

STATE OF North Dakota
Ward County

**CDBG DISASTER RECOVERY PROGRAM
City of Minot**

**AGREEMENT
With
BLU ON BROADWAY, LLC**

THIS DEVELOPMENT AGREEMENT ("Agreement"), dated this 6th day of January, 2020 is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (the "City"), and BLU ON BROADWAY, LLC, a North Dakota for-profit LLC, whose principal address is 400 10 St. SE, Minot, ND 58701 ("Developer"). The City and Developer are hereinafter sometimes individually referred to as a "Party" and collectively, as the "Parties."

I. Preamble:

WHEREAS, on June 7, 2016 (Docket No. FR-5936-N-01) the U.S. Department of Housing and Urban Development ("HUD") awarded \$74.3 million to the City in National Disaster Resilience Community Development Block Grant funds for the purpose of assisting recovery and resiliency in the most impacted and distressed areas through The Disaster Relief Appropriations Act 2013 (PL113-2), including funds for disaster recovery from major disasters declared under the Stafford Act (42 U.S.C.4121 et. Seq.) in 2011, 2012, and 2013. The Appropriations Act requires funds to be used only for specific resilient disaster-related purposes, and;

WHEREAS, HUD commonly refers to the program described in the preceding paragraph as the National Disaster Resilience Community Development Block Grant Program-Disaster Recovery ("NDR"), and;

WHEREAS, HUD has issued notices specifying alternative requirements and regulatory waivers for the purpose of undertaking NDR activities, and;

WHEREAS, the City has entered into an agreement with HUD, whereby the City shall manage and oversee activities under this funding Agreement, and;

WHEREAS, the City has approved up to \$4,750,000 of NDR funds, in the form of a twenty (20) year forgivable, no-interest loan ("NDR Loan"), for the Blu on Broadway mixed-use development to fund Eligible Project Costs as described specifically in this Agreement and;

WHEREAS, the City and the Developer enter into this Agreement in order to memorialize certain conditions and agreements pertaining to the construction of 42 affordable apartment units and applicable development of the Development Site, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the Parties hereby agree as follows:

II. Definitions

For purposes of this Agreement, certain words identified below have the following meanings:

“Affirmative Marketing Plan” means the HUD required affirmative marketing plan described in paragraph IV(I) and Exhibit E of this Agreement.

“Affordable housing” or “Affordability” means the cost of housing, which includes rent and utilities, does not exceed thirty percent (30%) of household income of LMI household with caps on rent and income based on household size annually set by HUD for North Dakota and its counties and cities.

“Affordability Period” is twenty years (20) from the date of issuance of the certificate of occupancy by the City, which permits the Developer to commence renting the 42 units in this Project to LMI Households.

“AMI” means the area median income applicable to Minot established annually by HUD for North Dakota and its counties and cities.

“Developer Fees” mean the compensation to the Project developer for the time and resources spent to develop the Project. The developer fee cannot exceed 15% of total development costs net of the developer’s fee, acquisition, and any permanent financing costs for the Project.

“Development Site” means the property on which the Project will be constructed, which is specifically described in Section III(C) of this Agreement.

“Eligible Project Costs” means costs directly attributable to activities and needs to accomplish the Project within the Development Site and determined to be eligible for use of NDR Loan proceeds, based on a review of the detailed Project Development Budget by the City’s Finance Director and the DR Program Manager, as described in this Agreement.

“LMI” means Low and Moderate Income and refers to the HUD calculations that may be adjusted annually to define the income limits, based on family size and including total household income for persons or households with annual incomes at or below eighty percent (80%) of the current area median income adjusted for family size.

“LMI Tenants” means qualified LMI residents living in the affordable housing developed through the Project described in the Agreement.

“LMI Households” means households with a total household income at or below 80% of the current AMI adjusted for family size.

"Marketing Plan" means written strategy prepared by Developer to address vacancies in the 42 units through a clearly understood and defined plan of action to fill such vacant units on a timely basis with eligible LMI households with said plan to include but not limited to funding committed, specific measures to be employed including timeline and schedule, and rationale for each of the measures to be taken.

"Project" means the Blu on Broadway mixed use development project described in paragraph III(D) of this Agreement.

"Project Costs" means all costs associated with the development of the Project within the specified Development Site including but not limited to acquisition cost (if applicable), pre-development costs, hard and soft construction or rehab costs, financing costs, developer fee and reserve account capitalization which must be approved by the City as set forth in this Agreement.

"Project Proposal" means the Blu on Broadway proposal prepared by the Developer submitted in response to the Infill Mixed-Use Affordable Multi-Family Request for Proposal (RFP) issued by the City.

"Subsidy Layering Analysis" means the HUD established limits on the amount of federal funds that may be invested in affordable housing on a per-unit basis. An evaluation of all committed Project funding must be conducted to ensure that the City does not invest any more NDR funds than necessary to provide affordable housing and the public funding does not unduly enrich the developer/sub-recipient. Applicants must demonstrate that they have structured projects to maximize other available financing source to limit NDR funding to the lowest amount necessary to assure Project feasibility.

"Tenant Income Verification" means the certified document from Developer as property owner or its representative verifying the income of each tenant occupying an NDR assisted unit. The method used will be the method described in 24 CFR 5.609(b) and (c).

III. General Project Terms and Conditions

A. National Objective. This Project is funded with CDBG-NDR Funds, shall meet HUD's LMI national objective, and the Developer is obligated to fulfill this national objective. To meet the LMI national objective, Developer shall construct housing that is rented to and occupied by qualified LMI tenants no later than eighteen (18) months after the City's issuance of the certificate of occupancy relating to the Project.

B. Amount and Form of Award.

1. Amount of Award. The City will contribute up to \$4,750,000 in CDBG-NDR Funds to the Project for Eligible Project Costs. The City does not represent or agree that the actual amount shall be \$4,750,000 but, rather, this is the maximum amount that could be paid by City to Developer.

2. Form of Award. The award described in this Agreement will be in the form of a twenty (20) year forgivable, no-interest loan ("NDR Loan"), and subject to the conditions set forth in this Agreement. The NDR Loan proceeds shall be used

solely to fund Eligible Project Costs. The NDR Loan shall be evidenced by a promissory note shall be in a form approved by the City Finance Director; Developer shall also execute a declaration of lien in a form approved by the City Finance Director. The promissory note and declaration of lien shall be executed by the Developer prior to disbursement of any NDR Loan funds by the City.

a. Repayment of NDR Loan: The NDR Loan shall be repaid, in full, without interest, no later than twenty years after the City issues the certificate of occupancy for the Project.

b. Forgiveness of NDR Loan: Developer shall repay the NDR Loan, in full, no later than twenty years after the City issues the certificate of occupancy for the Project, provided, however, Developer will be deemed to have made the following payments against the balance of the NDR Loan and forgiveness of the NDR Loan will be provided by the City, as follows, if the Developer meets the LMI national objective and complies will all of the obligations of this Agreement:

i. On the 10th anniversary of the issuance of the certificate of occupancy, if the Developer has met the LMI national objective and all other obligations described throughout this Agreement, 20 percent of the NDR Loan shall be deemed repaid to the City.

ii. On the 15th anniversary of the issuance of the certificate of occupancy, if the Developer has met the LMI national objective and all other obligations described throughout this Agreement, an additional 20 percent of the NDR Loan shall be deemed repaid to the City.

iii. On the 20th anniversary year of the issuance of the certificate of occupancy, if the Developer has met the LMI national objective and all other obligations described throughout this Agreement, the remaining balance of the NDR Loan shall be deemed repaid to the City.

c. Default. In the event of default by Developer of any of the material terms or conditions of this Agreement, the City may proceed with termination for cause as set forth in paragraph X(G) of this Agreement.

C. Development Site. Developer is the sole owner of the Development Site which is legally described as Home Acres Addition Lots 7 & 8 less Less Hwy Block 2, Minot, North Dakota. The Development Site is a 1.39-acre parcel.

D. Project. The Developer shall construct a mixed-used development project at the Development Site, which shall contain approximately 8,802 square feet of first floor commercial space; 10,027 square feet of underground parking structure (24 parking spaces); and 38,460 square feet of residential space (42 affordable apartment units and the associated common space), unless changes are required by the City of Minot through its administration of zoning, building, planning, and related codes and ordinances with such changes incorporated into this Agreement and memorialized in writing by the City consistent with those codes and ordinances. The Project shall also include improvements to the Development Site including water, fire, and sewer services, surface parking lot and parking lot lighting, on-site sidewalks, landscaping,

and other appurtenances. The NDR Loan provided under this Agreement may only be used for Eligible Project Costs.

The Developer must ensure, for the entire Affordability Period, that the 42 LMI apartment units (100%) are affordable to LMI residents; are rented to LMI residents and occupied by the same LMI residents; and are properly managed and maintained according to HUD's Housing Quality Standards requirements set forth under the HOME Entitlement Grant Program 24 CFR Section 982.401.

More particular descriptions of the Project are found in Exhibit A, which is attached and incorporated into this Agreement by reference.

E. Use of NDR Loan. The NDR Loan provided under this Agreement may only be used for reimbursement of Eligible Project Costs.

F. Disbursement of NDR Loan Funds.

1. Until at least Eighty (80) per cent of all Project Costs have been spent, Developer may submit monthly Draw Requests for NDR Loan proceeds providing each such individual Draw Request demonstrates that at least Fifty-one (51) per cent of the month's expenses are Developer and/or other non-NDR funds. Once the Eighty (80) per cent threshold has been reached, draw requests no longer require a percentage break out except for the 5% cap on Developer Fee. Developer shall submit a monthly Draw Request, which will be in such form as to (1) identify Eligible Project Costs to be reimbursed as described and approved in the Project Development Budget; and (2) attach proof of payments, materials, equipment, supplies delivered to the project site, services provided, and certification of work completed, and any related information to support the eligibility of the draw request for reimbursement. The Draw Request shall be submitted by Developer to the City's Finance Director and DR Grant Program Manager. The City and Developer will finalize a written draw request process that will facilitate an orderly payment process in conformance with HUD rules as well as 2 CFR Part 200 of the federal Uniform Administrative Guidelines. Developer recognizes and accepts that no NDR loan proceeds may be used as an advance and all costs in a Draw Request have been incurred.

2. The Developer understands and agrees that all Eligible Project Costs shall be invoiced and submitted to the City prior to January 1, 2022. The City is not responsible for any Project Costs, even if the costs are considered Eligible Project Costs under the terms of this Agreement, if they are submitted to the City after January 1, 2022.

G. Time of Performance.

1. **Construction of Project.** The Construction Phase of the Project shall be completed as specifically outlined in the Project Schedule, which is attached and incorporated into this Agreement as Exhibit C.

2. **Affordability Period.**

- a. **Affordability Period.** The Affordability Period relating to this Project shall be for twenty (20) years from the date of issuance of the certificate of occupancy relating to the Project.

- b. Affordability Period Requirements.** During the Affordability Period, Developer shall ensure that the 42 LMI apartment units (100%) are affordable to LMI residents; are rented to LMI residents and occupied by the same LMI residents within eighteen (18) months of the issuance of the certificate of occupancy for the Project; and are properly managed and maintained according to HUD's Housing Quality Standards requirements set forth under the HOME Entitlement Grant Program.

H. Promissory Note and Lien.

- 1. Execution.** Developer shall execute a promissory note and lien secured by the land and all improvements on the land in favor of the City to secure Developer's national objective obligations and all obligations during the Affordability Period. Execution of the promissory note and lien by the Developer and recording of said documents by the City shall occur prior to the City's release of Developer's personal guarantees referenced in paragraph IV(J). Said promissory note and lien in favor of the city may be in a position other than first position providing such other notes and liens are directly connected to the project and proof is provided that such note and lien to receive non-NDR funds for the project must be in superior position. As of the date that the City issues a certificate of occupancy for the Project, no additional debt or liens shall be incurred on the Development Site without prior approval of the City Council.
 - I. Failure to Meet National Objective or Other Requirements of Agreement.** If the Developer fails to fulfill the obligations or meet the national objective stated herein in this Agreement, all funds which the City has expended for the Project, through this Agreement, shall be reimbursed to the City by the Developer, unless a portion of the NDR Loan was previously forgiven as specified in this Agreement.

IV. Special Conditions before Release of Funds. None of the proceeds of the NDR Loan described in paragraph III(B) of this Agreement will be paid by the City until the following special conditions for release of funds are met. The special conditions described herein shall be satisfactorily completed no later than six months after execution of this Agreement. The City specifically reserves the right to cancel this Agreement if these special conditions are not met within the specified timeframe.

- A. Environmental Clearance.** Developer shall not obligate nor expend any funds for any choice limiting Project activity under this Agreement until notified, in writing from the City, that environmental review requirements pursuant to 24 CFR 570.604 have been satisfactorily completed for the Project activity(s) and that a HUD-approved Request for Release of Funds and certification has been issued. The City's written notice shall specify the date upon which Developer may begin to obligate and expend funds under this Agreement. The Developer does not assume responsibility for undertaking the environmental review process under 25 CFR Part 52. However, Developer shall provide the City with timely and accurate Project information as the City may require in order to cause the environmental review(s) to be satisfactorily undertaken. In the event that there is a proposed change in the location or scope of a Project activity, the Developer shall not undertake any action to obligate or expend funds in connection with the proposed change without obtaining the City's prior written approval. Any such

City approval shall be subject to City's sole determination as to whether or not the proposed change requires an additional environmental review and clearance before any funds may be committed or expended for the Project activity.

- B. Receipt of HUD Release of Funds.** Developer shall not obligate or expend any funds for this Project until the City is in receipt of HUD's Notice of Release of Funds relating to this Project and the City provides written notice of the HUD Notice to Developer.
- C. Plans and Specifications.** Developer shall submit Project plans and specifications to the City through the Finance Director, or their designee, and the DR Grant Program Manager which comply with all applicable State and City laws and meet the requirements of HUD's green building standards. After the City's Finance Director and DR Grant Program Manager determine the Project plans and specifications are acceptable to the City, they will provide Developer a written approval of the documents, and such approved plans and specifications shall become part of this Agreement. In addition, all standard City processes relating to review of Project documents, plans, and specifications shall still apply.
- D. Development Site Ownership and Lien Disclosure.** Developer shall provide to the City through the Finance Director and DR Grant Program Manager proof of its ownership of the land which constitutes the Development Site and copies of all liens on the Development Site property.
- E. Revised Project Proposal.** Developer shall revise the Project Proposal and financial documentation to include a consistent amount of NDR funds requested for the Project, which may not exceed \$4,750,000; provide the correct total Project cost; provide a detailed Project Development Budget as set forth in paragraph IV(E)(1) of this Agreement; provide a revised square footage detail by unit #, number of BRs, unit sq. ft., common space by sq. ft. by floor, commercial space, and underground parking and storage space by sq. ft.; provide a revised and acceptable methodology for allocating the Project square footages to the appropriate uses for both construction costs; provide a revised sources and uses statement; provide a revised operating budget; provide a revised project pro forma; and any additional documentation as requested by the City's DR Grant Program Manager and Finance Director.
 - 1. Project Development Budget.** Included in the Project Proposal shall be a Project Development Budget, which shall be incorporated into this Agreement as Exhibit B after the City's Finance Director and DR Grant Program Manager determine it is acceptable to the City and provide written notice to the Developer of approval.
 - a.** Within the Project Development Budget, the Developer shall specifically delineate Project Costs attributable to the commercial space and Project Costs attributable to the affordable housing. Project Costs will be used as the basis to allocate eligible costs for the residential portion of the Project or to the commercial portion of the Project, and to allow the City to determine the Eligible Project Costs the City will reimburse with NDR Loan and all other non-NDR costs not paid by the City. After the City's Finance Director and DR Grant Program Manager determine the Project Development Budget is acceptable to the City, the Project Development Budget shall be incorporated into this Agreement as Exhibit B.
 - b.** The Project Development Budget shall specifically identify allowable Developer Fees to be paid from the NDR Loan. Allowable Developer

Fees may not exceed the fees allowable under the Minot Affordable Housing Underwriting Guidelines (same as North Dakota Housing Finance Agency ("NDHFA") limits). The Project Development Budget shall acknowledge that twenty (20) percent of the allowable Developer Fees shall be paid only upon the successful completion of the Construction Phase of the Project, issuance of the certificate of occupancy by the City and Developer providing proof of land ownership and liens on property. The balance of the allowable Developer Fees shall be in increments of no more than 5% per Draw Request for NDR loan proceeds capped at eighty (80) per cent.

- c. The Project Development Budget shall specifically identify allowable architectural fees, construction management fees, contractor profit and overhead and contractor general requirements which should be part of the required soft costs disclosure of the Project Development Budget described paragraph IV(E)(1)(a) above. Allowable fees referenced in the preceding sentence shall not exceed the fees allowable under the Minot Affordable Housing Underwriting Guidelines (same as NDHFA limits). A copy of the Minot Affordable Housing Underwriting Guidelines shall be attached as Exhibit G.
- F. Project Schedule.** After the City's Finance Director and DR Grant Program Manager determine the Project Schedule is acceptable to the City, the Project Schedule shall be attached to this Agreement as Exhibit C.
- G. Qualified Appraisal.** Developer shall submit a qualified appraisal of the Development Site to the City's DR Grant Program Manager. Inclusion of acquisition costs for a future housing development, improvements to 1st Street SW, or improvements to other property not directly attributable to this Project are not eligible expenses for NDR funds.
- H. Project Document.** Using the Project Development Budget, the appraisal, and other data, Developer shall develop a Project Document that will provide development monitors and HUD auditors a single source document to readily understand the development costs, contributed capital, developer equity, eligible costs for the affordable apartment units and other building costs, prior to the release of any NDR funds, and the methodology used to allocate development costs and operating expenses for the affordable residential and commercial costs of the Project. The Project Document shall be submitted to the City's Finance Director and DR Grant Program Manager. After the City's Finance Director and DR Grant Program Manager determine the Project Document is acceptable to the City, they should provide Developer a written approval of the document.
- I. Affirmative Marketing Plan.** Developer shall prepare an Affirmative Marketing Plan for the Project that meets all applicable HUD rules and regulations in accordance with Exhibit E and submit to City's DR Program Grant Manager and Finance Director or designee. After the City's DR Grant Program Manager and Finance Director determines the Affirmative Marketing Plan is acceptable to the City written approval of the document shall be provided to the Developer.
- J. Project Personal Guarantees.** As security for the Construction Phase of the Project, Developer shall provide to the City Finance Director personal guarantees of the

ownership group of the project site land and improvements in such form and content satisfactory to the City Attorney and City Finance Director and such personal guarantees shall not be released until the City issues a certificate of occupancy for the LMI apartments which are part of the project.

K. Other City Agreements. Developer shall enter into any necessary agreements with the City relating to this Project.

V. Construction Phase Requirements. In addition to any applicable obligations identified in this Agreement, Developer shall comply with the following requirements during the Construction Phase of the Project:

A. Adherence with Project Schedule. Developer shall proceed with the construction of the Project at the Development Site in accordance with the Project Schedule approved by the city through both the DR Grant Program Manager and Finance Director.

B. HUD New Construction. Developer shall comply with HUD's requirements for new construction. The Developer must meet the Energy Star standards selected by the City. Developer and their Architect will coordinate with the DR Grant Program Manager during the preparation of the plans and specifications to ensure the final plans will meet HUD requirements and applicable City codes and ordinances, green building standards, and Uniform Federal Accessibility Standards (UFAS).

VI. Affordability Period Requirements. In addition to any applicable obligations identified in this Agreement, Developer shall comply with the following requirements during the Affordability Period of the Project:

A. Affordable Housing Requirements. For and in consideration of the City's Agreement to provide an NDR Loan for the Project, to be developed on the Developer agrees and understands:

1. All of the 42 residential apartment units will be affordable to and rented and occupied by LMI households with incomes at or below 80 percent of Area Median Family Income, adjusted for household size as established in the income guidelines promulgated by HUD and published annually by HUD. A copy of the 2019 income limits is included in Exhibit D of this Agreement.
2. Determination and certification of tenant LMI eligibility shall be done by the Developer at the time of initial rental of the unit to the tenant. Recertification of a tenant's eligibility shall not be necessary until tenant's initial lease expires. Determination and certification of tenant LMI eligibility shall be required at time of lease renewal. For leases with a term of 30 days or less, Developer shall recertify LMI eligibility at end of each 30-day period. Should a tenant relocate during the term of a lease to a different unit then recertification of new tenants for LMI eligibility shall be required.
3. All 42 units shall be leased to eligible LMI tenants and occupied by such tenants within 18 months of Developer receiving certificate of occupancy for Project building from the City. Any units not leased and occupied within 18 months shall require Developer to follow paragraph VI(A)(4).
4. If the Developer has vacant apartment units the Developer shall provide, as supplemental information in its quarterly Progress Report, a written report to the City's DR Grant Program Manager and Finance Director that includes, at a

minimum, the following information: (1) evidence of a Marketing Plan in place to fill the vacant apartment units (2) documentation of all advertisements, website postings, listings, open houses, etc. that Developer has undertaken to fill the vacant apartment units; (3) information relating to the number and location of each vacant unit, the reason(s) for the specific vacancy, and the length of each specific vacancy; (4) documentation establishing that the 42 LMI apartments are being maintained according to HUD Quality Standards for affordable housing set forth in 24 CFR, section 982.401 and City of Minot Code; (5) documentation establishing that the vacant units are being offered at rents in compliance with HUD LMI rent standards for the size of the vacant apartment units; (6) verifiable evidence of the multi-family rental vacancy rate in Minot for LMI housing; and (7) any additional information and/or documentation requested by the City's DR Grant Program Manager or Finance Director. If the Developer submits all of the information required in this paragraph, and the City's DR Grant Program Manager and the Finance Director deem the written report to be complete and the Marketing Plan, advertisements, and the Developer's overall efforts to fill the vacant units sufficient, the vacant apartment units shall not be considered non-compliant under the terms of this Agreement.

5. LMI households shall pay no more than 30 percent of their income for rent and utilities to meet affordable housing guidelines from HUD.
6. These 42 residential apartment units will remain compliant as LMI rental apartments for the Affordability Period. Once the Affordability Period terminates, all income/affordability restrictions shall terminate.
7. The Project Pro Forma, which is the financial plan for operation of the Project once the certificate of occupancy is issued, and related financial documents are based on the rent schedule included in Section 26 on page 7 of 14 of the Developer's 2019 Proposal v.2. These rents are lower than current FMR's for 80% AMI tenants enabling the Developer to lease the affordable apartments to tenants with income below the 80% AMI baseline providing affordable rents to lower income tenants, justifying the level of NDR subsidy provided to the Developer for this Project. To ensure that comparable rents as adjusted annually as used throughout the Affordability Period of this Project, a total of 18 of the 42 rental units will be subject to gross rent limitations designed to insure rents continue to be affordable to tenants according to CDBG-NDR program requirements. The Developer is required to utilize the lesser of the currently published HDU Fair Market Rents (FMR) for Ward County, ND or 30% of the currently HUD published 50% Area Median Incomes for Ward County, ND when calculating maximum gross monthly rent for these units, taking into account current published and applicable monthly allowances for utilities, published by the Minot Housing Authority or calculated by the Owner using another HUD-approved methodology, in accordance with 24 CFR 92.252 (c).

These specific rent limits are known to be regularly published by the NDHFA as the rent limits for the Neighborhood Stabilization Program 3's (NSP3) ongoing compliance and it shall be the responsibility of the Developer to be current with the rent limits published by NDHFA in renting the 42 units.

- B. Maximum Rental Amount During Affordability Period.** The rents for an NDR-assisted rental unit including rent and utilities may not exceed 30% of the tenant's household income to qualify as affordable under HUD rules. LMI tenants have household incomes at or below 80% of the area median income (AMI) for Ward County. Maximum rental amounts are adjusted annually by HUD based on the income limits prevailing for the location of the rental housing, which are published by HUD for the Section 8 rental assistance program on HUD's website. Developer will adjust the maximum rental amount within 30 days of publication of new income limits and apply the maximum amount to all new leases executed after that time. To determine the affordable rental amount, Developer will follow these procedures:
1. For each rental unit, a household size will be based on the numbers of bedrooms in the home, as follows: studio, one person; 1-bedroom, one person, 2-bedroom, two persons; 3-bedroom, three persons; 4-bedroom, four persons.
 2. Developer will identify the income limit for the appropriate household size and maximum allowed percentage of area median income from the HUD income limits available on the HUD website.
 3. The resulting income amount will be multiplied by 30% to represent an affordable housing payment.
 4. Using a schedule of utility allowances from the Minot Housing Authority or equivalent document, the estimated amounts of the tenant-paid utilities will be deducted from the affordable housing payment amount. The result will be the maximum allowed rent.
- C. Client Data.** The Developer shall maintain client data demonstrating tenant eligibility in accordance with CDBG-NDR LMI requirements. Such data shall include, but not be limited to, client name, address, income level, family size, racial and ethnic characteristics or other basis for determining eligibility and for HUD reporting. Such information shall be made available to the City monitors who shall be determined by and designated by the DR Grant Program Manager and Finance Director for review upon request.
- D. Client Information.** The Developer understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Developer's responsibilities with respect to activities undertaken under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
- E. Progress Reports and Monitoring.**
1. **Progress Reports.** The Developer shall submit quarterly Progress Reports to the City through the Finance Director and DR Grant Program Manager in the form and content, as required by the City. The Progress Reports shall include, at a minimum, (1) the total units rented and occupied; (2) the units rented and occupied since last Progress Report; (3) a signed statement attesting that all occupied units are rented to LMI residents and occupied by the same LMI residents; (4) a signed statement attesting that all tenants are being charged monthly rents in compliance with LMI HUD established caps; and (5) any additional information and/or documentation requested by the City's DR Grant Manager or Finance Director. If there are any vacant apartment units, the

Progress Report shall include the supplemental report specifically described in paragraph VI(A)(4) of this Agreement.

2. **Monitoring.** Developer agrees and understands that this Project will be **monitored** by the City on a regular basis to ensure compliance with HUD rules and regulations and the performance requirements established in this Agreement. The City may perform this activity or may contract a firm qualified, at the City's sole discretion, to perform the monitoring and inspection relating to the Project.

The City will monitor the performance of the Developer against the Developer's obligations as stated in this Agreement.

The City will use the Developer's quarterly Progress Reports to determine compliance with obligations under this Agreement. In addition, the Developer shall provide annual financial information and documentation for this review at no cost to the City as may be required by the City with such information to be provided to the City's DR Grant Program Manager. Failure to permit on-site monitoring or failure to provide the required monitoring and inspection information and documentation may result in the termination of this Agreement and/or the NDR Loan being called. An annual fee of \$5,000 will be imposed to cover any costs of ongoing monitoring and inspections to comply with the Affordability Period requirements and Developer agrees to pay the imposed fee within thirty days of receipt of an invoice from the City.

3. **Substandard Performance.** Substandard performance, as determined solely by the City, will constitute noncompliance with this Agreement. The City through the DR Grant Program Manager and Finance Director or designee will advise the Developer in writing of any substandard performance and grant the Developer a reasonable amount of time to cure the substandard performance. What constitutes a reasonable amount of time shall be in the sole discretion of the City through the DR Grant Program Manager, and the City shall advise the Developer, in writing, of the amount of time it will afford them to cure their substandard performance. If the Developer fails to cure their substandard performance after receiving notice of their substandard performance, that failure to cure shall be considered a material failure to comply with the terms of this Agreement and the City in its sole discretion may proceed to suspend or terminate this Agreement.

VII. Other Conditions

- A. **Cost Reasonableness and Subsidy Layering.** As required by HUD, Developer shall provide to the City's Finance Director and DR Grant Program Manager required documentation to meet HUD regulations regarding cost reasonableness and subsidy layering.
- B. **Property Taxes and Special Assessments.** Developer shall remain current with all property taxes and special assessments relating to Development Site. Failure to remain current with all property taxes and special assessments shall be considered a material breach of this Agreement.
- C. **Transfer of Property.** Under no circumstances shall the Developer sell or otherwise transfer any portion of the Development Site described in this Agreement without the

prior written approval of the City Council, however, written approval of the sale or transfer will not be unreasonably denied providing that Developer provides sufficient written guarantees demonstrating that sale or transfer preserves all terms and conditions of this Agreement as well as assignment of the Promissory Note and Lien to the new owner(s) acceptable to the City Finance Director and DR Grant Program Manager. In the event the City approves such a sale or transfer, all Developer responsibilities and requirements contained in this Agreement shall be conveyed to the purchaser by a written agreement and the performance requirements and responsibilities contained in this Agreement shall be acknowledged and agreed to by the purchaser through the full term of the Affordability Period contained in this Agreement. The Developer shall provide a copy of the written agreement between Developer and purchaser to the City within three (3) business days of its execution. Failure to obtain written approval of a sale or transfer of any portion of the Development Site, to notify the City of a sale or transfer of any portion of the Development Site, or to provide a copy of the written agreement between Developer and purchaser, shall be considered a material breach of this Agreement and may result in termination of this Agreement.

- D. Obligations at Close-Out.** The Developer's obligation to the City shall not end until all close-out requirements are completed covering both the Project Construction Phase and the subsequent Affordability Period. Activities during this close-out period shall include providing documentation that the rental of the units is in accordance with Exhibit D, Affordable Housing Requirements and Income Limits.
- E. Records to City.** All Developer records with respect to any matters covered by this Agreement shall be made available to the City and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with requirements will constitute a violation of this Agreement.
- F. Compliance with Public Records Laws.** Developer understands that, the City must disclose to the public upon request any records it receives from Developer. Developer further understands that any records obtained or generated by Developer under this Agreement may, under certain circumstances, be open to the public upon request under the North Dakota public records law. At no additional cost to the City, Developer agrees to contact City promptly upon receiving a request for information under the public records law and to comply with City's instructions on how to respond to the request.
- G. Environmental Conditions.**
 - 1. Air and Water.** The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
 - a. Clean Air Act, 42 U.S.C., 7401, *et seq.*;
 - b. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

- c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
- 2. **Flood Disaster Protection.** In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer shall assure that for activities including the construction of the housing which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance.
- 3. **Historic Preservation.** The Developer agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. Specifically, this requires the State Historic Preservation Officer to evaluate the impact of all federally funded projects on historic properties including potential historically significant archeological sites.
- H. **City Recognition.** The Developer shall ensure recognition of the role of City in this Project including on site signage during the Construction Phase of the Project and any media releases or activities. Media events, media releases, or similar activities should be coordinated with the City's DR Grant Manager and Public Information Officer. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Developer shall include a reference to the support provided under this Agreement in all publications and printed material, including signage.
- I. **Civil Rights Compliance.** If applicable to the CDBG eligible activity related to the acquisition of real property, the Developer shall comply with Title VI of the Civil Rights Act of 1964 as amended, and Title VIII of the Civil Rights Act of 1968 as amended, Section 104 (B) and Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- J. **Non-Discrimination.** If applicable to the CDBG eligible activity related to the acquisition of real property, the Developer shall comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 2 CFR 570.607, as revised by Executive Order 13279. The Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Developer will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

- K. Section 504.** With respect to contracts for the housing development, the Developer shall to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. Upon written request from Developer, the City shall provide the Developer with guidelines necessary for compliance with that portion of the Regulations in force during the term of this Agreement.
- L. Access to Records.** The Developer shall cause to be furnished all information and reports required hereunder and will permit access to its books, records and accounts by the City as requested by and through the Finance Director or the DR Grant Program Manager, any of the City's other authorized representative(s), HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- M. Employee Restrictions/Prohibited Activity.** The Developer is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- N. OSHA.** Where employees of the Developer are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety.
- O. Conflict of Interest.** The Developer shall abide by the provisions of 24 CFR 570.611, which include (but not limited to) the following:
1. The Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. The Developer must provide this document to the City prior to the release of any NDR Loan for the Project.
 2. No employee, officer or agent of the Developer shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
 3. No covered persons who exercise or have exercised any functions or responsibilities with respect to NDR assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NDR assisted activity, or with respect to the proceeds from the NDR assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Developer, the Developer, or any designated public agency.
- P. Lobbying.** The Developer hereby certifies that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee

of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly:

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- Q. Religious Activities.** The Developer agrees that the NDR Loan provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(J), such as worship, religious instruction or proselytization.
- R. Copyright.** If this Agreement results in any copyrightable material or inventions, the Developer and/or the City reserve the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use to authorize others to use, the work or materials for governmental purposes.
- S. Davis-Bacon Act Compliance Required.** When applicable, the Developer shall comply with any requirements of the Davis-Bacon Act. The Davis-Bacon Act (40 USC 3141-3144, 3146, and 3147) requires that, on all contracts and subcontracts which exceed \$2,000 in value or that include eight (8) or more residential units for federally assisted construction, alteration or rehabilitation, laborers and mechanics employed by the CDBG Developer, general contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if eight (8) or more contiguous residential family units are involved.)
 1. Volunteers – The prevailing wage provisions of this Act do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

2. Sweat Equity – The prevailing wage provisions of this Act do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for home ownership or provide labor in lieu of, or as a supplement to, rent payments.
- T. Contractual Work Hours and Safety Standards Act of 1962 – Compliance Required.** When applicable, Developer shall comply with the Contract Work Hours and Safety Standards Act of 1962, (40 USC 3701-3708.) requires that mechanics and laborers employed on federally assisted contracts which exceed \$2,000 be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work week.
- U. Copeland Anti-Kickback Act of 1934 – Compliance Required.** When applicable, Developer shall comply with the Copeland "Anti-Kickback" Act of 1934, (40 USC 3145) prohibits and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.
- V. Lead Based Paint Poisoning Prevention Act of 1971, (42 USC 4831) – Compliance Required.** When applicable, the Developer shall comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35 and all other related federal regulations, prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance; requires notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning; requiring inspection and testing of such housing and requires elimination of any lead-based paint hazards in such housing that is to be rehabilitated, modernized or improved under this Contract.
- W. Section 3 Housing/Community Development Act of 1968 – Compliance Required.** When applicable, Developer shall comply with Section 3 of the Housing and Community Development Act of 1968, and 24 CFR part 135 as amended, provides that, to the greatest extent feasible, opportunities for training, employment, and new contracting opportunities that arise through HUD-financed projects under this Program will be given to lower income persons who qualify as a Section 3 resident in the unit of the project area, and that contracts be awarded to businesses located in the project area owned, in substantial part, by Section 3 eligible residents of the project area or who have thirty percent (30%) or more of their full-time employees qualify as a Section 3 residents. The regulation applies to any HUD grant exceeding \$200,000 and any subaward exceeding \$100,000. The Developer the City with verification of compliance with Section 3 for contractors and subcontractors.

As a condition of receiving Federal funds, the Developer is required to comply with Section 3 of the Housing and Urban Development (HUD) Act of 1968 (Section 3), The Developer is required to pass down the Section 3 requirements to construction contractors and subcontractors funded with HUD funds and to monitor contractors and subcontractors for compliance with these requirements.

- X. Workers Compensation.** The Developer shall maintain Workers' Compensation and Employer's Liability insurance coverage for all its employees involved in the performance of this Agreement and in conformance with the laws of the State of North Dakota.

- Y. Insurance.** As outlined in Exhibit F, Insurance Requirements, the Developer shall carry sufficient insurance coverage to protect assets, acquired, constructed, and/or improved under this Agreement. The City shall be named as an Additional Insured Loss Payee on all such insurance policies taken out on behalf of the Project by the Developer, including the General Contractors Commercial General Liability and Builders Risk Insurance policies. The Developer shall not allow the commencement of work by the general contractor until evidence of insurance has been provided to the City through the Finance Director. See Exhibit F Insurance Requirements.
- Z. Hold Harmless.** The Developer shall protect, defend, indemnify, save and hold harmless the City, all its elected officials, Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against all loss, liability, claim, demand, suit, expense arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way arise from any act or omission of the Developer, its agents, servants, employees or contractors, or any and all costs, expense and/or attorney fees incurred by the Developer, as a result of any loss, liability, claim, cause of action, demand, suit, or expense related to the performance of Developer Responsibilities as set forth in this Agreement. The Developer agrees to investigate, handle, respond to, provide defense for and defend any such claim, demand or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claim, demand or suit is without merit, groundless, false or fraudulent.

VIII. Compliance with City Agreements and Applicable Laws

- A.** The Developer shall comply with all terms and conditions contained in this Agreement;
- B.** The Developer shall comply with the terms and conditions contained in each of the other City Agreements relating to this Project or Development Site;
- C.** The Developer shall comply with all applicable HUD Rules and/or Regulations;
- D.** The Developer agrees to comply with the applicable requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including subpart K of these regulations, except as may be otherwise stated in this Agreement and as CDBG-DR regulatory waivers have been granted by HUD and alternative requirements have been specified pursuant to FR-Vol. 81, NO. 109/Tuesday June 7 2016/Notices concerning funds provided to the CDBG-NDR Grantees. Developer also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the NDR Loan provided under this Agreement.
- E.** The Developer shall comply with all applicable provisions of the zoning, development, and building codes, and all ordinances and regulations of the State of North Dakota and the City of Minot, North Dakota;
- F.** Comply with Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR §570.606; and
- G.** Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42.

IX. Exhibits

The following exhibits are attached to this Agreement, and are incorporated and made a part hereof by reference:

Exhibit A	Project Description
Exhibit B	Project Development Budget
Exhibit C	Project Schedule
Exhibit D	Affordable Housing Requirements and Income Limits
Exhibit E	Affirmative Marketing Plan
Exhibit F	Insurance Requirements
Exhibit G	Minot Affordable Housing Underwriting Guidelines

X. Miscellaneous Conditions

- A. Severability.** The provisions of this Agreement are severable and if for any reason a clause, sentence, paragraph or other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions which can be given effect without the invalid provision.
- B. Headings.** Any headings or subheadings preceding the texts of the several parts hereof shall be solely for the convenience of reference and shall not constitute a part of this Agreement, nor shall it affect its meaning, construction or effect.
- C. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. The parties agree that any lawsuit filed to enforce, terminate, or interpret this Agreement will be filed in a District Court located in Ward County, North Dakota.
- D. Non-Assignability.** Developer shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the City. This provision shall not be construed to prohibit Developer from assigning their bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Written notice of any such assignment or transfer shall be furnished promptly to the City.
- E. Waiver.** The City's failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. Any failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- F. Amendments.** The Parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by duly authorized representatives of both of the parties.
 - 1. Any amendment or modification of this Agreement shall be effective only in the specific instance and only for the purpose for which it is given. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Developer from its obligations under this Agreement.
 - 2. The City may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the

EXHIBIT A

PROJECT DESCRIPTION

See attached Blu on Broadway Project Proposal (V3.8) cover letter



1. COVER LETTER

May 1, 2019

City of Minot NDR
John Zakian, Director
515, 2nd Ave SW
Minot, ND 58701

RE: City of Minot Affordable Multi-Family Rental Housing Proposal

Mr. Zakian

The enclosed application and supporting information are for the proposed mixed-use facility called Blu on Broadway (BOB). The proposed projects will be a 5-story building that includes approximately 10,000 SF of main floor commercial space, and 4 levels of multi-family affordable housing rental units (42 total). These units include a mix of sing-story studio, and one-bedroom units along with 2-story, 2-bedroom units. Other planned features include: underground parking, outdoor recreation space, a community video board and more.

The site is located on South Broadway where the former Pepsi bottling plant was located. An infill project at this location will meet many of the objectives that were identified for more resilient City of Minot, and most importantly provide for much needed long-term affordable housing.

To make this project work as currently modeled, we are requesting \$4,725,000 in NDR funds. That will complete the financing package that we have put together leveraging private investment, and traditional bank financing for the remaining commercial component of the development.

Thank you for your consideration and we look forward to completing another successful project that will make a lasting impact on the City of Minot's resiliency efforts.

Sincerely,

Todd Berning
EPIC Companies



TO: Mayor Shaun Sipma
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

DATE: December 30, 2019

SUBJECT: CONSIDER CDBG-NDR DEVELOPER AGREEMENT WITH BLU ON BROADWAY

I. RECOMMENDED ACTION

City Council consider CDBG-NDR LMI Multi-Family Mixed Use Developer Agreement with Blu on Broadway LLC.

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

III. DESCRIPTION

A. Background

The City issued a Request for Proposals specifically for mixed use projects either rehab or new construction using CDBG-NDR funds to seek to stimulate needed new investment in both commercial and LMI affordable multi-family housing development. The City received one proposal from Blu on Broadway, LLC for construction of an at least \$10 million new building on a vacant site abutting South Broadway to include ground floor of 10,000 square feet of new commercial tenants and additional floors of 38,462 square feet for 42 units of quality Low/Moderate Income eligible multi-family rental units. More than 50% of the investment for this project will be provided by the Developer complemented by \$4.75 million in CDBG-NDR funds to cover LMI related costs. This project meets two of the primary objectives of the HUD grant which are to provide quality housing for LMI eligible residents and to use CDBG-NDR funds as leverage to generate private investment. The developer agreement, itself, reflects the city's commitment to employing best practices in establishing clear benchmarks, guidelines, accountability, and assurances with the investment of public funds fully embracing lessons learned from past experiences with previous developer agreements.

B. Proposed Project

This project is exceptionally modeled to demonstrate to HUD the capability of using CDBG-NDR funds to support a notable revitalization project which utilizes multiple resources:

- Bank of North Dakota Flex Pace Interest Buy Down program which will provide \$500,000 in interest buy down on the developer side recognizing the CDBG-NDR funds as the required local contribution
- Tax Increment Financing (will be city's first) which incentivizes the Developer to undertake street and utility improvements outside the development site with an estimated cost of \$600,000

Both the Flex Pace and TIF agreements are separate from the CDBG-NDR developer agreement and will require City Council approval. The CDBG-NDR developer agreement

specifies that all such agreements need to be in place before CDBG-NDR funds can be spent. Key provisions of the CDBG-NDR agreement:

- Site and building will be guarantees for LMI multi-family rental for the 42 units for 20 years in the form of Promissory Note and Lien
- Until 80% of total project funds are spent, no draw request can be more than 49% CDBG-NDR funds
- The \$4.75 million of CDBG-NDR funds is in the form of a forgivable loan which will be pro-rated down to zero when the 20 year LMI anniversary period is reached
- None of the CDBG-NDR funds will be released until environmental clearance has been granted by HUD, detailed plans and specifications have been completed by the developer and approved by the City, detailed project budget with line item costs delineating NDR and non-NDR project costs to be completed by the Developer and approved by the city, and proof of ownership of land by the Developer comprising the project site.

IV. IMPACT:

A. Strategic Impact:

This project demonstrates to HUD the ability of the City of Minot to leverage CDBG-NDR grant funds with private sector investment as well as incentive programs to promote sustainable, resilient revitalization

B. Service/Delivery Impact:

This project addresses the City's commitment in the HUD approved CDBG-NDR Action Plan to develop quality multi-family rental housing for low/moderate income households.

C. Fiscal Impact:

The up to \$4.75 million in CDBG-NDR funds for this project represents a needed, significant commitment of funds to meet the deadline of having all CDBG-NDR funds spent by September 30, 2022

V. ALTERNATIVES

N/A

VI. TIME CONSTRAINTS

Approval of the CDBG-NDR Developer Agreement is necessary to commence the environmental review process to secure HUD Release of Funds with the goal to have such release to permit the project to commence construction during the 2020 construction season.

VII. LIST OF ATTACHMENTS

- A. Blu on Broadway, LLC CDBG-NDR Developer Agreement

EXHIBIT B
PROJECT BUDGET
See attached pages

Blu on Broadway

Project Analysis

Minot, ND

June 17, 2020

A	Construction Cost	SF	Cost/ft	Total
A1	Demo, Infrastructure, Parking, & 300k road	16,000 SF	\$50	\$500,000
A2	Underground Parking	10,700 SF	\$65	\$695,500
A3	Commercial - Main level	10,700 SF	\$100	\$1,070,000
A7	Total Commercial	10,700 SF	Commercial % of Project	22%
A8	2nd, 3rd, 4th, 5th Floor apartments	39,000 SF	\$115	\$4,485,000
A10	Total Residential	39,000 SF	Residential % of Project	78%
A20	Total Above Ground SF	49,700 SF	\$137.84	\$6,850,500
B	Construction Services		Cost	
B1	Construction contingency	2.9% of A		\$200,000
B2	A/E 75% of Total @ 4.2%	6.50% of A		\$450,000
B3	Construction and Project Management	5.82% of A		\$410,000
B4	Civil/Geotech/Environ	0.4% of A		\$25,000
B5	Total Construction Services			\$1,085,000
C	Total Construction and Construction Services		PSF	Total
C1			\$159.67	\$7,935,500
D	Fixtures, Furnishings & Equipment (FF&E)			
D1	Commercial TIA	\$30	8,802	\$264,060
D2	Community Video Board	0.0% of A		\$150,000
D3	Other	0.0% of A		\$0
D6	Total FF&E			\$414,060
E	Professional Fees & Expenses			
E1	Development Fee	5.5%		\$431,000
E2	Operating Maint Reserve Acnt Capitalization	1.5%		\$86,401
E3	Appraisal/title/Bank Fee	0.6%		\$50,000
E4	Leasing	4.0%	\$918,630	\$36,745
E5	Legal and Accounting - Startup			\$30,000
E6	Reserve Fund			\$0
E7	Total Professional Fees & Expenses			\$634,146
F	Miscellaneous			
F1	Land Purchase	60,720 SF	\$13.20 /SF	\$800,000
F3	Construction Interest			\$66,000
F4				\$866,000
F5	TOTAL PROJECT COSTS =		\$198 /SF	\$9,849,706.20

**Blu on Broadway
Minot, ND**

Project No. 18-070

BID PACKAGE	ESTIMATE	CONTRACTOR	BASE BID
General Conditions	390,116.25	Gehrtz Construction Services, Inc.	390,116.25
3A Concrete - Building	349,166.00	Quality Concrete, Inc.	693,000.00
3C Precast Concrete - Materials	227,929.00	Teracon Precast	310,366.00
3D Precast Concrete - Erection	49,004.00	Magnum Contracting, Inc.	166,100.00
3E Gypcrete	25,960.60	Beyond Concrete	33,645.00
4 Masonry	394,050.00	Deleed all masonry	
5A Structural Steel - Materials	182,002.88	Central Minnesota Fabricating, Inc.	94,960.00
5B Structural Steel - Erection	91,634.10	Magnum Contracting, Inc.	Included with 3D
5C Misc. Metals	245,075.00	Red River Fabricating	17,737.50
6A-1 Prefabricated Wood Components	244,202.36	Precision Wall/Truss Pros	273,239.20
6A-2 Framing Labor for Wood Components	276,431.25	Avante-Garde	326,000.00
6B-1 Misc. Materials	186,050.25	Allowance	186,050.25
6B-2 Misc. Labor	50,000.00	Allowance	50,000.00
6B-3 Site Amenities/Patio Allowance	75,000.00	Allowance	75,000.00
6C-1 Misc. Labor - First Floor	30,000.00	Allowance	30,000.00
6D Finish Carpentry	75,600.00	Cape Construction	90,000.00
6D-1 Finish Carpentry - Materials	25,200.00	Allowance	25,200.00
7A Moisture Protection	147,650.00	A&R Roofing Co., Inc.	123,720.00
7B Building Insulation	100,670.00	Cullen Insulation, Inc.	95,461.00
7E Prefinished Metal Siding	271,700.00	Capital Exteriors, Inc.	340,233.00
7F Sprayed Fireproofing	20,000.00	LB Hall Fireproofing	33,759.00
7G Sealants	55,053.90	Allowance	50,000.00
8A Frames/Doors/Hardware/Trim	163,104.38	Central Door and Hardware	127,720.00
8A-2 Closet Shelving	9,000.00	Horizon Shelving & Closets, Inc.	8,822.00
8C Sectional Doors	4,500.00	Overhead Door Minot	3,200.00
8D Residential Windows	121,319.75	Hearthland Pella	144,036.75
8E Aluminum Entrances & Windows	191,950.00	Northland, Ltd	112,500.00
9A First Floor Drywall	164,000.00	OM Wynn Contracting	142,850.00
9B Residential Drywall	211,530.00	Minnesota Drywall	444,210.00
9C Tilework	10,800.00	STC Flooring, Inc.	21,890.00
9E Acoustical	16,225.00	Dow Acoustics	15,925.00
9G Flooring	115,380.00	STC Flooring, Inc.	120,002.00
9I Painting & Wall Coverings	25,000.00	Allowance	25,000.00
10 Specialties	14,400.00	Allowance	7,500.00
10B Signage	48,000.00	Allowance	48,000.00
12B Window Treatments	23,400.00	Amys Windows	15,290.00
13 Prefabricated Cabinets - Materials	116,100.00	Rusco Windows	146,621.40
13A-1 Countertops & Sills	90,000.00	Designer Tops	29,905.00
13B Appliances	170,280.00	Rigels, Inc	175,694.78
14 Conveying System	130,000.00	ThyssenKrupp Elevator Corp.	145,000.00
21 Fire Protection	141,756.50	Nova Fire Protection	93,382.00
22 Plumbing/Hydronic Heating	360,709.00	Precision Mechanical, Inc.	489,100.00
23 HVAC/Ventilation	471,444.00	Connole Somerville Plumbing	288,561.00
26 Electrical	396,405.00	Fusion Electric	412,700.00
31 Earthwork	252,595.00	Dig It Up Backhoe Service, Inc.	348,000.00
32 Paving & Surfacing	180,850.00	Quality Concrete, Inc.	99,500.00
32A Asphalt Paving	-	Bechtold Paving, Inc	55,700.00
32D Landscaping	76,000.00	Premier Landscaping	34,880.00
33 Site Utilities	75,000.00	Dig It Up Backhoe Service, Inc.	\$ 120,500.00
Total Bid Packages	\$ 7,101,958.43		\$ 7,058,427.13
Alternate No. 1 Sound Board/Gypcrete			
Alternate No. 2 Vinyl Windows			
Alternate No. 3 Concrete Pavement			
Alternate No. 4 Quartz Countertops			
Alternate No. 5 Vinyl Wall Coverings			
Alternate No. 6 Ballasted 1st Floor Roof			\$ (4,620.00)
STC 39 at Windows			\$ 44,686.00
Unit Price No. 1 Removal of Unsatisfactory Soil			
TOTAL BID PACKAGES	\$ 7,101,958.43	\$ 6,850,000.00	\$ 7,098,493.13

EXHIBIT C

PROJECT SCHEDULE

See attached schedule

[illegible]

EXHIBIT D

AFFORDABLE HOUSING REQUIREMENTS AND INCOME LIMITS

Developer acknowledges and agrees that one hundred percent (100%) of the forty-two (42) units constructed for the Blu on Broadway affordable housing project will benefit households having initial incomes at or below eighty percent (80%) of Area Median Family Income (AMI), adjusted for household size, as established under income guidelines of HUD. These income limits are determined for the Project according to HUD's income limits for the area in which the Project is located.

Based upon current HUD-described income limits for this area, the following income limits apply for all beneficiaries of the CDBG-CDBG -assisted housing units developed by the Developer.

HUD Household 2020 80% Income Limits, Ward County, ND

Ward County, ND

FY 2020 MFI:

Category	1 PER	2 PER	3 PER	4 PER	5 PER	6 PER	7 PER	8 PER
EXTRA LOW INCOME	\$18,800	\$21,450	\$24,150	\$26,800	\$30,680	\$35,160	\$39,640	\$44,120
VERY LOW INCOME	\$31,300	\$35,750	\$40,200	\$44,650	\$48,250	\$51,800	\$55,400	\$58,950
LOW INCOME	\$50,050	\$57,200	\$64,350	\$71,450	\$77,200	\$82,900	\$88,600	\$94,350

The above-referenced income limits may be periodically adjusted, as based upon HUD annual adjustments. Upon any annual HUD adjustment, the City will provide Developer with updated income limits, and such notice shall be considered an amendment to this Agreement. Developer shall apply the most current income limits, as confirmed by the City, in effect at the time of selection of each program beneficiary.

EXHIBIT E
AFFIRMATIVE MARKETING PLAN

See attached plan.



Affirmative Fair Housing Marketing Plan

Blu on Broadway

6/17/2020

1a. Project name and Address

Blu on Broadway
1629 S Broadway
Minot, ND 58701

1b. Project Contract number

1c. Number of Units

42 units

1d. Managing Agent Name, Address, telephone number & Email address

EPIC Management
745 31st Ave E STE 105
West Fargo, ND 58078
701-866-1006
info@epiccompaniesnd.com

1e. Developer name, address, telephone number & Email address

EPIC Companies
745 31st Ave E STE 105
West Fargo, ND 58078
701-866-1006
info@epiccompaniesnd.com

1f. Entities responsible for Marketing

EPIC Marketing team

1g. To whom should approval and other correspondence concerning the AFHMP be sent

Blake Nybakken
745 31st Ave E STE 105
West Fargo, ND 58078
701.721.8047
Blake@epiccompaniesnd.com

2a. HUD-Approved Occupancy of the Project

LMI Households with a total household income at or below 80% of current AMI adjusted for family size.

2b. Date of initial Occupancy

July of 2021

2c. Advertising Start date

At least 90 days prior to initial occupancy.

3a. Target Market

Low income individuals, families, elderly and/or persons with disabilities.

4a. Proposed Marketing Activities

Completed marketing examples in Appendix A.

5a. Fair housing poster:

Owners/Agent will display the HUD fair housing poster in the front entrance of the Building.

5b. Affirmative Fair Housing Marketing Plan

The AFHMP will be available for public inspection at the management office.

5c. Project Sign:

Owners/Agent will post a sign displaying the HUD approved Equal Housing Opportunity logo or slogan or statement.

6a. Evaluation of Marketing Activities

Staff will account for all potential residents who visit the office seeking housing. Staff will file an application on each resident candidate, assessing ethnicity and how the potential resident heard about the property. Reports will be completed and reviewed quarterly to determine if the current marketing activities have been successful in attracting and housing the groups least likely to apply. Based on these results, future marketing will be revised to attract and house persons least likely to apply.

7a. Marketing staff

Owners/agent staff are responsible for affirmative marketing.

7b. Assessment of Marketing Activities and Corrective Actions:

Timing of assessment

- The owners/agents annually review the marketing activities to determine compliance with the previously approved plan.
- Staff is instructed on non-discrimination and fair housing policies as required with instruction from supervisors.

7c. Tenant selection Training/Staff

The marketing activities will be assessed through a variety of methods. The assessment will also include a comparison between the project's tenants/waiting list and the housing market area to determine if the marketing is adequately reaching those groups that were previously identified in the plan.

7d. Staff instruction/Training:

Owners/agents are required to make good faith efforts to design and implement an AFHM plan, to retain marketing documents, maintain accurate files, participate in the annual review, and to implement changes in plans when corrections are required.

Appendix A: Marketing Material

Targeted Populations → Methods of Advertising ↓	Targeted population: Low-income individuals, families, elderly and or persons with disabilities.
Newspaper(s) Minot Daily News	Print advertising; newspapers located at local businesses, social areas, and online presence.
Radio Station(s) Clear Channel Communications	Listeners throughout the community, the radio is on in multiple locations.
TV Station(s) KXMC	Viewers throughout the community, the TV is on in multiple locations.
Electronic Media Apartments.com RentPath Social Media EPIC Website	Seen through online search.
Bulletin Board Local Businesses	Patrons that are visiting local businesses.
Brochures	Place these in high traffic areas for visibility.
Other (specify) Minot Housing Authority	Use them as a resource. Banners

EXHIBIT F
INSURANCE REQUIREMENTS

1) Property Damage insurance:

- Insuring the Owner for all risks of physical loss of or damage to the real property comprising the Project, personal property of the Owner used to maintain or service the Project, and new construction, additions, alterations and repairs to structures including:
 - 1) Coverage for explosion
 - 2) Coverage against loss by fire and allied perils
 - 3) General boiler and machinery coverage
 - 4) Collapse and underground hazards
 - 5) Earthquake coverage for 80% of replacement value if property is in Zone 1 or 2 and all or partial wood frame construction with no reinforcement
 - 6) Sinkhole coverage in the amount of the full replacement value
 - 7) Mine subsidence insurance
 - 8) Theft, vandalism and malicious mischief coverage
 - 9) Sprinkler leakage coverage
 - 10) Windstorm & hail coverage with a deductible not to exceed 5%
 - 11) Consequential and resulting losses from an insured peril should also be covered
- Policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation
- The policy shall have a deductible of no greater than \$10,000 per occurrence
- The policy shall carry no coinsurance provisions
- Coverage and limits shall be extended to include the actual loss of rents sustained due to an insured loss, for a period of at least twelve months from the date of such loss
- Coverage shall be further extended to include debris removal, outdoor trees, shrubs, plants and lawns, and Ordinance or Law coverage for the increased costs of construction, or the loss in value of undamaged portions of the building(s), caused by the enforcement of building, zoning or land use law
- The policy shall include an endorsement naming:

Beyond Shelter, Inc.

PO Box 310

Fargo, ND 58107-0310

and

The City of Minot

PO Box 5006

Minot, ND 57802

as Loss Payee

2) Commercial General Liability insurance:

- Insuring for third party claims of legal liability against the Owner, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the ownership of the Project and including the costs to defend such actions brought against the Owner
- The policy shall include hired and non-owned automobile liability insurance
- The policy shall include an endorsement adding:

Blu on Broadway, LLC.

PO Box 879

Minot, ND 58702-0879

The City of Minot

PO Box 5006

Minot, ND 57802

as additional named insured

- The policy shall include an endorsement adding Blu on Broadway, LLC. and the City of Minot as additional named insured for Ongoing Operations (Form CG 20 33 07/04) **and** for Completed Operations (Form CG 20 37 07/04), or their equivalent on a combined form
- Limits of the policy shall be at least \$1 million per occurrence and \$2 million in the general aggregate
- Coverage needs to be primary and non-contributory

3) Umbrella/Excess Liability insurance:

- Limit on the policy shall be at least \$3 million per occurrence
- The policy shall include an endorsement adding Blu on Broadway, LLC. and the City of Minot as additional named insured

All insurance policies:

- are to be written through companies duly entered and authorized to transact that class of insurance in North Dakota. The Insurance Companies must have an A.M. Best rating of A-, VIII or better in the most recent Best's Key Rating Guide
- shall include endorsements requiring at least thirty (30) days prior written notice to the Owner of any cancellation, termination or reduction of coverage therein
- shall provide notice of renewal of any policy made at least ten (10) days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy
- CASUALTY MUST BE WRITTEN ON FORM ACORD 27
- GENERAL LIABILITY MUST BE WRITTEN ON ACORD 25-S

EXHIBIT G

MINOT AFFORDABLE HOUSING UNDERWRITING GUIDELINES

See attached document

City of Minot NDR Affordable Housing Underwriting Guidelines for Developers and Sub-Recipients

The City of Minot received National Disaster Resilience (NDR) funds from the US Department of Housing and Urban Development (HUD) to support resilience and recovery projects identified in the City's NDR Action Plan. Minot identified three integrated NDR projects: reduce flood risk; increase the supply of quality long-term affordable housing and foster a robust and healthy economy. NDR Affordable Housing is dedicated to addressing the housing needs of low- and moderate-income households in Minot in accordance with HUD's NDR requirements.

The city has two options in carrying out the goal of creating resilient affordable housing through the use of NDR funds which are either through competitive RFPs resulting on developer contracts or through negotiated sub-recipient agreements with non-profit corporations.

Underwriting and Subsidy Layering Analysis for NDR projects will follow the federal OMB 2 CFR 200 standards both for developer and sub-recipient projects. These guidelines will be used by the City of Minot to ensure transparency and evaluate project costs and fees to determine if they are eligible in meeting HUD's necessary and reasonable cost justification standards; evaluate income, expenses, and risks to determine there is a reasonable rate of return both to cover long term project operating costs as well as an acceptable profit and/or positive income realization base depending on whether it is a developer or sub-recipient project all of which will meet the HUD requirement that CDBG-DR or CDBG-NDR funds are justified and necessary for the proposed project. The guidelines comply with applicable federal, state and local laws, and establish the standards for evaluating affordable housing projects funding by the City of Minot NDR Affordable Housing Program. These guidelines follow the underwriting requirements of the North Dakota Housing Finance Agency and HUD regulations.

Applicants for any NDR Affordable Housing Program funds must comply with all applicable federal, state and local regulations related to the construction, acquisition, rehabilitation or provision of housing. These regulations include, but are not limited to:

- Community Development Block Grant (CDBG) regulations and policies
- Title III of the Americans with Disabilities Act (ADA) of 1990
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act
- Davis-Bacon and Related Acts
- Identify of Interest Transactions
- Copeland Anti-Kickback Act of 1034
- Conflict of Interest Requirements
- Environmental Regulations

- The Lead-Based Paint Poisoning Prevention Act and Lead Safe Housing Rule
- Section 3 – Economic Opportunities for Low and Very Low-Income Persons
- Uniform Relocation Act – URA

Applications received by the City of Minot through competitive RFPs or proposals received from non-profits for the sub-recipient vetting process must comply with all applicable federal environmental regulations. If any funds including non-NDR funds are spent or committed to a development prior to the completion of the environmental process, the City of Minot cannot provide NDR funding for the project.

Definitions

AMI – Area median income

Adjusted household income – gross household income limit that has been modified according to the number of persons residing within a dwelling unit

Affordable housing – In general, housing for which the household is paying no more than 30 percent of its income for gross housing costs, including utilities

Cost Reasonableness – HUD 2 CFR 200.404 regulations, the City must evaluate project costs to ensure they comply with reasonable cost regulations

Eligible applicants – For-profit developers, private non-profit developers, private non-profit subrecipients, public non-profits (housing or redevelopment authorities), and public entities (state or local government agency).

Extremely Low Income – households with incomes at or below 30 percent of the area median income (AMI) for Ward County, ND

Fair Market Rents – rental rates as established and updated periodically by HUD that are determined to be fair, affordable and appropriate rents for a geographical area

Household – all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements (24 CFR 570.3)

Housing Market Analysis – A market analysis or study is required for projects that will receive NDR funding for acquisition, rehabilitation and new construction. A market analysis is an evaluation of the economic conditions of supply, demand and rental rates for the type of low-income housing development being proposed as well as the rent levels proposed for the project. The market study must have been completed within the past 12 months.

Income – all reference to “Income” shall mean the annual income as defined in 24 CFR 5.609 referred to as “Part 5 annual income”

Low Income – households with incomes at or below 80% of the area median income (AMI) for Ward County, ND

Multifamily – any building or group of buildings with four or more permanent residential rental units operated as a single housing project and at least twenty percent of the units are restricted for occupancy by persons or families of low and moderate income

NDR Assisted Unit – All housing units that benefit from financial assistance from NDR funding. The number of NDR assisted units in a project will be calculated based on the amount of NDR assistance in relation to the cost of construction and NDR funds can only be used for NDR eligible LMI units.

Rent Restricted – Rent including utilities and any tenant-based rental assistance that does not exceed the applicable published area median income limits which are calculated based on an assumed 1.5 persons per bedroom (single person in an efficiency).

Subsidy Layering Analysis – HUD establishes limits on the amount of federal funds that may be invested in affordable housing on a per-unit basis. Before committing funds to a project, an evaluation of all committed project funding must be conducted to ensure that the city does not invest any more NDR funds than necessary to provide affordable housing and the public funding does not unduly enrich the developer/subrecipient. Applicants must demonstrate that they have structured projects to maximize other available financing source to limit NDR funding to the lowest amount necessary to assure project feasibility

Tenant Income Verification – The property owner or its representative must verify the income of each tenant occupying an NDR assisted unit. The method used will be the Section 8 Part 5 income verification.

Total Development Cost – The all-in cost of developing the project including acquisition cost (if applicable), pre-development costs, hard and soft construction or rehab costs, financing costs, developer fee and reserve account capitalization is applicable.

Very Low Income – households with incomes at or below 50% of the area median income (AMI) for Ward County, ND

Eligible Projects

To be considered for NDR funding a project must:

- be located within the city limits of Minot, outside of the new FEMA flood plain
- submit a complete and accurate project application and all required financial documentation. A complete Capital Needs Assessment (CNA) must be submitted identifying the useful life of major building systems that was prepared by an

Independent, qualified third party, independent of the developer or the sub-recipient non-profit

- ensure at a minimum, that at least 51% of the units to be built or rehabilitated in the project will meet LMI rental standards with CDBG-NDR funds only eligible for use for the LMI units (note: NDR funds for any project shall only be used for LMI units and/or LMI percentage share of common area costs) to and leased by households with incomes at or below 80% of the Ward County Area Median Income (AMI) published by HUD on an annual basis. To find the most current income limits (IL) for Ward County, click on the HUD website <https://www.huduser.gov/portal/datasets/il.html#2018> ; select the most current year; click on the button for "FY 2018 IL Documentation" (or the most current year available); from the drop down table select "North Dakota" and click on the state; then select Ward County from the drop down table and click on the county; finally click on the "View County Calculation" button. Rents must be affordable to households within the current income limits based on family size for Ward County. Tenant eligibility and rent rate compliance will be monitored annually.
- ensure that the affordable housing is properly managed and maintained throughout the affordability period to provide quality affordable housing for LMI residents and remains affordable for the longest period possible enforced through deed restrictions or similar instrument detailed in the project agreement and monitored on a yearly basis as set out in the development agreement or subrecipient agreement.
- meet and continue to meet all applicable HUD regulations and requirements in accordance with the City's NDR contract with HUD
- project applicant must have control of the site proposed to receive NDR funds for rehabilitation or new construction activities. Site control must be documented at the time the application is submitted. The site must have access to all public utilities including roads, water, wastewater, stormwater retention as required, electric and/or natural gas, and broadband infrastructure defined as cables, fiber optics, wiring or other permanent infrastructure including wireless infrastructure, resulting in broadband capacity meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.
- the project applicant must demonstrate they have the capacity to implement the project
- prior to any award, the developer or sub-recipient must ensure that the developer, sub-recipient, contractors, or subcontractors are not on the federal or state debarred or suspended list.

- may be used for new construction of multifamily rental housing units if the need for new construction can be supported by verifiable data
- may be used for substantial rehabilitation of existing multifamily rental housing to preserve quality, long-term rent restricted affordable housing for LMI households in accordance with the cost per unit restrictions contained in an RFP, request for application, or other allowable procurement process
- may be used to support adaptive reuse of an existing non-residential building to create affordable housing units
- only permanent multifamily rental properties with a minimum of 4 units are eligible
- the costs for NDR supported affordable housing projects must meet cost principles and requirements outlined in 2 CFR 200 Subpart E and other related cost and price analysis required by HUD. HUD requires the City of Minot to evaluate cost reasonable for all NDR projects.
- projects awarded funding will be monitored annually to ensure compliance with HUD rules and regulations and the performance requirements established in the project development or subrecipient agreement. The property owner/manager will be assessed an annual fee for the project annual compliance monitoring and inspection. The City of Minot shall, itself or will select an agency to perform the monitoring and inspection of the project, except with respect to a sub-recipient which shall have the lead responsibility for such compliance monitoring. The project owner/manager or sub-recipient as applicable is required to provide annual financial information and documentation for this review. Failure to provide the required monitoring and inspection information can result in additional costs assessed based on added work by the city to assure compliance to the project owner/manager or sub-recipient as applicable and can result in the project loan being called.
- projects currently in a project pipeline with existing commitments of funding from NDHFA, LIHTC or other similar funding sources are generally not eligible unless the applicant can demonstrate that NDR funds will allow rents to be reduced from the proposed market rate levels to levels which are affordable to household at or below 80% of AMI and will remain affordable for a period of at least 20 years, or additional funding is necessary as leverage to be able to completely carry out the project to serve LMI households.

PLEASE BE ADVISED: Once an application from a RFP or a proposal for a sub-recipient has been received by the City of Minot, the project must follow all federal environmental regulations. During the review period, neither an applicant nor any participant in the development process or any of their contractors may commit or expend any funds, including non-HUD funds or undertake any activities having either an adverse environmental impact or limitation on the choice of reasonable alternatives. If any funds (public or private) are spent or committed to a development prior to the completion of the environmental process, the City cannot provide federal funding for the project.

Maximum NDR Award

Minot may reject an application for NDR funds if the total development costs exceeds \$180,000 (current maximum per unit cost limit established by NDHFA) per unit for purposes of determining gap assistance from NDR funds. The City may waive this cost cap if the project requires atypical infrastructure or features such as historic rehabilitation elements, etc.

Reserves

All projects will be required to establish and maintain a replacement reserve account for the term of the NDR loan. This account will be separate from the project's operating account and will be established in a federally insured financial institution or the Bank of North Dakota, to be adequately funded for the entirety of the project's Affordability Period. The initial balance of the Replacement Reserve account shall be an amount greater than or equal to the sum of three-hundred dollars (\$300) per unit for each unit within the project. Each year \$300 per unit (total units in the project building) will be deposited in the replacement reserve account, each year after year 1 the amount deposited will increase by 3% per year. These funds will not be used for operation or routine maintenance and upkeep expenses, the funds will only be used for replacement of short-lived capital assets (example replacement of roof, windows, heating systems, parking surface, or other similar capital asset). Written permission must be secured from the City of Minot prior to any decrease in the Replacement Reserve account's minimum.

All projects will be required to fund and maintain an operating reserve account in a federally insured financial institution or the Bank of North Dakota. The operating reserve account will be equal to two (2) months of operating expenses and hard debt service. This account shall be separate from the replacement reserve and operating accounts and must be fully capitalized during the development phase of the project as part of the total development cost. Operating Reserve funds shall be accounted for separately from other project operational funds.

Eligible Project Activities and Costs:

Fees-

Combined builder profit, builder overhead and general requirements cannot exceed 14 percent of the hard construction costs. A developer fee cannot exceed 15 percent of total development cost net of the developer fee, acquisition and any permanent financing costs. When the Developer and the Contractor are the same entity, in addition to the fee limits stated above, the combined sum of Developer Fee, Contractor Profit, Contractor Overhead and General Requirements may not exceed 15 percent of the total development cost, less the Developer Fee.

Rehabilitation -

Housing rehabilitation includes essential repairs or improvements to meet local codes and Uniform Physical Condition Standards, major systems repair or replacement, accessibility improvements (ADA, section 504), abatement of hazardous materials, energy efficient improvements, and improvements to increase building resilience. Units to be rehabilitated that are currently occupied must meet URA and have a temporary relocation plan in place that will be followed during the project. New NDR affordable housing investments must create additional affordable housing units that will become rent restricted for the affordability period of the project as a requirement for the NDR investment as outlined in the development or subrecipient agreement.

NDR funds are provided to rehabilitate existing multifamily housing to preserve and improve the quality of affordable rental housing for qualified low and moderate income (LMI) households and ensure this affordable rental housing remains affordable to LMI households for a minimum of 20 years. A minimum of 51 percent of the units included in the proposal will be leased to and occupied by LMI households with NDR funds only eligible for use with the LMI pledged units. NDR funds may not be used to cover necessary general building improvements that benefit all building residents but NDR funds may be used to cover proportional share of such costs based on dedicated LMI units to total units in the project building (s). Detailed project costs must be provided. These project costs will be evaluated to determine if the costs are reasonable and comply with HUD's cost principles in 2 CFR 200 Subpart E. Only costs determined to meet HUD's cost reasonableness requirements may be included:

1. The remaining useful life of the proposed general building improvements must be reviewed in a qualified capital needs assessment and the proposed general building improvements must be within 5 years of or have reached or exceeded their expected useful life.
2. A subsidy layering analysis will be conducted in accordance with HUD requirements. NDR funding for a project may be adjusted based on the subsidy layering review.

3. NDR funds are disbursed on a pro-rate basis with other financing provided to the project and will be further defined in a project agreement if NDR funds are committed to the project. NDR funds are also only disbursed on a reimbursement basis. There is no advance of NDR funds permitted.

Soft Costs -

Eligible soft costs include architectural and engineering fees, financing costs, credit reports, title insurance, appraisals, environmental reviews, and builder or developer fees. Project-related soft costs may be included on a limited basis and may not exceed those limits established by the North Dakota Housing Finance Agency. Soft costs will be reviewed and approved based on need determined during the underwriting review.

Ineligible Project Costs

Refinancing of property; developer fees in excess of those allowed under North Dakota Housing Finance Agency HIF rules for 2015-2017 or as set forth in these guidelines whichever is lower; operating and management costs; costs associated with creating commercial spaces; and costs incurred prior to funding approval except as advised in writing.

NDR Funding

All NDR awards will be structured as a forgivable zero-interest loan with repayment terms based on project performance requirements and terms determined on a project specific basis as necessary to achieve project feasibility. The term of the loan will match the term of the NDR affordability period in the project agreement.

The applicant or sub-recipient must meet the performance requirements detailed within their agreement to be eligible for forgiveness of the NDR loan. Annual compliance monitoring and will verify tenant incomes and rent rates to ensure compliance with requirements. If the developer or sub-recipient fails to meet performance requirements the NDR loan for affordable housing will become immediately due and payable based on the forgiveness provisions included in the agreement. A deed of trust or other similar document will be secured against the property for the length of the affordability period or term of the loan, whichever is longer.

The NDR loan may be subordinated subject to the review and approval by the City of Minot. Loans or loan commitment may not be assigned without the prior written approval of the City of Minot. If the assignment is approved, the assignee must assume all loan requirements and obligations including but not limited to the affordability requirements.

Loan to value and Debt Coverage Ratio - For new construction and rehabilitation projects, the loan amount awarded by the City, plus the principal amount of all loans with a senior claim to the subject property shall not exceed 100% of the "as-proposed" value. Generally, the minimum

debt service coverage ratio will not be less than 1.15 and not more than 1.3. All project not within the stated parameters may be reviewed on a case-by-case basis.

National Objectives

HUD uses the term "Low to Moderate Income" (LMI) to refer to the national objective providing assistance to Low to Moderate Income persons for the CDBG-NDR program. The activities funded with CDBG-NDR funds identified herein must meet the LMI national objective and will be obligated to fulfill these requirements regardless whether the activities could qualify under another National Objective. All projects must provide at least 51% of the total project units to be restricted for LMI qualified tenants per NDR restrictions and NDR funds may only be used for such units and/or percentage share of common costs. The Developer/subrecipient must certify they will carry out the project funded with NDR funds to meet the low- and moderate- income requirements of CDBG-NDR as defined by HUD.

To support resilience

The City of Minot and HUD requirements encourages implementation of green infrastructure principles and energy efficient practices. Tools for green infrastructure are available at the Environmental Protection Agency's website; Indoor AirPlus website; Healthy Indoor Environment Protocols for Home Energy Upgrades website; and ENERGY STAR website: www.epa.gov/greenbuilding.

Project Requirements

When an application or sub-recipient proposal is received, it will be reviewed for eligibility and accuracy. In order to be eligible for review, the application must be complete and include the information identified below. Application packages missing any of the required items after the application deadline will be deemed incomplete and returned to the applicant.

The City must be satisfied that those who will develop, own, and operate the project are familiar with and prepared to comply with, the requirements of the CDBG-NDR program including applicable HUD rules and regulations and applicable state and local laws and ordinances. In addition, the Applicant must demonstrate that members of the development team have the experience, ability, and financial capacity, in their respective roles, to undertake, comply, maintain and manage the project. The City may require the Applicant or Sub-recipient to provide financial statements as deemed necessary. Applicants with limited experience in the development, ownership and management of affordable multifamily rental property may partner with an experienced developer or sponsor. Misrepresentation of any information about the experience or financial capacity of any property team member will be grounds for denial.

The application must address the following project requirements:

1. Market Conditions – Applicants must demonstrate that the City of Minot has an unmet affordable housing need or shortage that proposed project will support. A detailed in-house or 3rd party market analysis may be submitted demonstrating the demand for the proposed project. The market analysis should have been completed within the previous 12-months. The market analysis should evaluate the economic conditions of supply, demand and rental rates for the type of low-income housing development being proposed as well as the rent levels proposed for the project. The analysis should determine the feasibility of the subject property rental rates and state conclusions as to the impact of the property with respect to determining existing housing needs. All data presented should reflect the most current information available and the report must provide source data information. Other acceptable methods to demonstrate an unmet need is data provided from such sources as the Minot Housing Authority, applicant or proposer's experience with other properties it owns or manages in Minot which have low vacancy rates connected to LMI housing, etc.
2. Demonstrated Site Control - Evidence the applicant has and will maintain from the beginning of the application review process, direct control of the site included in the application until the land is acquired if it is not already owned by the applicant. Applicant will provide a site concept plan for the project and exterior plan perspective showing how the project will look when developed.
3. Zoning – Evidence that the appropriate zoning will be or is in place to accommodate the project must be provided
4. Available Utilities – Evidence must be provided to demonstrate that appropriate utilities (water, wastewater, electric and/or natural gas, stormwater management if required, and internet) will be available to the project with adequate capacity to serve the proposed project
5. Financial Projections – Must include at a minimum: a 20-year pro forma financial statement for the project using the required vacancy rate identified in the application; sources and uses statement with adequate explanations; a project operating budget; square footage detail for the project; estimations of average annual unit utility costs; and a detailed development budget for the proposed project must be included in the application.

The reasonableness of the development costs and operating expenses in relation to other similar developments will be assessed in evaluating the financial feasibility of applications as well as the cost reasonableness and the subsidy layering review.

6. Capital Needs Assessment – A complete Capital Needs Assessment (CNA) must be submitted with any application package involving rehabilitation (including adaptive reuse projects). The CNA must be completed by a qualified, independent third party acceptable to the City, such as a licensed architect or engineer, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies. The assessment will include a site visit and a physical inspection of the interior and exterior of all units and structures. The assessment will consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment will include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than 50 percent of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life of a component is less than the term of the NDR loan, the application package must provide for a practical way to finance the future replacement of the component. The assessment will examine and analyze the following:
- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, stormwater drainage, and gas and electric utilities and lines
 - Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing systems, and drainage
 - Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors
 - Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting, fixtures, fire protection, and elevators
7. Appraisal – Each application package involving acquisition costs or equity contribution of real estate which exceeds 15 percent of the total development costs, must include an appraisal of the subject property completed within 12 months of the date of the application by a state Certified General Real Property Appraiser, that support the value of the real property.
8. Project addresses Housing Needs of Individuals or Households with Low or Moderate Incomes – A minimum of 51 percent of the total units in each multifamily project must be reserved for households of low and moderate income defined as at or below 80 percent of the area median income (AMI) for Ward County as adjusted annually. NDR funds can only be used for the LMI dedicated units and the LMI units share of common area costs.

9. Need for Public Funds – The applicant must be able to demonstrate, as part of the application or proposal package, that the project would not be feasible without financial assistance from NDR funds. This will be evaluated in terms of the gap between cost of construction and the amount of debt the project could reasonably obtain and support. Applicant must have provided information outlining both the short- and long-term financial feasibility of the project based on the maximums as set forth in the General Provisions section. A 20-year financial pro-forma must accompany the application. Project proposals will be underwritten to achieve a target debt service coverage ratio of 120 percent.
10. Cost Reasonableness – HUD requires a project to be reviewed to determine if the cost of the project is reasonable. In determining reasonableness of a given cost consideration must be given to:
 - a. Whether the cost is a type generally recognized as ordinary and necessary
 - b. The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; federal, state, local, and other laws and regulations; and terms and conditions of the Federal award
 - c. Market prices for comparable goods or service for the geographic area
 - d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities
 - e. Whether the costs significantly deviate from established practices and policies regarding the incurrence of costs, which may unjustifiably increase the award's cost
11. Readiness to Proceed – Applicant or sub-recipient must have provided a schedule for completion of the project. Project schedules that show a completion date after November 1, 2021 may be eliminated due to NDR requirements for program completion.
12. Generation of Private Capital Contribution – Applicant or Sub-recipient must demonstrate the ability to raise capital for the project through private contributions. The value of any non-cash contributions must be documented through an "arm's length" third party evaluation and written documentation.
13. Rehabilitation of Existing Habitable Structures – Applications or proposals involving the rehabilitation of existing structures that are not currently rent restricted to meet the needs of households at or below 80 percent AMI and require a minimum rehabilitation of \$20,000 in hard construction costs per unit to preserve the useful life and quality of affordable housing in Minot (not including cosmetic maintenance such as new paint, carpet, etc.) is allowed.

14. Special Needs Affordable Housing – Special needs housing must serve residents who are income qualified and meet other special need criteria including: elderly, those with mental illness, developmental disabilities, and the project must provide documentation that it meets the following requirements:
- a. Documenting a need for the type of special housing based on market demand and the findings of local social service agencies
 - b. Third-party verification of the services appropriate to the targeted population
 - c. Detailed commitment for a service agency to provide specific on-going services consistent with the needs of the targeted population
 - d. Housing for residents with physical disabilities, evidence that the units for disabled tenants and the building meet the specific needs of the targeted population including accessibility features that may exceed ADA standards but make a project more functional for people with a disability
 - e. Certification from an architect or Applicant that the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines
15. An applicant or sub-recipient may request a waiver to allow submission of the CAN and/or appraisal at a later date if there are other funding sources in the project which would otherwise require the applicant to incur additional costs for multiple reports because of timing issues. In all cases, the CAN and appraisal will be required prior to issuance of a final financial commitment.

Project Award Process

NDR funding will be provided in the form of a loan to assure compliance with all NDR project performance criteria including LMI affordability for a minimum of 20 years. The terms and condition for each project will be determined on a case by case basis based on HUD requirements and regulations. For the full affordability period of the project, the loan will function as a zero interest, forgivable loan secured by a Deed of Trust or similar legal instrument and the responsible project owner(s) or assigns must meet all project performance requirements established in the project development agreement. However, if the responsible project owner or assigns does not meet project performance requirements (affordable rents, affordability period, required compliance monitor, acceptable maintenance and operation of the development, etc.) for the full affordability period, the NDR loan will become due and payable to the City of Minot based on the terms established in the project development agreement.

An applicant or sub-recipient must submit a complete and accurate NDR Affordable Housing Application or proposal including all required financial documents. **Step 1:** Applications or proposals will be reviewed and an underwriting and subsidy layering review will be prepared. A

written underwriting and subsidy layering review will be provided to the City's Chief Resilient Officer. **Step 2:** The City's Chief Resilience Officer will make a recommendation regarding the application to the City Council. **Step 3:** The Minot City Council will action on the application **Step 4:** Once an application is approved by City Council the final development agreement or subrecipient agreement will be executed detailing all applicable requirement, loan details, performance requirements, and other applicable requirements and policies.

Access to NDR Funds

Draw requests against an NDR financial award can be made for costs incurred upon firm commitment of all other funding sources such as construction financing. NDR funds will only be disburse on a reimbursement basis. An agreement with recapture provisions and restrictions will be recorded by the City prior to release of any NDR funds. The borrower may request available NDR proceeds for payment or reimbursement of approved costs incurred toward the development of the project. Draw requests will be submitted on the Draw Request form and submitted with documentation supporting the expenses claimed, general contractor's sworn construction statement, and architect's inspection report.

Disbursement of up to 95 percent of the NDR proceeds may be made during construction of the project. Five percent of the NDR loan proceeds will be retained until project completion. Disbursement of retainage will be made upon satisfaction of all conditions including an inspection of the project and approval of the final draw request by Minot City Council.

Compliance Monitoring

Owners of NDR-assisted properties must remain in compliance with their project agreement and program and HUD guidelines throughout the term of the NDR loan. The City of Minot will annually monitor all properties for compliance with NDR program requirements including those related to income and rent limits, revenues and expenses, cash flow, reserve accounts, insurance coverage, and property condition. The City of Minot may delegate monitoring to the Minot Housing Authority or other entity. Annual compliance monitoring will include a desk review of information and documentation provide by property owner and a property inspection and review of the project location.

On an annual basis, owners of NDR-assisted properties must provide the following information to the City of Minot or their designated compliance monitor:

- 1) Rent Compliance report
- 2) Project-specific financial statements including a balance sheet and statement of revenues and expenses (Income statement) including documentation
- 3) Reserve account statements

- 4) Proof of property and liability insurance coverage
- 5) Documentation supporting current utility allowances being used

Fees will be assessed to property owners/managers that do not submit the required reports and documentation for the compliance monitoring and inspection and for projects determined to be in substantial noncompliance to cover the expense of additional monitoring. Project owners/managers that do not provide and required information and documentation for compliance monitoring and/or projects that are found to be in noncompliance will be subject to their project loan becoming immediately due and payable.

Subsidy Layering

This analysis is used to determine the amount of investment needed to make a project feasible and is sometimes referred to as a "gap analysis". It is used to evaluate the gap between approved costs (Uses) and available financing and other subsidies (Sources). Before committing funds to a project, the City will evaluate the project in accordance with HUD guidelines to ensure that the amount of NDR investment is needed to make a project feasible and will not unduly enrich the project owner. The City will evaluate:

- Debt capacity to ensure financing terms are reasonable and comparable to those available from other lenders
- Equity Contributions to assess the full spectrum of returns that are accruing to owners and investors. If it appears that the project is returning a higher level of return than is warranted given project risk and market conditions, then the City can require additional equity investment or reduce the level of NDR assistance.

HUD does not allow the investment of more funds than necessary to make the housing affordable for the project period. If the City determines the amount of NDR assistance and other sources exceeds the amount necessary to make the project feasible and viable for the affordability period, the City may: reduce the amount of NDR assistance; increase the number of NDR assisted units in the project or lower the target income levels and rents to be charged; or, revise the loan terms that bring the rate of return into line with reasonable standards.

Applicants or sub-recipients must demonstrate they have structured projects to maximize other financial sources thereby limiting NDR funding to the lowest amount necessary to assure project feasibility. Applicants must certify in their application whether additional assistance will be provided to the project, and if so, what type, source and amount of assistance will be provided.

Generally, for affordable rental housing development projects, funds provided from the contributions of private lenders and other funding resources including equity may not enough to cover the cost of developing and operating the project. HUD NDR funds typically fill the gap and serve as "gap financing". The subsidy layering analysis is conducted to determine an appropriate

amount of NDR funds needed to “fill the gap”. The gap is influenced by several factors, some of which can be modified prior to a commitment of NDR funds, including:

- Level of physical improvements
- Rent levels and affordability
- Income levels being served (e.g. a target population of 60 percent of area median income could require less assistance than a target population below 30 percent of area median income)
- Payment terms of all funding including public and private funding
- The City’s funding will be the “last gap in” such that the City’s funding will be the first funding source reduced when there are net cost savings or increases in other sources

The City can deny NDR assistance if the applicant or sub-recipient refuses to make reasonable adjustments or to limit its return/costs in compliance with underwriting guidelines or if it appears that NDR funds are not needed to close a financing gap. While the City will identify the amount of subsidy needed through gap and other project analysis, the City must also determine that the amount of NDR assistance needed for program-eligible costs or activities.

scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Developer except that any change resulting from Developer noncompliance with the terms and conditions of this Agreement shall not require Developer's signature to a written amendment.

G. Suspension or Termination.

1. In accordance with Appendix 2 to 2 CFR Part 200 of the federal Uniform Administrative Guidelines which are applicable to all federal grants, the City may suspend, terminate or partially terminate this Agreement for cause if the Developer materially fails to comply with any terms of this Agreement. Examples of material failures to comply with the terms of this Agreement may include (but are not limited to) the following:
 - a. Failure to comply with any of the applicable rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
 - b. Failure, for any reason, of the Developer to fulfill in a timely and proper manner its obligations under this Agreement;
 - c. Submission by the Developer to the City reports that are incorrect or incomplete in any material respect; or
 - d. Failure to meet the Project Schedule included in this Agreement.

If termination for cause is initiated by the City, the City shall give the Developer written notice of default, specifying the Developer's non-compliance with the terms of this Agreement. The Developer shall have thirty (30) days after receipt of such notice, to either correct such non-compliance or, in the case of non-compliance that cannot be corrected in thirty (30) days, began in good faith to correct such non-compliance and diligently proceed to complete such correction, then the City may formally declare Developer to be in default of this Agreement. Upon a declaration of default, this Agreement shall terminate on the date specified in such notice. Upon termination, unless specified otherwise in this Agreement, the unpaid balance of the NDR Loan shall be immediately due and payable to the City by the Developer.

2. The Developer may exercise any rights available to it under North Dakota law to terminate for cause upon the failure of the City to comply with the terms and conditions of this Agreement; provided that Developer shall give the City written notice specifying the City's failure and, if within thirty (30) days after receipt of such notice, the City shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction.
3. The City reserves the right to terminate this Agreement in whole or in part if there are material changes to the Project that would significantly alter the terms of this Agreement and/or materially alter the feasibility of satisfactorily completing the Project activities of this Agreement.

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

To the City
Finance Director
DR Grant Program Manager
City of Minot
PO Box 5006
Minot, North Dakota, 58702

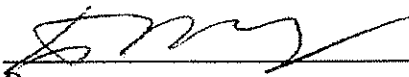
To Developer
BLU on Broadway, LLC
PO Box 879
Minot, North Dakota 58702

- I. Developer Shall Not Have Employer/Employee Relationship with City.** Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Developer shall at all times remain a "Vendor" with respect to the Project activities to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance.
- J. Authority to Execute Agreement.** Each party represents and warrants that this Agreement has been duly authorized, executed and delivered by it; that the undersigned representatives are fully authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a valid and binding obligation, enforceable against each party, its successors and assigns in accordance with its terms.
- K. Entire Agreement.** This Agreement and any exhibits specifically incorporated herein by reference, constitutes the entire Agreement between the City and Developer for the use of funds under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Developer with respect to this Agreement.

This Agreement is signed below, in three (3) duplicate originals, by the duly authorized representatives of Developer and the City and is made effective on the first date as is herein set out above.

WITNESSES:

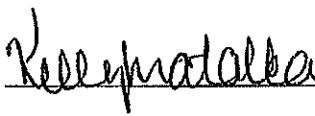

Developer:


_____  1/13/2020
By: _____
Title: _____
Date

By: _____
Title: _____
Date

By: _____
Title: _____
Date

The City of Minot:

 _____  1-7-2020
By: Shaun Sipma
Title: Mayor
Date

_____  1-8-2020
By: David Lakeffeld
Title: Finance Director
Date