

## GUARANTY

**WHEREAS**, 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”), the **GRAND FORKS GROWTH FUND**, a Jobs Development Authority, whose mailing address is 255 North 4<sup>th</sup> Street, P.O. Box 5200, Grand Forks, North Dakota 58203 (hereinafter referred to as the “JDA”) and **BLOCK V, LLC**, a North Dakota limited liability company, whose address is 4000 Garden View, Suite 101, Grand Forks, North Dakota 58201-7421 (referred to herein as the “Borrower”) entered into that certain Payment in Lieu of Property Tax Development Agreement (the “Block V PILOT Development Agreement”) having an effective date of \_\_\_\_\_, 2021 that provided certain property tax incentives to the Borrower.

**WHEREAS**, under the Block V PILOT Development Agreement, there is a loan from the JDA to the Borrower in the original principal amount of \$900,000.00, with the Borrower executing a promissory note to the JDA for such loan dated \_\_\_\_\_, 2022 (the “Block V Note”).

**WHEREAS**, under the Block V PILOT Development Agreement, the Borrower granted to the JDA a first lien mortgage to the JDA by the certain mortgage dated the \_\_\_\_\_, 2022 (the “Block V Mortgage”).

**WHEREAS**, under the Block V PILOT Development Agreement and to induce the JDA to provide the herein described loan to the Borrower and to extend other accommodations to or for the benefit of the Borrower, the Undersigned is to provide this Guaranty to the JDA.

**NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, THE UNDERSIGNED HEREBY ABSOLUTELY AND UNCONDITIONALLY GUARANTEES TO THE JDA 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 the JDA the payment and performance of the debt, liability or obligation of Borrower to the JDA evidenced by, relating to or arising out of the following: Block V Note and Block V Mortgage, and any extensions, renewals or replacements thereof, (hereinafter referred to as the “Indebtedness”).
- B. If this  is checked, the Undersigned guarantees to the JDA 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 the JDA (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 the JDA 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 all Indebtedness has 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 the JDA and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the JDA shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the JDA, 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 unlimited as to amount, plus accrued interest thereon and all attorneys’ fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The JDA may apply any sums received by or available to the JDA 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 JDA, advising the JDA that such payment is made under this guaranty for such purpose.

5. The undersigned will pay or reimburse the JDA for all costs and expenses (including reasonable attorneys’ fees and legal expenses) incurred by the JDA 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, the JDA 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 the JDA is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty), without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodations or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the Interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefore; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the JDA 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 the JDA 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 the JDA 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 the JDA to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such amount was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

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

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The JDA 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 the JDA 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 the JDA, without further act, condition or acceptance by the JDA, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefits of the JDA 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 JDA. The Undersigned waives notice of the JDA's acceptance hereof.

