including such costs as legal, engineering, accounting, and tax preparation expenses. Further, the City shall charge a premium on the Beacon TIF Bonds equal to 0.5% above the average net effective interest rate of the Beacon TIF Bonds.

4.3. Total Reimbursable Public Costs.

4.3.1 The Developer understands and acknowledges that the extent of tax increment financing and the payment of reimbursable costs is directly dependent upon the Property Values, which the Developer projects will be at or above the Targeted Property Values on the dates specified in Section 1.6258.

4.3.2 Subject to the satisfaction of the conditions precedent described in Section 4.4 and the conditions under the purchase agreement described in Section 3.1, the City will pay to the Developer the Total Reimbursable Public Costs as follows:

(a) Sixty-Six and 2/3 percent (66 2/3%) of the Total Reimbursable Public Costs shall be paid to the Developer within ten (10) Business Days after the first Business Day in which both of the following are exist: (1) the Public Components are Finally Completed and (2) Certificates of Occupancy have been issued for Building 1 and Building 2. The date of payment under this Section 4.3.2(a) shall be referred to herein as the “First Public Cost Closing Date”

(b) The remaining thirty-three and 1/3 percent (33 1/3%) of the Total Reimbursable Public Costs shall be paid to the Developer within ten (10) Business Days after the date the Certificate of Occupancy has been issued for Building 3. The date of payment under this Section 4.3.2(a) shall be referred to herein as the “Second Public Cost Closing Date”

(c) The amounts determined to be payable under Sections 4.3.2(a) and 4.3.2(b) are subject to reduction pursuant to Section 4.6.2(b).

4.4. Conditions Precedent for Payment of Total Reimbursable Public Costs. The payment by the City to the Developer of the Total Reimbursable Public Costs are subject to the satisfaction of the following conditions precedent:

4.4.1. With respect to the amount described in 4.3.2(a), the Public Components are Finally Completed and Certificates of Occupancy have been issued for Building 1 and Building 2.

4.4.24.4.2 The Developer and City have entered into the purchase agreement described in Section 3.1 and the Developer has satisfied all of the terms and conditions of said purchase agreement.

4.4.3. With respect to the amount described in Section 4.3.2(b), a Certificate of Occupancy for Building 3.

4.4.34. The Guarantors have executed and delivered to the City their respective Guaranty.

4.4.45. The Developer has delivered to the City the executed Letter of Credit.

4.4.56. The City has determined that no Construction Stoppage has occurred as of or prior to the First Public Cost Closing Date and the Second Public Cost Closing Date, as the case may be.

4.4.67. There has been no event of default under this Agreement or Other Beacon TIF Agreements by the Developer or any other Person obligated thereunder.

4.4.78. As of the First Public Cost Closing Date and the Second Public Cost Closing Date, as the case may be, the representations and warranties of the Developer, described in Section 5 are true and correct.

4.5. Letter of Credit. The Letter of Credit shall be issued and remain effective from and after the Calendar Day on which Construction commences and until the date in which a Certificate of Occupancy is issued for Building 3. The City may only draw upon the Letter of Credit upon ~~a~~ an event of default by the Developer. Following the issuance of the Certificate of Occupancy for Building 3, the Developers requirement to maintain a Letter of Credit shall terminate.

4.6. Beacon TIF Bonds

4.6.1. Authorization. Pursuant to the terms of this Agreement and ~~on the~~ provided the conditions described in Section 4.6.3 are satisfied, Beacon TIF Bonds, in the principal amount not to exceed the amount of the Total Reimbursable Public Costs, may be

issued by the City, the proceeds of which shall be used for payment to the Developer of the Total Reimbursable Public Costs pursuant and subject to the terms of Sections 4.3 and 4.4.

4.6.2. Beacon TIF Bond Fund Deposit.

(a) The City shall deposit proceeds received from the Beacon TIF Bonds into a fund for subsequent payment to the Developer pursuant and subject to the terms of this Agreement, including Section 4.3 and Section 4.4. This fund for the deposit of proceeds of the Beacon TIF Bonds shall be referred to as the “Beacon TIF Bond Issuance Fund.”

(b) In the event there remains funds with the Beacon TIF Bond Issuance Fund and when a Deficiency Amount occurs, the City may, in its discretion, apply and use such funds to cover and pay the Deficiency Amount. In the event the City does apply and use funds within the Beacon TIF Bond Issuance Fund, then there shall be a reduction in the Total Reimbursable Public Costs payable under Section 4.3.2(a) or Section 4.3.2(b), as the case may be, equal to the amount of the Beacon TIF Bond Issuance Fund that was applied and used to cover and pay the Deficiency Amount. By way of example, if the amount calculated under Section 4.3.2(b) was \$1,000,000.00, but prior to the Second Public Cost Closing Date there was a \$100,000.00 Deficiency Amount and the City used and applied the money held in the Beacon TIF Bond Issuance Fund to pay such Deficiency Amount, then the amount payable under Section 4.3.2(b) shall be reduced to \$900,000.00 (\$1,000,000.00 less \$100,000.00).

4.6.3. Conditions Precedent to issuance of Beacon TIF Bonds. The issuance of the Beacon TIF Bonds are subject to the satisfaction of the following conditions precedent:

(a) Approval by the City Council to issue the Beacon TIF Bonds;

(b) The Guarantors have executed and delivered to the City their respective Guaranty.

(c) The Developer has delivered to the City the executed Letter of Credit.

(d) The City has determined that no Construction Stoppage has occurred as of or prior to the date the Beacon TIF Bonds are issued by the City.

(e) There has been no event of default under this Agreement or Other Beacon TIF Agreements by the Developer or any other Person obligated thereunder.

(f) As of the date the Beacon TIF Bonds are issued, the representations and warranties of the Developer, described in Section 5, are true and correct.

4.7. Excess Beacon Tax Increment. The Developer agrees and acknowledges that any excess Beacon Tax Increments remaining in the Beacon TIF District Fund upon the termination of this Agreement and/or upon payments of the entire amount owing under the Beacon TIF Bonds and all amounts to necessary to reimburse the City for its costs incurred under

this Agreement, including the full reimbursement and pay down to zero of any Sales Tax TIF Inter-Fund Loan and the City's administrative fee and premium described in Section 4.2.5, shall belong to the City.

4.8. ⁷ Insufficient Beacon Tax Increment.

4.8.1. The Developer agrees that in the event there is a Deficiency Amount generated from the Beacon TIF District, the amount of said delinquency shall be levied and certified as special assessments against the Private Components, levied and certified as a special assessment. "Deficiency Amount" means, in a particular year, the Beacon Tax Increments are insufficient to cover and pay the debt service on the Beacon TIF Bonds plus the costs incurred by the City under this Agreement, including reimbursement of the Sales Tax TIF Inter-Fund Loan, as described in Section 4.2.4(b), and the City's administrative fee and premium as described in Section 4.2.5.

4.8.2. The special assessment that may be imposed under Section 4.8.1 shall be applied to the residential and commercial spaces located within the Private Components, (exclusive of the City Building Space or any other such space owned by the City) on a pro-rata basis based upon square footage basis.

4.8.3. The Developer agrees that in the event of a Deficiency Amount, the above-described special assessments benefit the property that will be subject to such assessment and that said benefit exceeds the amount of the special assessment by more than fifty percent (50%). The Developer, for itself, and its successors and assigns, waives any objection to any irregularity with regard to the assessment process for such special assessments. This waiver includes a waiver to any objection to the amount of the special assessments levied against the Private Components, including any and all claims that such assessment is excessive, arbitrary, capricious, or unreasonable. Further, the Developer, for itself and its successors and assigns, waives all rights to appeal such action of the City to the court. These waivers are express, and the Developer acknowledges that it is waiving any and all rights of appeal to the assessment and reassessment.

4.9. Guaranty. To further secure the payment of any Deficiency Amount, the Guaranty from each Guarantor required to provide a Guaranty pursuant to ~~Section~~Sections 1.39 and 1.40 shall be executed and delivered to the City.— Without in any manner limiting the ability of the City to levy the special assessment, as described in Section 4.8, for a Deficiency Amount, each Guarantor shall be jointly and severally liable for any Deficiency Amount and the City may, in addition to any other remedy available to it, also seek and obtain payment of the Deficiency Amount from each Guarantor, jointly and severally.

SECTION 5 – DEVELOPER REPRESENTATIONS/INDEMNITY/RELEASE OF LIABILITY

5.1. Representations and Covenants of the Developer. The Developer represents and covenants to the City, which the City has relied on in entering into this Agreement and shall continue to rely on in the execution of and performance of this Agreement:

5.1.1. The Developer is a limited liability company duly organized and validly existing under the applicable laws of the State of North Dakota.

5.1.2. The Developer is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement.

5.1.3. The Developer is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

5.1.4. This Agreement to which the Developer is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

5.1.5. There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

5.1.6. The Developer's undertakings pursuant to this Agreement are for the purpose of developing the Beacon Development Property.

5.1.7. Developer further recognizes that, in view of (a) the importance of the development of the Beacon Development Property to the general welfare of the City; and (b) the substantial financing and other public aids that were made available by the City for the purpose of making such development possible, the qualifications and identity of Developer are of particular concern to the City. Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with Developer, and, in doing so, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed.

5.1.8. The Developer will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

5.2 Indemnity.

5.2.1. The Developer agrees to and shall indemnify, save and hold the City, its agents, officers, employees, contractors and other sub-contractors harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including

attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with (a) any acts or omissions of the Developer under this Agreement and other agreement to be executed in connection herewith, (b) the acquisition, construction, installation, ownership, maintenance, and operation by Developer of the Components or (c) from the presence on any portion of the Beacon Development Property of any dangers, toxic or hazardous pollutants, contaminants, chemicals, waste, materials, or substances, as defined in or governed by the provisions of any federal, state or local law, statute, code, ordinance, regulation, requirement, or rule relating thereto, that were caused or as the result of Developer's actions or omissions or its agents, employees or other representatives.

5.2.2. The Developer agrees to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with the Developer's acts or omissions; and.

5.2.3. Without limiting the foregoing, the indemnification obligation of the Developer shall include the obligation and duty to defend the City, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the Developer's indemnification obligations.

5.3. Release of Liability The Developer hereby releases and forever discharges the City from any and all claims or causes of which may result from a loss of the tax increments as provided herein, whether by legislative action or judicial decision. The Developer understands and agrees that the tax increment financing which is to be provided to the Developer pursuant to Chapter 40-58 of the North Dakota Century Code is solely dependent upon the validity of said provisions and compliance with all of the provisions contained therein. The Developer has satisfied itself as to such validity and compliance and hereby waives any and all claims and causes of actions which it has or may have against the City in the event of loss of the tax exemption for any reason.

SECTION 6 - DEFAULT BY DEVELOPER / REMEDIES OF CITY

6.1. Default By Developer. An event of default by Developer shall occur if any of the following occur:

6.1.1. The Developer fails to act or otherwise observe or perform any of the terms or conditions of this Agreement.

6.1.2. The City Auditor has sent notice to the Developer of a Construction Stoppage and the Developer has failed to recommence Construction on such Component(s) within 10 Calendar Days after the date of the City Auditor's notice of a Construction Stoppage.

6.1.3. The Developer fails to observe or perform any of the other covenants, promise or agreement within the Other Beacon TIF Agreements, and/or any other Person obligated under the Other Beacon TIF Agreements fails to observe or perform any of the covenants or agreements contained therein, and such default continues unremedied beyond the

expiration of any applicable grace period which may be expressly allowed under the Other Beacon TIF Agreements.

6.1.4. Any representation or warranty by the Developer in this Agreement and/or the Other Beacon TIF Agreements or in any other agreement, certificate, request, or other document executed, furnished pursuant to or under this Agreement proves to have been incorrect in any material respect as of the date when made or deemed made.

6.1.5. The Developer admits in writing the fact that its debts exceed a fair valuation of its property.

6.1.6. Any Guarantor admits in writing the fact that its debts exceed a fair valuation of the Guarantor's property.

6.1.7. The Developer or any Guarantor commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

6.1.8. The Developer or any Guarantor makes an assignment for the benefit of its creditors.

6.1.9. The Developer or any Guarantor consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

6.1.10. The Developer or any Guarantor has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the Developer or any Guarantor, as the case may be, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Developer or any Guarantor or for any substantial part of its property, or approving a plan for reorganization of the Developer or any Guarantor, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

6.2. Remedies by City. Upon the occurrence of an event of default by the Developer, the City may:

6.2.1. Pursue and obtain any and all other available legal or equitable remedies against the Developer for such default, including but not limited to the termination of this Agreement and all of the Developer's rights under this Agreement and/or the Other Beacon TIF Agreements.

6.2.2. Pursue and obtain any and all other available legal or equitable remedies against any other Person obligated under this Agreement and/or the Other Beacon TIF Agreements, including but not limited to the termination of all of said Person's rights under this Agreement and/or the Other Beacon TIF Agreements.

6.2.3. Terminate the Beacon TIF District and all of the attending tax increment financing incentives.

6.2.4. Make written demand for all funds remaining on the Letter of Credit, with the City using such funds to reimburse itself for damages, costs and expenses the City has suffered or incurred under this Agreement.

6.2.5. Retain all money within the Beacon TIF District Fund and/or the Beacon TIF Bond Issuance Fund.

6.2.6. Pursue and obtain against the Developer and each Guarantor full and complete reimbursement for all costs and expenses the City has incurred under this Agreement, including recovery of the then outstanding balance of the Beacon TIF Bonds and the balance of the Sales Tax TIF Inter-Fund Loan.

6.2.7. Pursue and seek for all damages or other remedies available to the City.

6.3 **Remedies by City Cumulative.** All rights and remedies of the City from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

6.4. **Non-Waiver of Remedy.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice except as may otherwise be provided by law

SECTION 7 – MISCELLANEOUS PROVISIONS

7.1. **Future Special Assessments.** The Developer acknowledges and agrees nothing herein shall preclude future special assessments for later improvement districts benefitting the Beacon Development Property being levied and apportioned as special assessments against the Beacon Development Property.

7.2. **Payment of Taxes and Special Assessments.** Developer shall pay when due all ad valorem taxes and any future special assessments payable with respect to the Beacon Development Property in accordance with the provisions of applicable laws of the State of North Dakota.

7.3. **No other property tax incentives.** The Developer acknowledges and agrees that while any amount is outstanding under the Beacon TIF Bonds, no portion of the Private Components shall be eligible for any property tax incentive, including but not limited exemptions described in N.D.C.C. § 57-02.2-03 or other incentive that serves to lower or reduce the value of any part of the Private Components.

7.4. Assignment. Except as otherwise upon the prior written consent by the City, the Developer agrees, on behalf of itself, its officers, and partners and the personal representatives of the same, and any other person or persons claiming any benefits under the Developer by virtue of this Agreement, that this Agreement and the rights, interests, and benefits hereunder will not be assigned, transferred, pledged, or hypothecated in any way by the Developer or by any other person claiming under it by virtue of this Agreement, and will not be subject to execution, attachment, or similar process. Any attempt at assignment, transfer, pledge, or hypothecation or other disposition of this Agreement or of such rights, interests, and benefits contrary to the foregoing provisions or the levy of any attachment or similar process, will be null and void and without effect.

7.5. Discontinued Business Operation. In the event the Developer discontinues its business operations on the Beacon Development Property, this Agreement will terminate and be of no force or effect except for periods of remodeling/renovation or in the event of damage caused by fire, flood, or natural disaster.

7.7. Termination. This Agreement will terminate and be of no further force and effect after the Beacon TIF Bonds have been paid in full, or December 31, 2048, whichever event occurs first.

7.8. Severability. If any of the provisions contained herein shall for any reasons be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

7.9. Entire Agreement. This Agreement constitutes the sole and entire agreement and understanding between the Parties hereto as to the subject matters hereof, and supersedes all prior discussions, agreements and understandings of every kind and nature between them as to such subject matter.

7.10. Amendments. Neither the Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto.

7.11. Change in the Law. The Developer will ensure that the Beacon Development Project, including but not limited to the ~~construction~~Construction of the Public Components, is performed in accordance with the terms of this Agreement following any Change in Law. If a Change of Law occurs or will occur within one hundred eighty Calendar Days, any Party may notify the other Party and include in such notification: (i) an opinion on its likely effects; (ii) any necessary changes to the Project or implementation of this Agreement, including the full detail of the procedure for implementing such changes; and (iii) amendments (if any) required by this Agreement. After either Party delivers a notice of a Change in Law, the Parties shall meet and discuss the issues referred to in such notice and any ways in which the Developer can mitigate the effect of the relevant Change in Law.

7.12. Legislative and Tax Law Disclosure. The Developer acknowledges and agrees that the authority of the City to create, impose, and administer the TIF District is derived from

North Dakota statutory authority and the North Dakota Legislature has the power to amend, repeal, and replace any and all laws relating to tax increment financing, property tax valuation, and collection.

7.13. Authority. The Parties to this Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Agreement. The Parties to this Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Agreement and each agreement, document and instrument executed and delivered pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

7.14. Memorandum of Agreement. The City and the Developer agree to execute and deliver on the date of the signing of this Agreement a memorandum or short form of this Agreement in a form sufficient to put all contractors, suppliers, and the public on notice of the existence of the Agreement with respect to the Beacon Development Property. ~~NeA~~ copy of this Agreement ~~shall~~may be fixed to the memorandum of Agreement. The Developer shall pay all costs charged by the State of North Dakota and Grand Forks County to record the memorandum of Agreement. The Developer agrees that within ten (10) Calendar Days following the expiration or earlier termination of this Agreement, a memorandum noting such expiration or termination which may executed by the City and recorded in the official records of Grand Forks County, North Dakota, at the City's sole cost and expense.

7.15. Non-Merger. None of the provisions of this Agreement shall be merged by reason of any deed or other instrument transferring any interest in any part of the Beacon Development Property or any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

7.16. Headings. All titles or headings to articles, sections, subsections or other divisions of this Agreement or exhibits hereto are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the Parties hereto.

7.17. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota and the Ordinances of the City of Grand Forks and any action or claim related thereto shall be brought in the District Court for Grand Forks County, North Dakota.

7.18. Interpretation and Administration. Notwithstanding anything to the contrary, the City Council shall have full power and authority to interpret, construe, and administer this Agreement, and its interpretations and construction thereof and action thereunder will be binding and conclusive on the Parties for all purposes.

7.19. Waivers. One or more waivers by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

7.20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

7.21. No Third-Party Beneficiary. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns. No other person or entity shall have any right to rely on this Agreement or to claim or derive any benefit therefrom absent the expressed written consent of the Party to be charged with such reliance or benefit.

7.22. Relationship of Parties. The Parties shall perform as independent contractors under this Agreement. Each Party, its employees, agents, and representatives are not employees of the other Party for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Compensation Act, and the North Dakota Workers' Compensation Act. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship. Each Party will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

7.23. Cooperation. The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

7.24. Singular and Plural. Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

7.25. References. The words “herein,” “hereof,” “hereunder” and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular article, section or subsection. Any reference herein to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Agreement unless otherwise stated herein. Any reference herein to an Exhibit shall be deemed to refer to the applicable Exhibit attached hereto unless otherwise stated herein.

7.26. Notices. Any notice required or desired to be served by either Party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the City:

255 North 4th Street
Grand Forks, ND 58201

To the Developer:
400 10 ST SE
Minot, ND 58701

The provisions of this Section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

7.27. Time of the essence. Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

7.28. Performance of Additional Acts. The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

7.29 Binding Effect. This Agreement will inure to the benefit of and is binding upon the City and the Developer, and their respective successors and assigns.

BEACON LANDHOLDINGS, LLC,
a North Dakota limited liability company

By: _____
Its: _____
Dated: _____

EPIC MANAGEMENT, LLC,
a North Dakota limited liability company

By: _____
Its: _____
Dated: _____

EPIC HOLDINGS II, LLC,
a North Dakota limited liability company

By: _____
Its: _____
Dated: _____

“Developer”

CITY OF GRAND FORKS,
a North Dakota municipal
corporation

By: Brandon Bochenski
Its: Mayor
Dated: _____

Attest:

By: Maureen Storstad
Its: City Auditor
Dated: _____

“City”

EXHIBIT 1.2

CITY OF GRAND FORKS

RENEWAL AND DEVELOPMENT PLAN 2021-01

FOR

BEACON DEVELOPMENT PROPERTY

1. INTRODUCTION.

1.1. The City of Grand Forks, North Dakota (the “City”), has previously adopted a general plan for the City, which includes the 2045 Land Use Plan and the Grand Forks Renaissance Zone Plan, setting forth therein its development plans and goals for the City (collectively the “General Plan”).

1.2. Pursuant to N.D.C.C. ch. 40-58 and for purposes of pursuing tax increment financing as allowed thereunder, the City, by this Renewal and Development Plan 2021-01 for Beacon Development Property (the “Beacon Development Plan”) makes this specific renewal and development plan, as defined under N.D.C.C. § 40-58-01.1(8).

1.3. The Beacon Development Plan concerns the proposed development and redevelopment of real property (the “Beacon Development Property”). A depiction of the Beacon Development Property and the proposed development and redevelopment thereof is attached as Exhibit “A,” which by this reference is incorporated herein.

1.4. The City finds the Beacon Development Property is unused or underutilized real property that is zoned or used as a commercial site and therefore the Beacon Development Property is “industrial or commercial property,” as defined in N.D.C.C. § 40-58-01.1(14), that exists within the City.

1.5. The City, based on the review and recommendations from the City’s Local Government Advisory Committee, the independent review by Baker Tilly and City staff reports, finds that the proposed development and redevelopment of the Beacon Development Property is necessary in the interest of the public economy, health, safety, morals, or welfare of the residents of the City.

2. LAND ACQUISITION.

2.1. The City, to the greatest extent it determines to be feasible in carrying out this Beacon Development Plan, shall afford maximum opportunity, consistent with the sound needs of the City as a whole, to the development and redevelopment of the Beacon Development Property, as described herein.

2.2. Acquisition of land and/or land rights to permit the development and redevelopment of the Beacon Development Property to occur is not anticipated to be necessary. However, to the

EXHIBIT 1.2

extent such acquisition may be necessary, the City reserves its right to purchase the necessary land and/or land rights by negotiation prior to any condemnation action.

2.3. If the City acquires any land, it may sell or lease all or a part of any property purchased to further the goal of development of the Beacon Development Property.

3. ZONING AND LAND USES.

3.1. The Beacon Development Property, as developed and redeveloped, shall primarily be used for mixed-use buildings that incorporate retail, commercial office, and living space, with a designated and City owned public plaza and parking areas.

3.2. To the extent the Beacon Development Property is not zoned properly, the City, following its normal zoning procedures, shall zone the Beacon Development Property for such use.

3.3. The City reserves the right to zone part of the Beacon Development Property for other uses if it deems that to be in the best interest of the City.

4. RELATIONSHIP TO GENERAL PLAN AND LOCAL OBJECTIVES.

4.1. The Beacon Development Plan furthers and is consistent with the General Plan for the City and promotes (a) the development and redevelopment of commercial sites within the City and (b) the ongoing economic development of the City that is necessary for future growth, welfare and stability of the City and its citizens.

5. DEVELOPMENT GOALS.

5.1. The City, in creating Beacon Development Plan, has taken into consideration the ongoing and varied needs of its businesses and citizens.

5.2. The Beacon Development Plan may be made up of a number of separate projects or steps which the City contemplates may be necessary to carry out the goals and objectives of the Beacon Development Plan, which may include the following:

(a) Street, street-light, sewer, water, drainage and storm water improvements to the Beacon Development Property, as well as leading to the Beacon Development Property.

(b) The establishment of other municipal improvements, including but not limited to, recreational spaces, parks, and parking areas, within the Beacon Development Property.

(c) The creation, by separate resolution by the City, of one or more tax increment financing districts for the Beacon Development Property to pay for all or part of the costs described under N.D.C.C. § 40-58-20.1(3).

EXHIBIT 1.2

(d) The granting of other economic incentives that may be permitted by state law either alone or in conjunction with a tax increment financing district.

(e) Such other steps that the City may in the future determine to be necessary to achieve its goal of industrial and commercial expansion.

6. FINANCING.

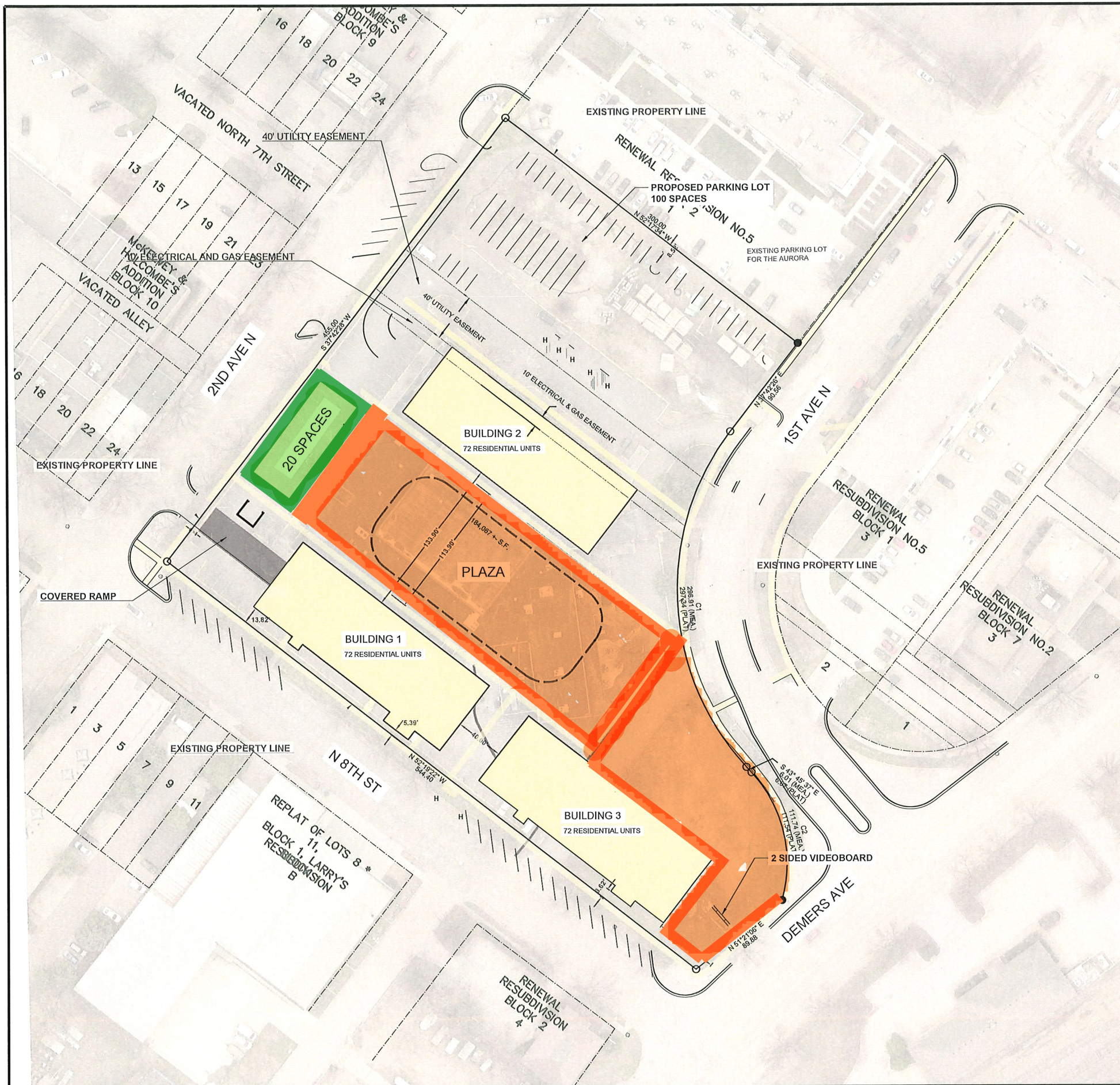
6.1. The City reserves the right to finance the costs incurred in implementing the Beacon Development Plan, as may be allowed by law, which may include the use of tax increment financing exemption, tax increment financing bonds under N.D.C.C. ch. 40-58 and/or contributions by private enterprise or other private sources of funds.

7. IMPROVEMENTS PAID BY PROJECT DEVELOPER.

7.1. The improvements to be funded by the Beacon Development Plan are the improvements described herein, including costs of development described and allowable under N.D.C.C. § 40-58-20.1(3).

7.2. The project developer may privately construct and finance the improvements set out herein and may be reimbursed for those allowable costs, described in N.D.C.C. § 40-58-20.1(3), through tax incentive financing under N.D.C.C. ch. 40-58, for a period of time that shall not exceed twenty-five (25) years in length and in accordance with a tax increment financing development agreement to be entered into with the City.

EXHIBIT 1.3



GENERAL NOTES:

1. ALL WORK PERFORMED WITHIN THE PUBLIC RIGHT-OF-WAY SHALL BE DONE IN ACCORDANCE WITH THE CITY OF GRAND FORKS STANDARD CONSTRUCTION SPECIFICATIONS. PRIOR TO DOING ANY WORK IN THE CITY RIGHT-OF-WAY, CALL THE ENGINEERING DEPARTMENT AT 748-2640.
2. ALL DRIVEWAYS LEADING TO REFUSE CONTAINERS SHALL BE CONSTRUCTED OF 6" CONCRETE WITH A MINIMUM 6" COMPACTED BASE.
3. ALL LANDSCAPING SHALL BE PROTECTED FROM VEHICULAR TRAFFIC BY A STANDARD CONCRETE CURB AND GUTTER.
4. ALL SIGNS TO BE APPROVED BY THE GRAND FORKS INSPECTIONS DEPARTMENT (CONVENTIONAL ZONING) OR PLANNING DEPARTMENT (PLANNED UNIT DEVELOPMENT).

PROPERTY INFORMATION

THE BEACON BY EPIC
 101 1ST AVE N
 GRAND FORKS, ND 58003

LEGAL DESCRIPTION
 LOT 2, BLOCK 2
 RENEWAL RESUBDIVISION NO. 5

ZONING
 B4 CENTRAL BUSINESS DISTRICT

TYPE USES
 DEVELOPMENT
 THE BEACON BY EPIC
 OWNER / DEVELOPER
 EPIC COMPANIES

PROJECT INFORMATION

BUILDING INFORMATION
 BUILDING HEIGHT = 7 PER IBC DEFINITION
 OCCUPANCY = ?
 CONSTRUCTION TYPE = ?
 SPRINKLER SYSTEM = ?
 FFE = 7 (V)

PARKING REQUIREMENTS

PARKING SPACE - STANDARD - ADA 9' X 18'-6" - 90 DEG 7
 PARKING SPACE - ADA 9' X 18' - 45 DEG 0
 PARKING SPACE 9' X 18' - 90 DEG 113
 PARKING SPACE 9' X 18' - 45 DEG 0
 UNDERGROUND PARKING 103

PARKING PROVIDED

PARKING SCHEDULE		
PARKING SPACE - STANDARD - ADA 9' X 18'-6" - 90 DEG		7
PARKING SPACE - ADA 9' X 18' - 45 DEG		0
PARKING SPACE 9' X 18' - 90 DEG		113
PARKING SPACE 9' X 18' - 45 DEG		0
UNDERGROUND PARKING		103

ACCESSIBLE PARKING (REQUIRED)

TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES	PROVIDED
223		9

LOT, HEIGHT, AREA & YARD REQUIREMENTS

SITE SCHEDULE

Name	Surface Area	Percent Coverage
Site - Overall	184,000 SF (4.22 AC)	100%
Building Footprint 1	12,591 SF	
Building Footprint 2	12,503 SF	
Building Footprint 3	12,769 SF	
Paved Surface		
Green Space		
Impervious Surface		
Max Impervious Surface		

COMMERCIAL SPACE

Building 1	Building 2	Building 3
Floor 1: 11,300 SF	Floor 1: 10,085 SF	Floor 1: 11,300 SF

PROJECT:
THE BEACON BY EPIC

LOCATION:
 GRAND FORKS, ND

CLIENT:
EPIC COMPANIES

CONSULTANT:

 Burian & Associates, LLC
 1171 Gold Drive South, Suite 220
 Fargo, ND 58103
 (701) 478-7999

REV #	DESCRIPTION	DATE

PROJECT MANAGER:
 DRAWING BY: CALEB KJETLAND
 JURISDICTION:
 DATE: 08/25/2021

SHEET TITLE:
DRAFT SITE PLAN

SHEET NUMBER:

JOB/FILE NUMBER:

C:\Users\caleb\Documents\Burian & Associates\Dropbox\Burian and Associates, LLC\Shared Files\Clients\Epic Companies\11-0002 The Beacon\030 Primary Engineering\PROJECT TEMPLATE\CONSTRUCTIVE SPACES SITE PLAN - Jun 30 2021 08:41:03 pm PLOTTED BY: caleb

EXHIBIT 1.40

GUARANTY

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce **CITY OF GRAND FORKS**, a municipal corporation under North Dakota law (herein, with its participants, successors and assigns, called "Lender"), enter into that certain Tax Increment Financing Development Agreement, dated the ___ day of _____, 2021 (referred to herein as the "TIF Development Agreement"), a copy of which is attached hereto as Exhibit "A," and by this reference incorporated herein or extend other accommodations to or for the account of _____ (herein collectively called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

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

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.
2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, until the later of (a) all Indebtedness has been paid in full or (b) the Beacon TIF Bonds, as described in the TIF Development Agreement, have been paid in full. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

EXHIBIT 1.40

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

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

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

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

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty), without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodations or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the Interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the

EXHIBIT 1.40

acceptance of any instrument in renewal thereof or substitution therefore; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 1111 (b)(2) of the United States Bankruptcy Code.

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

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

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

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

EXHIBIT 1.40

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

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

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

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

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

[insert name of guarantor]

“Undersigned” shall refer to all persons who signed this guaranty, severally and jointly.

**PUBLIC PLAZA AND CITY PARKING AREA MANAGEMENT
AGREEMENT**

**BY AND BETWEEN
CITY OF GRAND FORKS, NORTH DAKOTA
AND
BEACON EVENTS, INC.**

Dated as of _____, 20__

Relating to:

**An agreement pertaining to the public plaza and city parking area management of the
Project at 701 1st Avenue North, Grand Forks, North Dakota 58203.**

PUBLIC PLAZA AND CITY PARKING AREA MANAGEMENT AGREEMENT

THIS PUBLIC PLAZA AND CITY PARKING AREA AGREEMENT (the “Agreement”) is entered this _____ day of _____, 2021, by and between the CITY OF GRAND FORKS, NORTH DAKOTA, a Home Rule City and political subdivision of the State of North Dakota (the “City”), and BEACON EVENTS, INC., a non-profit corporation organized and existing under the laws of the State of North Dakota (“Manager”).

WHEREAS, the City has undertaken numerous community engagement amenities and projects throughout the City, including the Project, to revitalize the community;

WHEREAS, to promote community involvement and well-being through these amenities and projects, the City desires to hold community events and programs;

WHEREAS, Manager is organized to create, organize, and implement community events for all ages; and

WHEREAS, the City and Manager desire to enter into this Agreement to provide for the management of the Project by Manager.

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

ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 1.01 **DEFINITIONS**. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

“Applicable Law” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, State, and local laws including, without limitation, the City Code, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the City, (b) Manager, or (c) the Services.

“Beacon Development Property” means the following described parcel of real property having a street address of 710 1st Avenue North, Grand Forks, ND 58201 and more particularly described as follows:

Lot Two (2), in Block Two (2), Renewal Resubdivision No. 5 to the City of Grand Forks, according to the plat thereof on file in the Office of the County Recorder within and for Grand Forks County, N.D., and recorded in Book “152” of Deeds page 253.

“Best Efforts” means an entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with Applicable Law.

“Business Day” shall mean a day other than a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

“Calendar Day” shall mean Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday. When this Agreement requires a calculation of the number of Calendar Days, each day is counted, regardless of whether it is a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

“City” means the City of Grand Forks, North Dakota, a Home Rule City and political subdivision of the State of North Dakota.

“City Administrator” means the Person appointed and acting as the city administrator for the City.

“City Attorney” means the Person appointed and acting as the city attorney for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0401.

“City Code” means Grand Forks City Code of 1987.

“City Council” means the city council of the City, which is composed of the Mayor and council members.

“City Event” means an event that the City desires to be held or holds in the Project pursuant to Section 4.02 hereof, which includes but is not limited to (a) public celebrations, public gatherings and/or other public events that are free of charge or that may require an entrance fee to attend, whether sponsored or put on wholly or in part by the City or sponsored or put on wholly or in part by any other Person, (other than the Manager), and/or (b) any other event, meeting, seminar, or non-commercial or commercial use by or through the City.

“City Parking Area” means the area depicted in green on Exhibit ~~DA~~ to be constructed and installed by the Developer on the Beacon Development Property.

“City Representative” means as defined in Section 12.12.

“**City Staff**” means those individuals identified in Section 4.01 hereof.

“**Developer**” means collectively EPIC Holdings II, LLC, a North Dakota limited liability company, Beacon Landholdings, LLC, a North Dakota limited liability company, and Epic Management, LLC, a North Dakota limited liability company and each of their respective employees, agents, representatives and contractors.

“**Development Agreement**” means that certain Tax Increment Financing Development Agreement by and between the City and the Developer having an effective date of _____, 2021.

“**Effective Date**” means the 1st day Calendar Day following the date the City takes title of hethe Project pursuant to the Development Agreement.

“**Event**” means individually and collectively a City Event and/or a Manager Event.

“**Event Account**” means the separate interest-bearing account in the name of the Manager and under the Manager’s federal tax identification number in a financial institution located in the City and which account is fully insured by the Federal Deposit Insurance Corporation, where advance Operating Revenues, described in Section 6.05(a) are deposited.

“**Exhibit**” means the documents designated as an exhibit and attached to this Agreement. Any reference to an Exhibit in this Agreement shall mean such document and all information contained on the document is incorporated into this Agreement as if fully set forth herein. In the event of any conflict of any provision of an Exhibit and the provisions of this Agreement, the provisions of the Agreement shall prevail.

“**Good Faith**” means the observance of reasonable commercial standards of fair dealing in a given trade or business.

“**Good Industry Practice**” means the industry practices and standards that would be exercised by a prudent and experienced service provider engaged in the same kind of undertakings and under similar circumstances as those applying to the Services.

“**Maintenance Fee**” means the maintenance fees established under Section 7.01.

“**Maintenance Fund**” means the separate interest-bearing account in the name of the City and under the City’s federal tax identification number in a financial institution located in the City and which account is fully insured by the Federal Deposit Insurance Corporation, where advance the Maintenance Fees are deposited.

“**Manager**” means Beacon Events, Inc.

“**Manager Event**” means an event to be held in the Project that is not a City Event.

“**Mayor**” means the Person elected and acting as the mayor of the City pursuant to N.D.C.C. § 40-08-14.

“Net Losses” means the amount in any calendar year by which Operating Expenses exceed Operating Revenues and determined in accordance with generally acceptable accounting principles and applying the cash method of accounting. The Manager shall report to the City the Net Losses within thirty (30) Calendar Days after the end of each calendar year.

“Net Profits” means the amount in any calendar year by which Operating Revenues exceed Operating Expenses and determined in accordance with generally acceptable accounting principles and applying the cash method of accounting. The Manager shall report to the City the Net Profits within thirty (30) Calendar Days after the end of each calendar year.

“Operating Account” means the separate interest-bearing account in the name of the Manager and under the Manager’s federal tax identification number in a financial institution located in the City and which account is fully insured by the Federal Deposit Insurance Corporation, where Operating Revenues are deposited and Operating Expenses are paid.

“Operating Budget” shall mean a line-item written budget for the Project that includes a projection of Operating Revenues and Operating Expenses, presented on a monthly and annual basis.

“Operating Expenses” shall mean all expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Project under this Agreement, including but not limited to the following: (1) cost of operating supplies, including general office supplies, (2) advertising, marketing, group sales, and public relations costs, (3) cleaning expenses, (4) web-site costs, (5) the Management Fee under Section 5.01, (6) printing and stationary costs, (7) postage and freight costs, (8) equipment rental costs, (9) routine and day-to-day repairs and preventive maintenance, (10) security expenses, (11) telephone and communication charges, (12) cost of employee uniforms and identification, (13) exterminator, snow and trash removal costs, if applicable (14) computer, software, hardware and training costs, (15) office expenses, (16) audit and accounting fees, (17) legal fees, (18) all insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (19) commissions and all other fees payable to third parties, (20) cost of complying with any Applicable Laws, (21) costs incurred by Manager to settle or defend any claims asserted against Manager arising out the Services; and (22) taxes.

The term “Operating Expenses” **does not** include, ~~and (2)~~ payments or expenses made or incurred under and/or relating to the Development Agreement or the Other Beacon TIF Agreements, including but not limited to the Public Plaza CAM, Beacon Tax Increment and/or payments on the Beacon TIF Bonds, as described in the Development Agreement or the Other Beacon TIF Agreements.

“Operations Manual” shall mean the document to be developed, negotiated in Good Faith and agreed upon by Manager and City, which shall be intended to be an outline and shall contain the terms, policies and procedures regarding the management and operation of the Project, including the general policies and procedures to be implemented in operating the Project.

“Operating Revenue” shall mean all revenues, income, monetary receipts and the value of in-kind product or services received, generated, earned or relating to the Manager’s operation of the Project and/or the Services, including but not limited to (1) Event ticket proceeds income, (2) Sponsorships and advertising (including advertising from video boards/signs located within the Project ~~and advertising by Tenants subject to as described in~~ Section 3.11), (3) fees and income from the rental, licensing or other use of all or any portion of the Project, (4) concession and/or merchandise income, (5) fees, payments and income from vendors or other third parties, (6) fees, payments and income from parking, including from Reserved Parking, and (7) other miscellaneous revenues and income relating to the Project.

The term “Operating Revenue” **does not** include: (1) the Maintenance Fee, (2) any rental, fee or other charge received by the City from any Person for the rental, license or use of the Project for a City Event (3) the City Start-Up Deposit, (4) any City Discretionary Funding Deposit, and/or (5) any revenues, income, monetary receipts and the value of in-kind product or services received, generated, earned or relating to City Events, the Development Agreement or the Other Beacon TIF Agreements, including but not limited to the Public Plaza CAM, Beacon Tax Increment and/or payments on the Beacon TIF Bonds, as described in the Development Agreement or the Other Beacon TIF Agreements.

“Other Beacon TIF Agreements” means the City Parking Area Lease, Private Component Plans, Guaranty, Letter of Credit, Overall Component Plans, Private Component Plans, Public Component Plans and any and all other agreements or instruments referred or described in the Development Agreement, whether now or hereafter executed and delivered by the Developer and/or any other Person in connection with the performance of the Development Agreement, as such agreements may be amended or supplemented from time to time.

“Party” means either the City or Manager, as the context may require, and its respective legal representatives, successors, and permitted assigns, and whenever a reference in this Agreement is made to any Parties hereto, **“Parties”** means the City and Manager, collectively, and their respective legal representatives, successors, and permitted assigns.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

“Project” means the Public Components.

“Project General Manager” means the individual identified in Section 5.04.

“Public Components” means, individually and collectively, the Public Plaza and the City Parking Area.

“Public Parking Spaces” means the parking spaces in the City Parking Area designated by the City as open for public parking without charge or fee.

“**Public Plaza**” means the areas designated as “Plaza,” “ and depicted in orange on Exhibit **EA** to be constructed and installed by the Developer on the Beacon Development Property.

“**Reserve Account**” means the separate interest-bearing account in the name of the Manager and under the Manager’s federal tax identification number in a financial institution located in the City and which account is fully insured by the Federal Deposit Insurance Corporation, where Operating Revenues are deposited pursuant to Section 6.14.

“**Reserved Parking Spaces**” means the parking spaces in the City Parking Area designated by the City as spaces for reserved parking for a charge or fee.

“**Services**” means as defined in Section 3.01.

“**Sponsorship**” means a monetary or in-kind product or service to support an Event or support the Project generally.

“**State**” means the State of North Dakota.

“**Utility**” means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing power, electricity, light, heat, or gas, which directly or indirectly serve the Project.

“**Usual and Customary**” means the reasonable and lawful public custom or customary in the industry concerning transactions of the same nature as those which are to be affected thereby and either known to the Parties or so well established, general, and uniform that they must be presumed to have acted with reference thereto.

Section 1.02 INTERPRETATION. The headings of Articles and Sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “relating to” means relating to, referring to, relevant to, pertaining to, consisting of, reflecting, evidencing, concerning, or in any way logically or factually connected with the matter discussed. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person’s permitted assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement, and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and

to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II.
ENGAGEMENT/MANAGER BOARD OF DIRECTORS

Section 2.01 **ENGAGEMENT.**

(a) From and after the Effective Date, the City hereby engages Manager to operate, supervise, manage, direct, and control programming services in the Project in accordance with and subject to all of the terms and conditions hereof.

(b) Manager hereby accepts such engagement and shall perform the services described herein from and after the Effective Date, subject to the limitations expressly set forth in this Agreement and in the Operations Manual.

Section 2.02 **MANAGER TAX STATUS.**

(a) As a condition precedent to the City's engagement of Manager, the Manager shall provide written documentation to the City demonstrating:

(1) The Manager is a North Dakota non-profit corporation under N.D.C.C. ch. 10-33 and

(2) The Manager has applied for and received a favorable written determination by the Internal Revenue Service and obtained the status of tax-exempt corporation pursuant 26 U.S.C. § 501(c)(3).

(b) For the entire term of this Agreement, the Manager shall maintain its status as a nonprofit North Dakota corporation and tax-exempt corporation pursuant to 26 U.S.C. § 501(c)(3).

(c) The Manager represents that the purpose for which the City is engaging Manager under this Agreement shall comply with and match the Manager's purposes as a nonprofit tax-exempt corporation.

Section 2.03 **MANAGER ARTICLES OF INCORPORATION.** Prior to submitting to the North Dakota Secretary of State, the Manager shall provide to the City its proposed articles of incorporation and bylaws for approval by the City Administrator and City Attorney in the exercise of their respective discretion.

Section 2.04 **BOARD MEMBERS OF MANAGER.** Without limiting the discretion described in Section 2.03, the Manager's articles of incorporation shall provide for a nine (9) member board of directors and require that all the activities and affairs of the Manager be managed by or under the direction of such board of directors. The Manager's articles of incorporation shall also require the board of directors be appointed, selection, placed and removed, including to fill any vacancy, in the following manner:

(a) Two members of the Manager’s board of directors shall be appointed and selected by the City, which appointment and selection shall be by nomination of the Mayor and confirmed by the affirmative vote of the City Council.

(b) Two members of the Manager’s board of directors shall be appointed and selected by the Grand Forks, North Dakota School District, which appointment and selection shall be by the affirmative vote of its school board.

(c) Two members of the Manager’s board of directors shall be appointed and selected by the Grand Forks, North Dakota Park District, which appointment and selection shall be by the affirmative vote of its board of park district commissioners.

(d) Three members of the Manager’s board of directors shall be at-large members, appointed and selected as follows:

(1) One at-large member of the Manager’s board of directors shall be appointed and selected by the City, which appointment and selection shall be by nomination of the Mayor and confirmed by the affirmative vote of the City Council.

(2) One at-large member of the Manager’s board of directors shall be appointed and selected by the Grand Forks, North Dakota School District, which appointment and selection shall be by the affirmative vote of its school board.

(3) One at-large member of the Manager’s board of directors shall be appointed and selected by the Developer.

(e) An appointed and selected member of Manager’s board of directors may be non-judicially removed only by the Person appointing said board of director.

**ARTICLE III.
AUTHORITY AND OBLIGATIONS / USE OF PROJECT**

Section 3.01 SERVICES. For the benefit of the City and in performance of this Agreement, Manager shall perform the following duties, activities, and responsibilities (collectively referred to as “Services”):

(a) Perform and furnish services as appropriate or necessary to maintain, operate, manage and promote the Project as a first-class public gathering area and facility in accordance with the Operations Manual and the terms of this Agreement;

(b) Hire or otherwise engage, pay, supervise and direct all personnel Manager deems necessary for the operation of the Project and to meet its duties, obligations and responsibilities under this Agreement, and to conduct staff planning, retention and training as the Manager deems necessary;

- (c) Procure, negotiate, execute, administer and assure compliance with contracts relating to Events and the Services;
- (d) Advertise, promote, and/or market the Project to secure Events in the Project;
- (e) Solicit and secure funds, including Sponsorships, necessary to hold Events in the Project, and to sell Sponsorships in the best interest of the City;
- (f) Develop and provide standard form contracts for Events, booking of Events, advertising, Sponsorships, Reserved Parking Spaces, rentals, licenses, and/or use of or within the Project, and submit such contracts to the City for its approval, and upon such City approval, to use such form and not materially deviate from the terms and conditions contained in such standard form contract without prior approval of the City;
- (g) Coordinate with the City Representative in an effort to meet the City's programming requirements and quotas;
- (h) Coordinate with City Staff as provided in Section 4.01 herein;
- (i) Manage and book Events in the Project;
- (j) Except as may be provided for herein, set the amount of fees and charges for Events, booking of Events, advertising, Sponsorships, Reserved Parking Spaces, rentals, licenses, and/or use of or within the Project, and for vendors and the sale of concessions, beverages, food, merchandise and novelty within the Project, all of which are subject to the approval of the City;
- (k) Work with the City to establish a Maintenance Fee;
- (l) Coordinate a calendar for Events in the Project;
- (m) Showcase the Project as a valuable asset to the community, which shall include but is not limited to planning, preparing, implementing, coordinating and supervising with the City a marketing plan, all public relations and other promotional programs for the Project;
- (n) Secure any necessary approvals, permits, governmental or otherwise, and other compliance requirements under Applicable Laws for any Event, rental, license or other use of the Project, including licensing and permits for liquor, food, and noise;
- (o) Ensure all Persons conducting an Event, renting, licensing or otherwise using the Project, or any portion thereof, are aware of and comply with all Applicable Laws and have secured all necessary approvals, governmental or otherwise, for said Event, rental, license or other use of the Project including licensing and permits for liquor, food, and noise;
- (p) Advertise, promote, and/or market any Events secured for the Project;

- (q) Secure security and crowd control personnel, as necessary, for Events;
- (r) Secure emergency medical and fire protection personnel, as necessary, for Events;
- (s) Secure trash receptacles, restrooms, and other related facilities for Events;
- (t) Secure and coordinate any vendors desired for Events;
- (u) Require all vendors, renters, licensees, and users of the Project to execute agreements containing standard indemnification and insurance obligations on the part of the vendor/user/licensee and in favor of and to protect the City and Manager against liability.
- (v) Operate and maintain the Project, including any equipment utilized in connection with its operation and any improvements to the Project, in the condition received, normal wear and tear excepted;

(w) Institute traffic and parking controls as needed for Events, and to collaborate and coordinate with the City in establishing and creating such controls;

- ~~(w)~~(x) Coordinate and oversee set-up and tear down of Events;
- ~~(x)~~(y) Clean and restore the Project to its pre-Event condition following an Event;
- ~~(y)~~(z) Attend meetings at the request of the City upon reasonable notice of the same

~~(z)~~(aa) Maintain, prepare and provide the records and reports, financial reports, and Operating Budget described in Sections 3.07, 3.08, and 3.09;

~~(aa)~~(bb) Make and be responsible for routine and day-to-day repairs and preventive maintenance and cleaning of the Project, and ensure such repair, maintenance or cleaning be of a quality and class that is at least equal to that of the item being repaired, replace or maintained, with all such repaired, replace or maintained item being the property of the City;

~~(bb)~~(cc) Collect and deposit in a timely manner into the Event Account all Operating Revenues received pursuant to Section 6.05;

~~(ee)~~(dd) Collect and deposit in a timely manner into the Operating Account all Operating Revenues;

~~(dd)~~(ee) Pay in a timely manner from the Operating Account all Operating Expenses;

~~(ee)~~**(ff)** Coordinate, as needed, the manner and permitting and approval the sale and consumption of alcohol, liquor, food and beverages within the Project;

~~(ff)~~**(gg)** Perform all other matters described in this Agreement, except those Extra Services the Manager decides not to perform; and

~~(gg)~~**(hh)** Perform all other acts and things that, in the determination of the City, are Usual and Customary and constitute Good Industry Practice for the operation of the Facility.

Section 3.02 **EXTRA SERVICES.** The City reserves the right to request that Manager perform services in addition to the Services set forth in Section 3.01 (the “Extra Services”). In requesting that Manager perform Extra Services, the City, in its sole discretion, will determine whether Manager shall receive compensation, fees, or benefits as a result of the performance of such Extra Services. Manager shall, in its sole discretion, have the right to deny performing any Extra Services requested by the City. Such a denial by Manager, however, shall permit the City to engage another Person to perform such Extra Services. In the event the Manager performs such Extra Services, then the performance of such Extra Services shall be in accordance with and subject to all of the terms and conditions of this Agreement, and the performance of such Extra Services will be deemed, for all purposes, to be within the term “Services.”

Section 3.03 **STANDARDS OF PERFORMANCE.** In performing the Services, and the powers and authorities conferred upon it by this Agreement, and in addition to the requirements under Section 3.04, the Manager and all of its employees, agents, representatives and contractors shall perform and serve the City in Good Faith and shall:

- (a) Protect and promote the City’s interests;
- (b) Provide Services in an economically sound manner; and
- (c) Observe all Applicable Laws.

Section 3.04 **TIME AND EFFORTS REQUIREMENTS.** Without in any manner limiting the requirements of Section 3.03, but in addition thereto, the Manager and all of its employees, agents, representatives and contractors, shall be subject to and comply with the following standards:

(a) Devote sufficient time and use Best Efforts to perform, furnish, provide and fulfill the Services and all duties and responsibilities related thereto and the needs of the City and of its residents, and to perform duties and conduct the Services in accordance with the standards of performance set forth herein.

(b) Perform and furnish all Services in Good Faith and as appropriate or necessary to maintain, operate, manage and promote the Project in a timely and competent manner and in accordance with the standard of care and diligence of competence that is Usual and Customary and that complies with and meets Good Industry Practice.

(c) In the event Manager engages any Person to perform one or more Services, require all of Persons to perform, furnish and provide the Services at the same standard of care, skill, diligence, and competence required of Manager.

Section 3.05 OWNERSHIP / USE OF PROJECT

(a) The City shall at times retain ownership of the Project, including but not limited to real estate, equipment, displays, fixtures, improvements and similar property relating to the Project. Any data, equipment or materials furnished by the City to the Manager or acquired by the Manager as an Operating Expense shall remain the property of the City, and shall be returned to the City when no longer need by the Manager to perform under this Agreement.

(b) The City, by this Agreement, gives Manager a revocable license to use and manage the Project, and the Manager accepts such license, for the purpose of performing the Services.

Section 3.06 NON-COMPETITION. Manager shall not provide services for any other facility without the prior written consent of the City and such consent shall not be unreasonably withheld.

Section 3.07 RECORDS AND REPORTS. Manager shall maintain, keep, or cause to be kept, accurate, full, and complete financial and other records, books and accounts of all its activities under this Agreement, including the Services, in accordance with generally accepted accounting principles, which records, books and accounts shall be available to the City upon request. The City may, at its option and during customary business hours, conduct audits of the books, records, and accounts of the Manager. The City may also, in its sole discretion, require Manager to be responsible for or supervise the entry of financial information concerning the Project into the business records of the City.

Section 3.08 FINANCIAL STATEMENTS.

(a) Manager shall furnish to the City a detailed monthly written financial statement and other reports detailing the activities of the Manager, including its Services, relating to the Project. Each monthly financial statement and other report shall include a balance sheet, aging report of accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date relating to the Project in accordance with generally accepted accounting principles. In addition, the financial statement and reports shall include a written report providing a summary of bookings for each such month and separate cash receipts and disbursements reports for each Event during such month. Additionally, the financial statement and other reports shall include copies of all bank statements of the Operating Account, Event Account, Reserve Account and other bank account of the Manager. The monthly financial and other reports shall be provided to the City within fifteen (15) calendar days after the close of the applicable month.

(b) The Manager shall provide the City, within ninety (90) days following the end of each calendar year, a certified audit report on the accounts and records as kept by the

Manager for the Project. Costs of obtaining such audit report shall be an Operating Expense. The audit shall be conducted by an external auditor approved by the City and shall be conducted in accordance with generally accepted auditing standards.

Section 3.09 ANNUAL OPERATING BUDGET.

(a) Manager, no later than June 30 of each calendar year, shall submit to the City an annual Operating Budget for the upcoming calendar year for the Project. The Operating Budget shall be the Manager's Good Faith projection of Operating Revenues and Operating Expenses, presented in a monthly and annual basis, for the upcoming calendar year. In addition to the Operating Budget, the Manager shall include a written summary of secured Events for such upcoming calendar year and a separate cash receipts and disbursements report for each such Event and a written plan to solicit and secure Events, Sponsorships and advertising for the Project.

(b) Each annual Operating Budget shall be subject to review and approval of the City. In the event extraordinary events occur that could not have been contemplated at the time of the submission and/or approval of the annual Operating Budget, the Manager shall promptly submit an amendment to such budget for review and approval by the City Council.

(c) The Manager shall use all reasonable and Good Faith efforts to manage and operate the Project according to the approved Operating Budget. However, the City acknowledges that projections within an Operating Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond the Manager's control, and that Manager shall have no independent liability due solely to numbers within an Operating Budget not being achieved. Manager agrees to notify the City within 30 days of any material change or variance in Net Profits, Net Losses, Operating Revenues or Operating Expenses from that provided for in the approved Operating Budget, and in requested by the City, the Manager shall work in Good Faith with the City to develop and implement a plan (or changes to the then current plan) to limit Operating Expenses to be incurred for the remaining months of the calendar year with the goal of achieving the approved Operating Budget.

Section 3.10 LIGHT AND NOISE PLAN. On or prior to the Effective Date and with each submission of the annual Operating Budget under Section 3.09, the Manager shall submit a plan to the City, for its review and approval, outlining the actions the Manager will take to comply with Applicable Law, including the City Code, relating to light and noise.

Section 3.11 ADVERTISING IN THE PROJECT.

(a) The Manager, upon the written consent of the City, ~~(which consent shall not be unreasonably withheld),~~ may enter into contracts for or display of advertisements, video messages or signage located in the Project by (1) tenants or owners of the ~~real property~~ "Private Components" area defined and described ~~on Exhibit A attached hereto in the Development Agreement,~~ or (2) sponsors of the Project or an Event held within the Project ~~or (3) other third parties.~~ Any and all advertisements, video messages or signage must be in accordance with all City rules, regulations and guidelines.

(b) In no case shall Manager enter into any contract or otherwise sell or display any advertising, marketing, video message, signage or Sponsorship that conflicts with or is contrary to any agreement, contract, understanding or rights entered into or granted by the City for the Project.

(c) The Manager agrees that no agreement or contract it may enter into for any advertising, marketing, video message, signage or Sponsorship shall include any obligation on the part of the City to use any product or services of such advertiser, marketer or sponsor or to purchase any product or services from said advertiser, marketer or sponsor.

(d) In no case shall the City be charged or pay any rental, payment, fee or other charge to advertise or market a City Event ~~on the video board located [altnerate 1: in the Project or alternative 2: located outside of the Project and depicted and described on Exhibit 1.3 as the "2 sided videoboard"]~~ in the Project, including on the video board.

(e) Subject to the limitations and terms described in this Section 3.11(e), the Developer shall be permitted to use the video board located within the Project that is adjacent to Demers Avenue for display of advertisements or video messages by (1) tenants or owners of the "Private Components" area defined and described in the Development Agreement, or (2) sponsors of the Project or an Event held within the Project. The Parties acknowledge and agree the video board shall provide 8 time slots for advertising each minute (resulting in eight total advertisements or video messages per minute and each single advertisement or video message lasting 7.5 seconds). The Developer's use of the video board shall be limited to one of such eight 7.5 second time slots per minute. The Developer's use of the video board and advertisements and video messages or signage must be in accordance with all City rules, regulations and guidelines. The Developer shall not be charged or pay any rental, payment, fee or other charge for the video board use described in this Section 3.11(e).

Section 3.12 USE BY DEVELOPER. Manager shall allow the Developer six (6) days of use of the Project, rent free, per calendar year. The Developer shall be responsible for and pay all Utilities, maintenance, and clean-up costs corresponding with their use of the Project.

Section 3.13 MANAGER WEBSITE. Manager will develop a website and will utilize such website for the promotion of the Project. On the website, Manager shall include at least the following: rental, license or use rates for the Project, standard contracts for the Project, the Operating Manual, and any and all advertising and signage opportunities for the Project.

Section 3.14 CITY PARKING AREA. The following shall apply to the City Parking Area:

(a) The Public Parking Spaces shall be available for public use and without charge.

(b) The Reserved Parking Spaces may be subject to subleasing by the Manager. The Manager shall be responsible for entering into subleases of the Reserved Parking Spaces; provided, however, prior to entering a sublease, the Manager shall seek review and prior

written approval of any sublease from the City. If the Manager engages in negotiations for subleases of the Reserved Parking Spaces prior to the City taking ownership of the Public Components under the Development Agreement, the Manager shall involve the City in those negotiations and shall submit the subleases, prior to their execution, to the City for review and prior written approval.

(c) Any Reserved Parking Space that is not sub-leased by the Manager shall, at the discretion of the City, be either (1) leased by the City on an hourly or daily basis and any payments to the City for such hourly or daily leasing shall be excluded from Operating Revenue or (2) be designated as a Public Parking Space. The Manager and the City shall jointly agree upon hourly or daily rates the City may charge for the City Parking Areas.

ARTICLE IV. CITY INVOLVEMENT

Section 4.01 **CITY STAFF.** The City reserves the right to utilize its staff or hire additional staff to be present and work with the Manager at Events (“City Staff”). City Staff will be employees of the City, and the City will determine the roles and hours of City Staff at Events. If the City intends to have City Staff present at an Event, the City will provide reasonable notice of such to Manager and will include the identity of the City Staff and a description of the role he or she will play at the Event.

Section 4.02 **CITY EVENTS.**

(a) The City reserves the right to use all or any portion of the Project for City Events and shall at all times have first priority to utilize the Project.

(b) If the City desires to use hold a City Event, it will use its Best Efforts to notify Manager at least forty-five (45) calendar days prior to the desired date for the City Event. Such notification will include a description of the City Event. The City will solely manage City Events, including obtaining Sponsorships for the same, and may request that Manager to provide assistance. Manager will only provide assistance to the extent requested by the City.

(c) No Maintenance Fee, rental, payment, fee or other charge to rent, license or use the Project shall be assessed to or paid by the City or any other Person for a City Event. Nothing herein shall preclude or prevent the City from assessing or receiving a rental, payment, fee or other charge to the City from any Person for the rental, license or use of the Project for a City Event.

Section 4.03 **CITY MARKETING.** Manager may submit materials for the marketing and promotion of Events to the City’s Public Information Department for inclusion on the City’s marketing channels, including the City website. The decision to include marketing and promotional materials submitted by the Manager within the City’s marketing channels and website shall be made solely by the City in the exercise of its discretion. The City shall have the right to use for no charge, the marks, logos, indicators, or names of the Project and Manager in its advertising or marketing of the Project.

Section 4.04 POWERS RESERVED TO CITY. Without in any manner limiting the rights of the City described herein, but in addition thereto, the City shall have the right in connection with the following:

- (a) To approve the annual Operating Budget, as provided in Section 3.09 of this Agreement;
- (b) To review Operating Manual set by Manager for use of the Project;
- (c) Upon request by the City, Manager shall provide a list of available dates to the City for use of the Project. When the Project is not in use by Manager, the Project shall be and remain a public space.
- (d) To approve naming and naming rights for the Project.

Section 4.05 EQUIPMENT. In the event Manager desires to utilize equipment owned by the City for a Manager Event, it must seek pre-approval from the City prior to incurring any expenses for such Manager Event.

Section 4.06 UTILITY EXPENSES. The City is responsible for covering any and all Utility expenses incurred for the Project, provided, however, such Utility expenses shall be included and incorporated into the determination of the amount of the rental, licensing, use and other fees and charges described in Section 3.01(j) and included within the Operating Revenues.

ARTICLE V. COMPENSATION AND REVENUES AND MANAGER PERSONNEL

Section 5.01 MONTHLY MANAGEMENT FEE. Commencing the Effective Date and on the first day of each month during the term of this Agreement, the City shall pay a management fee to Manager for the performance of Services for the ensuing month. The amount of the monthly management fee will be determined annually through and be a line item in the annual Operating Budget described in Section 3.09.

Section 5.02 OTHER FEES AND EXPENSES. Manager shall not be entitled to, nor shall it receive, any other compensation, fees, or expenses from the City for its performance of the Services other than the Management Fee outlined in Section 5.01, start-up costs outlined in Section 6.06, and compensation outlined elsewhere in this Agreement.

Section 5.03 BENEFITS. Manager shall not be entitled to, nor shall it receive, any benefits from the City for its performance of the Services.

Section 5.04 PERSONNEL OF MANAGER / PROJECT GENERAL MANAGER.

(a) All staff, employees and other personnel hired by the Manager shall be the employees, agents and independent contractors of the Manager and not of the City. The Manager shall select, in its sole discretion but the subject to the City's right to approve the Operating Budget, the number, function, qualifications and compensation, (including salary and

benefits) of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees.

(b) The Manager shall engage and hire a Project General Manager who shall have sufficient managerial experience with facilities that are similar to the Project. The hiring of the Project General Manager by the Manager shall be subject to prior approval of the City Administrator, in the exercise of his discretion. The Project General Manager shall have general supervisory responsibility for the Manager in the performance and furnishing of the Services and the duties and obligations of the Manager hereunder, and will be responsible for the day-to-day operations of the Project, supervision of the Manager's employees, and the management of all Services and other activities of the Manager under this Agreement.

(c) All salary, benefits, costs and expenses associated with the Manager's employees, including the Project General Manager, are included in Operating Expenses but shall be paid solely by the Manager ~~and shall not be an Operating Expense.~~

Section 5.05 PERFORMANCE REVIEW. The City Representative and Manager shall meet at the end of each calendar year quarter for a performance review of the Manager.

ARTICLE VI. EVENTS

Section 6.01 TYPE OF EVENTS. The Parties agree that Manager shall seek to secure Events that promote community involvement and well-being. Manager shall not seek to secure Events including, but not limited to the following:

- (a) Content that threatens any person or organization;
- (b) Content that violates intellectual property rights;
- (c) Content promoting any illegal activity;
- (d) Content which might compromise the safety and security of the public or public systems; or
- (e) Content that violates any federal, State, or local law.

Section 6.02 EVENT SCHEDULE. At least Twenty (20) Calendar Days prior to the first calendar day of a month, Manager shall provide a schedule of Events booked for the upcoming calendar month to the City Representative. The furnishing of this schedule to the City does not preclude Manager from modifying the schedule or adding or removing Events from the schedule. The schedule is intended for informational purposes only, but it does not relieve Manager from abiding by any other term or condition of this Agreement.

Section 6.03 CONCESSIONS/FOOD/BEVERAGE/NOVELTIES AND MERCHANDISE. Manager ~~shall not~~ may directly or engage a third-party vendor(s) to sell, furnish or provide concessions, food ~~sales, beverage sales and services, or novelty, beverages, novelties~~ or

merchandise ~~sales~~ during any ~~Event, but rather if such sales or services are to be offered during an Event,~~ the Manager shall engage third party vendor(s) to do so. Event, provided, however, during a City Event, the City shall determine the party to sell concessions, food, beverages, novelties or merchandise. All revenue from ~~such vendor~~ the Manager's sales of concessions, food, beverages, novelties or merchandise during an Event or payments from vendor(s) for the vendor to provide such sales during an Event shall be included within Operating Revenues.

Section 6.04 **EXECUTION OF CONTRACTS.**

(a) Manager shall have the right to enter into contracts relating to its activities for the operation of the Project, including the Services. Any such contracts shall contain standard indemnification and insurance obligations that are Usual and Customary for the type of services or obligations being provided or performed by such vendor.

(b) No contract entered into by the Manager shall extend beyond the term of the Agreement or earlier termination of this Agreement.

(c) The Manager may purchase or procure services, or otherwise transact business with the Developer or an affiliate of the Developer, provided the prices charged or services rendered by the Developer or such affiliate of the Developer are competitive with those obtainable from Persons unrelated to the Developer. Manager shall, at the request of the City, provide reasonable evidence establishing the competitive nature of such prices and services.

Section 6.05 **HANDLING OF OPERATING REVENUES AND PAYMENT OF OPERATING EXPENSES.**

(a) Manager shall deposit as soon as practicable following receipt (but not more than one Business Day after receipt) into the Event Account any Operating Revenues, including Event ticket sales and other Event related revenues which are received in advance of and in contemplation of an Event, pending the completion of the Event. Such monies shall be held in escrow and may be used to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the Event that must be paid prior to or contemporaneously with the Event. Promptly upon completion of the Event, the Manager shall transfer all funds remaining in the Event Account, including any interest accruing thereon, into the Operating Account. Bank service charges, if any, on such account shall be deducted first against interest earned and then against the principal.

(b) Except as provided in Section 6.05(a), all Operating Revenues shall deposit as soon as practicable following receipt (but not more than one Business Day after receipt) into the Operating Account.

(c) The Manager shall pay all Operating Expenses from funds in the Operating Account in a timely manner to avoid any late payment, interest or other untimely payment fees or charges.

Section 6.06 **FUNDING / START UP COSTS.**

(a) Manager is solely responsible for raising funds, including Sponsorships, to carry out its Services, including for marketing and for advertising, and for holding Events in the Project.

(b) To ensure sufficient funds are available on the Effective Date, the City shall remit startup costs to Manager in ~~the amount of \$ _____ according to the schedule attached hereto as Exhibit B~~ an amount approved by the City, which amount may be up to but does not exceed \$85,000.00 (the “City’s Start-Up Deposit”).

(c) In the event of a Net Loss or there are insufficient funds within the Operating Account to pay Operating Expenses, the City may, but is not obligated, to deposit additional funds into the Operating Account to reimburse the Manager for the Net Loss or to pay such Operating Expenses (any such deposit shall be referred to as the “City Discretionary Funding Deposit”).

Section 6.07 PERMITTING AND NOTICE. In the event the Manager seeks to hold a Manager Event that requires a permit from the City in accordance with Applicable Law, (including City Ordinances), the Manager shall secure any and all necessary permits from the City or other applicable governmental entity prior to holding the Event.

Section 6.08 MARKS. During the term of this Agreement, the Manager is authorized to utilize marks, logos, indicators, or names of the City and Project to carry out its Services. The Manager shall not, however, use such marks, indicators, or names without obtaining prior written consent from the City. The Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the City relating to such marks, logos, indicators, or names. All intellectual property rights in any Project marks, logos, indicators, or names developed by the Manager or the City shall be and at all times remain the sole and exclusive property of the City. The Manager agrees to execute any documentation requested by the City from time to time to establish, protect or convey any such intellectual property rights. Upon the expiration or termination of this Agreement for any reason, such license to utilize any marks, logos, indicators, or names of the Project shall immediately cease, and Manager shall have no further rights to use such marks, logos, indicators, or names.

Section 6.09 EVENT QUOTA. Manager shall program at least two (2) Events per calendar month.

Section 6.10 MANAGER EMPLOYEE AT EVENT. Manager shall have at least one (1) employee readily available or on-site for any Event held at the Project. Manager shall indicate to the City and to applicable public safety agencies who that employee is, his or her contact information, and whether he or she will be on-site or on-call.

Section 6.11 DEBTS AND LIABILITIES. All debts and liabilities incurred by Manager in the course of its Services shall be the debts and liabilities of Manager and in no event shall they be the debts and liabilities of the City unless otherwise expressly agreed to by the City.

Section 6.12 CITY PROMOTION. The City, in its sole discretion, may promote Events.

Section 6.13 **SECURITY PERSONNEL.** When securing security and crowd control personnel for an Event, Manager shall first inquire with the Grand Forks Police Department to determine the number of police officers that the Grand Forks Police Department will require to be present for an Event. Notwithstanding and without limiting the required police officers that are to be present during an Event, the Manager shall also have the authority to hire a private security firm.

Section 6.14 **NET PROFITS AND OPERATING RESERVE.** The Manager shall establish the Reserve Account and may utilize the funds in the Reserve Account as necessary for cash flow needs and upon prior approval by the City. The Reserve Account shall be established from the Net Profits. The amount of the Net Profits to be deposited into the Reserve Account shall be determined by Good Faith negotiation and agreement of the City and Manager. Unless otherwise agreed by the Parties, when the total amount in the Reserve Account is at least One Hundred Ten percent (110%) of the Operating Expenses for the most recently approved Operating Budget, no amount of Net Profits is to be deposited into the Reserve Account. The Net Profits that are not deposited into the Reserve Account shall be remitted to the City on or before the 15th day of February following the end of each calendar year.

ARTICLE VII. MAINTENANCE

Section 7.01 **MAINTENANCE.**

(a) Following the Effective Date of this Agreement, the City and Manager will work cooperatively to establish a schedule of Maintenance Fees to be charged for all Manager Events held in the Project. City Events will not be subject to any Maintenance Fees. Manager will be responsible for collecting Maintenance Fees for all Manager Events, and the City will deposit the Maintenance Fees into the Maintenance Fund, which the City will establish and administer.

(b) The Manager shall be responsible for routine and day-to-day repairs and preventive maintenance and cleaning of the Project.

(c) City will be responsible for all additions, alterations, repairs, maintenance or improvements of the Project where the cost thereof is greater than \$25,000.00 and the depreciable life of the applicable items is, according to generally acceptable accounting principles, in excess of five (5) years (the "City Capital Expenditure").

(d) The Manager shall, as the time of submitting the annual Operating Budget to the City, provide to the City a schedule of proposed City Capital Expenditures, for the purpose of allowing the City to consider and decide on whether to pursue such matters. The determination as to whether a City Capital Expenditure shall be made shall be made solely by the City in the exercise of its discretion. The City is under no obligation to make a City Capital Expenditure proposed by the Manager.

(e) The City may utilize the Maintenance Fees, funds in the Maintenance Fund, funds from the Public Plaza CAM (as described in the Development Agreement) and/or

obtain funds from a special assessment to benefitted property to pay all or any portion of the City Capital Expenditure.

(f) If desired by the City, the City may bid out any City Capital Expenditure as a City project pursuant to N.D.C.C. ch. 48-01.2 or other applicable law regarding bidding of public projects and may, as allowed by Applicable Law, specially assess the City Capital Expenditure to benefitting properties.

ARTICLE VIII. LIABILITIES

Section 8.01 INDEMNIFICATION.

(a) The Manager agrees to and shall indemnify, save and hold the City, its officials, directors, officers, agents, representatives and employees harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, experts' fees and costs, and costs of investigation and litigation, which arise out of, result from, relate to or are in connection with (a) any acts or omissions of the Manager or any of the Manager's directors, officers, agents, representatives, employees and contractors under this Agreement and other agreement to be executed in connection herewith or (b) breach by the Manager of any of its representations,, covenants or agreements made herein.

(b) With respect to each separate matter brought by any third party against which the City is indemnified by Manager, the Manager shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve, through counsel of its choice, any proceeding, claim, or cause of action underlying such matter, except that (a) the City may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the City may, at its option, assume control of such defense or resolution if the Manager does not promptly and diligently pursue such defense or resolution, provided that the Manager shall continue to be obligated to indemnify the City hereunder in connection therewith; and (c) neither Manager nor the City shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, the Manager and the City shall in Good Faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Manager's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, the City shall promptly (and in no event more than twenty (20) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Manager of the nature of such matter and the amount demanded or claimed in connection therewith

(c) The obligations of the Manager in this Section 8.01 shall survive termination or expiration of this Agreement.

(d) Notwithstanding the other provisions of this Agreement, if legal costs are being incurred by the Manager or the City for a third party claim in respect of which the City

is claiming indemnity from the Manager, such reasonable legal costs will be considered an Operating Expense unless and until liability of the Manager pursuant to this Agreement is established by a court of competent jurisdiction with respect to the underlying claim on which the Manager's obligation to indemnify is based. In the event that the liability of the Manager is so determined, then such legal costs shall be considered as costs of the Manager (and not Operating Expenses) and covered by the indemnity given by the Manager to the City hereunder and the parties shall adjust between them in respect of such legal costs.

Section 8.02 MANAGER INSURANCE.

(a) Manager will obtain and maintain the following insurance during the term of this Agreement:

(1) Workers' compensation insurance as required by the State of North Dakota.

(2) Commercial general liability insurance, personal injury, bodily injury, and property damage on an occurrence basis with limits of liability not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. The City shall be named as an additional insured on a primary, non-contributory basis.

(3) Business automobile liability insurance covering all owned, hired, and non-owned vehicles with personal protection insurance to comply with the provisions of the North Dakota No Fault Insurance Law including residual liability insurance with minimum bodily injury limits of \$2,000,000 each person and \$4,000,000 each occurrence and minimum property damage limits of \$2,000,000 each occurrence. The City shall be named as an addition insured on a primary, non-contributory basis.

(4) Commercial umbrella insurance with a minimum limit of \$4,000,000. The City shall be named as an additional insured on a primary, non-contributory basis.

(b) All policies shall be issued by companies authorized to do business in the State of North Dakota, name Manager as the insured, and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) calendar days' prior notice to the City.

(c) Certificates evidencing the above-described insurance shall be submitted to the City prior to the commencement of Services under this Agreement and at least fifteen (15) calendar days prior to the expiration dates of expiring policies. A current certificate of insurance must be on file with the City for the duration of this Agreement. Said coverage shall be primary coverage rather than any policies and insurance owned or maintained by the City. Policies shall be issued by insurers who endorse the policies to reflect that, in the event of payment of any loss or damages, subrogation rights under those contract documents will be waived by the insurer with respect to claims against the City.

(d) Manager shall be responsible for the payment of all deductibles contained in any insurance hereunder.

(e) If, during the term of this Agreement, changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the above-described insurance limits, Manager will furnish on demand such additional coverage as may reasonably be required by the City under the circumstances. All such insurance shall be obtained at Manager's expense, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City.

(f) The provisions requiring Manager to carry said insurance shall not be construed in any manner as waiving or restricting the liability of Manager under this Agreement.

(g) The City has the authority to vary from the specified limits as deemed necessary.

Section 8.03 **CITY INSURANCE.** The City will maintain liability and property insurance for the Project as determined in its discretion.

ARTICLE IX. REPRESENTATIONS AND WARRANTIES

Section 9.01 **MANAGER REPRESENTATIONS.** Manager hereby represents and warrants to the City as follows:

(a) Manager is a duly organized nonprofit company created under the laws of the State, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has the full power, right, and authority to execute and perform each and all of its obligations under this Agreement;

(b) Manager has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement;

(c) Each person executing this Agreement on behalf of Manager has been or will at such time be duly authorized to execute each such document on behalf of Manager;

(d) This Agreement has been duly authorized, executed, and delivered by Manager and constitutes a valid and legally binding obligation on Manager, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency, and similar applicable laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(e) Neither the execution and delivery by Manager of this Agreement, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of (i) the governing instruments of Manager or any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge,

any Applicable Law, where such violation will have a material effect on the ability of Manager to perform its obligations under this Agreement;

(f) There is no action, suit, proceeding, investigation, or litigation pending and served on Manager which challenges Manager's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or challenges the authority of the Manager official executing this Agreement; and Manager has disclosed to the City any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which Manager is aware;

(g) Manager is in material compliance with all Applicable Laws applicable to Manager or its activities connected with this Agreement; and

(h) To the best of Manager's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a default by Manager has occurred.

Section 9.02 **CITY REPRESENTATIONS.** The City hereby represents and warrants to the Manager as follows:

(a) The City has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;

(b) Each person executing this Agreement has been or at such time will be duly authorized to execute each such document on behalf of the City;

(c) Neither the execution and delivery by the City of this Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or will result in a default under or violation of (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any Applicable Law, where such violation will have a material adverse effect on the ability of the City to perform its obligations under this Agreement; and

(d) The City has taken or caused to be taken all requisite actions to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

ARTICLE X. TERM/TERMINATION/DEFAULT

Section 10.01 **TERM.** The initial term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2026. The City shall have the four (4) options to extend and renew the Agreement, and the term of each extension and renewal shall be a period five (5) years. The City shall exercise the option to extend and renew this Agreement by providing written notice to the Manager at least ninety (90) days prior to the expiration of the initial term or any extension or renewal term, as the case may be. In the event the City extends and renews this Agreement, such extension and renewal shall be under all of the terms and

conditions as set out in this Agreement, a new contract shall be unnecessary upon such extension and renewal, and this Agreement constitute the agreement of the Parties for any extended or renewed term.

Section 10.02 TERMINATION BY MUTUAL AGREEMENT. The Parties may mutually agree, in writing, to terminate this Agreement, at any time, without termination fee, penalty, or liquidated damages.

Section 10.03 TERMINATION BY THE CITY. In addition to the remedies described in Section 10.05, the City may terminate the Agreement without termination fee, penalty, or liquidated damages by providing to the Manager sixty (60) Calendar Day's advance written notice, for or under any of the following events or conditions:

(a) The City decides to sell, lease, or close the Project.

(b) The failure of the Manager to obtain and maintain its status as a nonprofit North Dakota corporation and tax-exempt corporation pursuant to 26 U.S.C. § 501(c)(3).

Section 10.04 EVENT OF DEFAULT

(a) In the event either Party to this Agreement has defaulted in the performance of the Party's obligations hereunder, violated any term, condition, covenant or provision of this Agreement, and/or fails to meet the standards of performance under this Agreement (including but not limited to the standards described in Sections 3.03 and 3.04), (a "Non-Performance Event"), the other Party shall give notice to such Party of describing the Non-Performance Event and demand the Non-Performance Event be corrected, remedied, ceased or cured within a reasonable period after the date of such notice, which period shall not be less than fifteen (15) or more than sixty (60) Calendar Days. If the Party receiving notice of a Non-Performance Event does not correct, remedy, cease or cure such Non-Performance violation within the time specified in such notice, then an event of default shall have occurred. Notwithstanding anything to the contrary, if the Non-Performance Event shall be of such a nature that the same cannot be completely corrected, remedied, ceased or cured within the specified time period, then such Non-Performance Event shall not constitute or otherwise be an event of default if the non-performing Party shall have commenced actions to correct, remedy, cease or cure the Non-Performance Event within the specified time period and continues to proceed with reasonable diligence and in good faith to correct, remedy, cease or cure the Material Non-Performance.

(b) If the Non-Performance Event constitutes malfeasance or misfeasance by the Manager, the City shall not be obligated to provide an opportunity to correct, remedy, case or cure. For purposes of this Agreement, malfeasance means (1) conduct that demonstrates lack of even slight care which is practically willful in nature and displays a reckless temperament, (2) evil doing, ill conduct, the commission of some act which is positively unlawful, the doing of an act which is wholly wrongful and unlawful, or the doing of an act which the person ought not to do at all, and/or (3) the unjust performance of some act which the party had no right or which he had contracted not to do. Malfeasance shall also include any wrongful conduct that affects,

interrupts, or interferes with the performance of official duties. For purposes of this Agreement, misfeasance means the improper performance of some act, which the party may lawfully do.

Section 10.05 REMEDIES UPON AN EVENT OF DEFAULT. Upon the occurrence of an event of default under Section 10.04, the non-defaulting Party shall have the right to (a) terminate this Agreement without termination fee, penalty, or liquidated damages, whereupon all obligations of the non-defaulting Party that had not been incurred as of the effective termination date, including but not limited to the obligation to pay the balance of fees due, shall terminate and (b) pursue any and all other available remedies against the defaulting Party.

Section 10.06 EFFECT OF TERMINATION.

(a) In the event this Agreement terminates, the Manager shall turn over the Operating Account, the Event Account and Reserve Account to the City, and all other funds, money, and rights to funds or money collected or promised to for Events in the Project or to sponsor the Project as of the termination date.

(b) Additionally, upon termination or expiration of this Agreement for any reason, (1) the Manager shall promptly discontinue the performance of all Services hereunder, (2) the Manager shall make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Project as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (3) without any further action on part of Manager or City, the City shall, or shall cause a successor manager of the Project to, commence the management and operation of the Project.

(c) Any obligations of the Parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

**ARTICLE XI.
CONFIDENTIALITY**

Section 11.01 GENERALLY. All information furnished to, or developed by, Manager or any of its employees, directors, or sub-contractors pursuant to this Agreement shall be the property of the City and shall be kept confidential by Manager, both during and after the term of this Agreement.

Section 11.02 NORTH DAKOTA OPEN RECORDS REQUEST.

(a) In the event Manager receives an open records request for any records relating to its Services or this Agreement, Manager shall notify the City of the request and shall secure an opinion from the City as to whether Manager shall release the records.

(b) The Parties acknowledge and agree that documents provided by the Manager to the City and/or otherwise within the City's custody and/or control may be subject to North Dakota Century Code Chapter 44-04 relating to public meetings and records or other Applicable Law relating to disclosure of such records. The Manager shall cooperate, coordinate

with and assist the City in the disclosure of any requested records under North Dakota Century Code Chapter 44-04 or other Applicable Law. Accordingly, records or documents provided by the Manager to the City may be subject to release as required under North Dakota Century Code Chapter 44-04 or other Applicable Law.

ARTICLE XII. MISCELLANEOUS

Section 12.01 **ASSIGNMENT.** Neither Party may assign this Agreement without the prior written consent of the other Party. The Parties' rights and obligations under this Agreement will be passed to the assignees to which those rights and obligations have been permissibly assigned.

Section 12.02 **MODIFICATION.** This Agreement may be amended or modified only by mutual consent of both Parties, unless otherwise provided for herein.

Section 12.03 **GOVERNING LAW/JURISDICTION.** This Agreement will be governed by and construed in accordance with the laws of the State and the City Code, and any action or claim relating to this Agreement shall be brought in the District Court for Grand Forks County, North Dakota.

Section 12.04 **INDEPENDENT CONTRACTOR.** In the performance of this Agreement, it is mutually understood and agreed that Manager, its directors, officers, employees, agents, representatives and contractors are at all times acting and performing as an independent contractor and not as an employee, joint venturer, agent, partner, or lessee of the City. The City shall not exercise control or direction over the specific methods by which Manager performs its Services hereunder; the sole interest and responsibility of the City shall be to ensure that the Services covered by this Agreement are rendered in accordance with the terms and conditions hereof. The Manager, its directors, officers, employees, agents, representatives and contractors shall not have any claim under this Agreement against the City for workers compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, social security benefits, disability insurance benefits, unemployment insurance benefits, or other employee benefits, all of which shall be the sole responsibility of Manager. The City shall not withhold on behalf of Manager, its directors, officers, employees, agents, representatives and contractors, or any of the Manager's personnel any sums for income tax, unemployment insurance, Social Security, or otherwise pursuant to any law or requirement of any government agency, and all such withholding, if any is required, shall be the sole responsibility of Manager. Manager shall indemnify and hold harmless the City from any and all loss or liability, if any, arising with respect to any of the foregoing benefits or withholding requirements.

Section 12.05 **NO DISCRIMINATION.** Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, gender identity, sexual orientation, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age

Section 12.06 SEVERABILITY. In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

Section 12.07 WAIVER. No waiver of any Party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent of one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 12.08 NO THIRD-PARTY BENEFICIARIES. Nothing contained in this Agreement is intended or will be construed as creating or conferring any right, benefits, or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a Party to this Agreement, except those rights expressly contained herein.

Section 12.09 ENTIRE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter, except as otherwise provided herein.

Section 12.10 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 12.11 SURVIVAL. The indemnifications, limitations, releases, obligations, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

Section 12.12 AUTHORIZED REPRESENTATIVES.

(a) The City and Manager hereby designate the following individuals as their initial representatives, respectively, to administer this Agreement on their respective behalf:

- (1) City Representative: City Administrator
- (2) Manager Representative: Project General Manager

(b) The above-named representatives will be reasonably available to each other during the term of this Agreement and will have the authority to issue instructions and other communications on behalf of the City and Manager, respectively, and will be the recipients of notices and other written communications from the other Party pursuant to this Agreement, except as otherwise provided in this Agreement.

(c) The above-named representatives shall not have the authority to make decisions or give instructions binding upon the City or Manager, except to the extent expressly authorized by the City or Manager, as the case may be, in writing, or with respect to the City Representative, as may be authorized under the City Code or under applicable policies of the City.

(d) Any reference herein to City approval or consents shall mean any process of the City to approve or consent to a particular matter under Applicable Law, including the City Code, or as may be permitted under applicable policies of the City.

(e) In the event either the City or Manager designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative, as the case may be.

Section 12.13 NOTICES.

(a) All notices under this Agreement shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier services, with delivery receipt requested; or (iv) sent by email communication followed by a hard copy, to the following addresses.

(b) All notices to the City shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the City Representative:

City of Grand Forks
Attn: City Representative
255 North 4th Street
Grand Forks, ND 58201

(c) All notices to Manager shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the Manager Representative:

(d) Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central time and all other notices received after 5:00 p.m. shall be deemed received on the first calendar day following delivery.

Section 12.14 TIME OF THE ESSENCE. Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

Section 12.15 PERFORMANCE OF ADDITIONAL ACTS. The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

Section 12.16 PUBLIC HEALTH MODIFICATIONS. The Parties acknowledge the public health guidelines related to public gatherings may make some provisions within this Agreement difficult or impossible to execute. Should public health recommendations or mandates create a situation in which the Parties desire or are required to make modifications to the terms of this Agreement to move forward with an Event, the Parties agree to work together in Good Faith to modify such term to ensure a safe, enjoyable and beneficial event. All changes made pursuant to this Section 12.16 shall be agreed upon in writing and signed by the Parties. Further, a public health recommendation or mandate described in this Section 12.16 shall not constitute a Non-Performance Event, event of default or Force Majeure Event.

Section 12.17 WAIVERS. One or more waivers by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

Section 12.18 FORCE MAJEURE. In the event that either Party to this Agreement is unable to perform its obligations hereunder or to enjoy any of its benefits because of the substantial damage or destruction of the Project due to any cause, a natural disaster, pandemic, social unrest or action, order or decree of a governmental body with appropriate jurisdiction (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party of such fact and shall do everything possible to resume its performance. Upon the other Party's receipt of such notice, each Party's obligations hereunder shall be suspended for the period of such Force Majeure Event and, if applicable, the payments due under this Agreement shall be reduced pro rata. If the Force Majeure Event lasts for a period of two (2) years or more from the date that the other Party receives notice of such Force Majeure Event and the Party that received such notice has been able to perform its obligations hereunder despite such Force Majeure Event, the Party that received such notice may terminate this Agreement by giving notice thereof to the Party unable to perform because of such Force Majeure Event and shall be under no further obligations to the other Party under this Agreement.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed.

The governing body of the City of Grand Forks, North Dakota, approved this Agreement on the ___ day of _____, 20___.

THE CITY OF GRAND FORKS, NORTH
DAKOTA

By: _____
Brandon Bochenski, Mayor

ATTEST:

Maureen Storstad, City Auditor/Finance Director

The governing board of directors of Beacon Events, Inc. approved this Agreement on the ___ day of _____, 20___.

BEACON EVENTS, INC.

By: _____

Its: President

EXHIBIT A—
STARTUP COST SCHEDULE

~~EXHIBIT B~~

PUBLIC PLAZA

~~EXHIBIT C~~

AND CITY PARKING AREA

EXHIBIT 1.59

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRAND FORKS

APPROVING

RENEWAL AND DEVELOPMENT PLAN 2021-01

TAX INCREMENT FINANCE DISTRICT NO. 2021-01

AND

TAX INCREMENT FINANCING DEVELOPMENT AGREEMENT

FOR BEACON DEVELOPMENT PROPERTY

WHEREAS, the City Council of the City of Grand Forks, North Dakota (the “City”) has considered, reviewed, and held a public hearings on February 1, 2021 and _____, 2021 regarding (a) the development and redevelopment, and attendant proposed tax increment financing for the Beacon Development Property, (b) the City of Grand Forks Renewal and Development Plan 2021-01 for Beacon Development Property (attached hereto as Exhibit 1 and referred to as the “Beacon Development Plan”), (c) the Tax Increment Finance District 2021-01, and (d) the Tax Increment Financing Development Agreement (attached hereto as Exhibit 2 and referred to herein as the “TIF Agreement”):

NOW THEREFORE, BASED ON SUCH CONSIDERATION, REVIEW AND PUBLIC HEARINGS BY THE CITY COUNCIL, THE CITY COUNCIL DOES HEREBY MAKE THE FOLLOWING RESOLUTIONS:

1. Findings Relating to Beacon Development Plan and Tax Increment Financing.
The City Council does approve and adopt the following findings:

1.1. The Beacon Development Plan relates only to the development and redevelopment commercial property, and therefore, pursuant to N.D.C.C. § 40-58-06(2), the Planning and Zoning Commission is not required to review the Beacon Development Plan.

1.2. No families will be displaced as a result of the Beacon Development Plan and the development and redevelopment of the Beacon Development Property.

1.3. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, conforms and is consistent with and furthers the general plan for the City, which includes the 2045 Land Use Plan and the Grand Forks Renaissance Zone Plan, setting forth therein its development plans and goals for the City (collectively the “General Plan”).

1.4. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, will afford maximum

EXHIBIT 1.59

opportunity, consistent with the sound needs of the City as a whole, for the development and redevelopment of the Beacon Development Property by a private enterprise.

1.5. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, will activate a downtown space with a new high quality redevelopment consisting of residential and commercial properties.

1.6. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, will promote economic development by rehabilitating a high visibility and high priority site.

1.7. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, will enhance and diversify the City's economic base.

1.8. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, will meaningfully contribute to the City's tax base based on the preliminary estimated incremental tax value of the Beacon Development Property after development and redevelopment exceeding at least \$30 million dollars.

1.9. The Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, will broaden and connect to the existing downtown without the need for significant City infrastructure development and investment.

1.10. The financial strength of the project has been reviewed by independent third party Baker Tilly.

1.11. On December 10, 2020, the City's Local Government Advisory Committee reviewed proposed development and redevelopment of the Beacon Development Property, including the attendant proposal for tax increment financing for such development and redevelopment, and provided a consensus and non-binding recommendation to move forward with the Beacon Development, with the proposed tax increment financing as more particularly described herein.

1.12. The City, pursuant to N.D.C.C. §§ 40-05-24 and 40-58-20.2(2), has obtained the consent of the Grand Forks Public School District and Grand Forks County to participate in the property tax incentive that will be in the form of tax increment financing for the development and redevelopment of the Beacon Development Property, and the Grand Forks Park District has likewise provided a general consensus to move forward with the same.

1.13. Pursuant to N.D.C.C. § 40-58-06(1) and based on the foregoing findings, the Beacon Development Property is designated as an area appropriate for a renewal and development project, as defined in N.D.C.C. § 40-58-01.1(9).

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1.14. The Beacon Development Property, as described in the attached Beacon Development Plan, is unused or underutilized real property that is zoned or used as a commercial site and therefore the Beacon Development Property is “industrial or commercial property,” as defined in N.D.C.C. § 40-58-01.1(14), that exists within the City.

1.15. Based on the review and recommendations by the City Council, the City’s Local Government Advisory Committee, the independent review by Baker Tilly and City staff reports, and pursuant to N.D.C.C. § 40-58-05(2) and the City’s policy on tax increment financing, the Beacon Development Plan, and the proposed development and redevelopment of the Beacon Development Property thereunder, is necessary in the interest of the public economy, health, safety, morals, or welfare of the residents of the City.

1.16. Based on the foregoing findings and pursuant to N.D.C.C. § 40-58-20.1(2), the TIF Agreement will not result in unfair competition and the TIF Agreement is in the best interests of the City as a whole.

2. Approval of Beacon Development Plan.

2.1. Based on the foregoing findings, the Beacon Development Plan is approved and adopted.

2.2. The City reserves the right to amend and modify Beacon Development Plan, with any such amendment and modification being subject to further approval by the City Council.

3. Approval of Tax Increment Finance District 2021-01. Having adopted the General Plan and the Beacon Development Plan, and based on the foregoing findings, the Tax Increment District No. 2021-01 covering the Beacon Development Property is adopted and approved as follows:

3.1. The property tax incentive under Tax Increment District No. 2021-01 shall be the tax increment, calculated pursuant to N.D.C.C. § 40-58-20(4), resulting from the development or redevelopment of the Beacon Development Property pursuant to the Beacon Development Plan and the TIF Agreement, (any approved modifications thereof), based on eighty percent (80%) of the incremental value of the Beacon Development Property computed and certified pursuant to N.D.C.C. § 40-58-20(3).

3.3. The improvements to be funded by tax increment financing shall be the costs of development and redevelopment of the Beacon Development Property described and allowable under N.D.C.C. § 40-58-20.1(3) and subject to the terms of the Beacon Development Plan and the TIF Agreement.

3.2. The City reserves the right to finance the costs incurred in implementing the Beacon Development Plan, as may be allowed by law, which may include the use of tax increment financing exemption, tax increment financing bonds under N.D.C.C. ch. 40-58 and/or contributions by private enterprise or other private sources of funds.

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3.4. The Tax Increment District No. 2021-01 shall be for a period of twenty-five taxable years, commencing with taxable year in which the City requests the Grand Forks County Auditor and Treasurer to compute, certify and remit tax increments, pursuant to N.D.C.C. § 40-58-20(1) resulting from the development and redevelopment of the Beacon Development Property. By way of example only, if the City makes the request on January 1, 2022, the Beacon TIF District shall commence in the 2021 taxable year and shall terminate on December 31, 2047, with the attendant tax increment for such period then being due and payable to the City in 2023 and ending in 2048.

3.5. The City reserves the right to amend and modify Tax Increment District No. 2021-01, with any such amendment and modification being subject to further approval by the City Council.

4. Approval of Tax Increment Financing Agreement.

4.1. Based on the foregoing findings, the TIF Agreement is adopted and approved.

4.2. The City reserves the right to amend and modify the TIF Agreement, with any such amendment and modification being subject to further approval by the City Council.

Adopted by the Grand Forks City Council the __ day of _____, 2021.

CITY OF GRAND FORKS

Brandon Bochenski, Mayor

Dated: _____

ATTEST:

Maureen Storstad, City Auditor

Date: _____