

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MINOT
AND BLU ON BROADWAY, LLC, FOR THE
BLU ON BROADWAY DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this ___day of _____, 2020, by and between the City of Minot, a municipal corporation, hereinafter the “City,” and Blu on Broadway, LLC, a limited liability company organized under the laws of the State of North Dakota, hereinafter the “Developer.” City and Developer are jointly referred to herein as the “Parties.”

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

WHEREAS, this Development Agreement (hereinafter the “Agreement”), relates to the development known as Blu on Broadway, owned by the Developer, and located within the City of Minot, whose legal description is Home Acres Addn, Blk 2, Lots 7 & 8 Less Hwy (hereinafter the “Property”); and

WHEREAS, the purpose of this Agreement is to memorialize the specific improvements and conditions the Developer must complete before the City will authorize additional permits for the development of the Property; and

WHEREAS, the following Exhibits are attached and incorporated into this Agreement:

- a) Exhibit A - City of Minot Development Policy; and

WHEREAS, the City Council authorized the following action:

- a) By Resolution No. 3633, the City approved a Planned Unit Development (PUD), subject to Planning Commission conditions, as listed in section 8 below;
- b) The City Council authorized the Mayor to sign this Development Agreement with the Developer; and

WHEREAS, pursuant to Minot Zoning Ordinance 13-3, the Developer and City will create and approve a Final PUD Plan clearly identifying all land uses and performance standards that will be considered permitted uses within the PUD; and

WHEREAS, the City is requiring the Developer to complete the following improvements as conditioned within the approval of the Blu on Broadway PUD; and

NOW, THEREFORE, the Parties hereto agree and stipulate as follows:

1. Public Street and Utility Infrastructure Improvements
 - a. Developer shall install, at their sole cost or as a part of a TIF (tax increment financing) district, the sanitary sewer, storm sewer, and water main utilities to serve the Blu on Broadway development.

- i. The Developer shall install 8” PVC water main in 1st Street SW from the existing water main in 16th Avenue SW to the existing water main in 17th Avenue SW, including hydrants, valves, and other associated items. Public water main within the right-of-way must meet City Standard Specifications.
 - ii. Approval of the water and fire service location from the new 8” PVC water main into the Property shall be part of the site plan review and approval process.
 - iii. The Developer may be required to extend the existing 8” PVC sanitary sewer main to the south to serve the Property, pending the design details to be determined as a part of the site plan review and approval.
 - iv. Approval of the sanitary sewer service location from the 8” PVC sewer main in 1st Street SW into the Property shall be part of the site plan review and approval process.
 - v. The Developer shall pay all fees due to the City for connection to City utilities prior to the issuance of a plumbing permit for the connection into the City sanitary sewer system.
 - vi. Developer shall install storm water utility infrastructure as required in the City’s adopted Storm Sewer Design Standards Manual. The infrastructure shall include all manholes, pipes, and inlets as required.
- b. Developer shall install, at their sole cost or as a part of a TIF (tax increment financing) district, the public street sections and street lighting to serve the Property. Specifically:
 - i. 1st Street SW from 16th Avenue SW to 17th Avenue SW must be improved to City urban residential street standards, including street lighting and sidewalk on both sides of the street.
 - ii. The Developer may petition the City to construct the improvements listed in 1.b.i by special assessment to the benefiting property owners. The approval of the creation of the assessment district is dependent on the resolution of necessity and final approval by the City Council.
- c. The Developer shall ensure all required public street and utility infrastructure improvements are designed and included in the plans titled “1st Street SW Reconstruction”, or as a separate paving district plan set to be titled later, both separate from the Property’s site plan, and any of which must be approved by the City and kept on file with the Engineering Department.
- d. All public street and utility infrastructure must be installed and tested per the City Standard Specifications and Details by the Developer.

- e. All public street and utility infrastructure must be inspected full time during active construction by an engineering firm, licensed to do work in North Dakota, and under the direction of a professional engineer, licensed to do work in North Dakota.
 - i. If at any time during construction the work is not being inspected by an engineering firm, the City may order the work to stop immediately until the work can be inspected. The City shall not be held responsible in any way for the work stoppage due to Developer's failure to retain an engineering firm to conduct inspections.
- f. The Developer shall warranty all public street and utility infrastructure work constructed as part of the Blu on Broadway development to be free of material and workmanship defects for a period of two years after written notice of substantial completion by the City.
 - i. At any time during the two-year warranty period, the Developer shall correct any deficiencies found by the City. The Developer shall be responsible for any and all costs associated with correcting any deficiencies identified by the City including but not limited to contractor costs, attorney's fees, and engineering costs.
- g. The Developer shall submit record drawings certified by the engineer of record to the City for all public street and utility infrastructure installed as part of the Blu on Broadway development conforming to the City's Record Plan Policy on file with the Engineering Department. Record drawings shall be submitted hard copy, dwg, and GIS format.
- h. Security valued at 120% of all public street and utility infrastructure costs, as determined by a contractor's bid for the work or the design engineer's opinion of probable cost, shall be required and provided by the Developer to the City; the required security shall be in the form of an unconditional letter of credit or performance bond, and shall be submitted in a form acceptable to the City Attorney.
 - i. This security is required prior to the approval of the "1st Street SW Reconstruction" plans and prior to commencing any work within the City right-of-way.
 - ii. 10% of the approved security shall be held by the City during the two-year warranty period. After all warranty corrections are approved by the City, the remaining security shall be released to the Developer.

2. Storm Water Management

- a. Storm Water Management Plans shall be required and must be approved by the City Engineer.
- b. The development improvements must conform to all floodplain management requirements.
- c. Developer will be required to operate and maintain the storm water infrastructure that is located outside the right-of-way and in dedicated easements. This includes any pipes, channels, ponds, and outlet structures.
 - i. An operation and maintenance plan must be submitted to the City for approval before Certificates of Occupancy for any building may be issued.
 - ii. Developer consents and agrees that if they do not maintain the storm water infrastructure according to the operations and maintenance plan, the City is authorized to enter the property where the infrastructure is located and perform any maintenance required. The City's cost to perform the maintenance will be billed to the Developer. The City also reserves the right to special assess the cost of maintenance against the benefitting properties.
 - iii. All critical storm water infrastructure, as determined by the City Engineer, including but not limited to channels and ponds, outside the right of way, must have an easement (storm water and access) recorded over the improvements. The easement width and location shall be approved by the City Engineer.

3. Erosion Control

- a. Erosion Control practices shall meet the requirements of the State of North Dakota and be approved by the City Engineer.

4. Traffic Operations Study

- a. Developer shall complete traffic operations study per the City's and NDDOT applicable guidelines;
- b. Developer's traffic operations study shall include traffic generation and distribution for lane capacity analysis, turn lane, and signal analysis;
- c. In addition to the work outlined in section 1.b., the improvements recommended in the traffic operations study, required by the City, shall be installed prior to the issuance of any Certificate of Occupancy.

5. Driveway Access

- a. Existing driveway access to the Property from Broadway shall be eliminated.
- b. Driveway access location(s), width, and design ingress/egress to the Property from 1st Street SW shall be approved by the City Engineer as a part of the City of Minot site plan review process.

6. Park District Requirements

- a. The on-site outdoor park area included in the Blu on Broadway development shall be accessible to the public during regular public park hours.

7. Planning Requirements

- a. A Storm Water Management Plan is required.
- b. A Developer's Agreement is required.
- c. The Developer is required to improve 1st St SW to serve this project.
 - i. Install water main in 1st St SW.
 - ii. Reconstruct 1st St SW – including sidewalk (on both sides) and lighting.
 - iii. Additional details will be provided in the Developer's Agreement.
- d. Conduct a traffic impact study – eliminate access to Broadway.
- e. New fire service required.
- f. Sewer connection fees required.
- g. Additional addresses will be assigned to each leasable space with its own exterior door.
- h. Approval of this PUD authorizes a reduction in off-street parking to 80 parking spaces from that quantity otherwise required by the Minot zoning ordinance.
- i. Approval of this PUD authorizes an increase in allowable density to 30 living units per acre, well above the maximum that is otherwise enforced in C2 zoning districts.
- j. Approval of this PUD and the associated concept Landscape Plan established intent, and authorizes some deviations in landscaping requirements as it allows the applicant to work with City staff and the Minot Park District in developing final plans for recreational amenities and landscaping that will be public amenities.

- k. In the event of future problems with inadequate off-street parking for the residents, the City Council may require a certain quantity of the total parking spaces they deem reasonable to be signed as “Reserved for Residential Tenants Only.”
- l. A minimum of 3,000 square feet of office space shall be provided on the ground floor.

This Agreement shall be governed by and interpreted according to North Dakota law. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in Ward County, North Dakota.

Each party represents and warrants that this Agreement has been duly authorized, executed, and delivered by it; that the undersigned representatives are duly authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a valid and binding obligation, enforceable against Developer, its successors and assigns, in accordance with its terms.

Neither this Agreement nor any item hereof may be changed, waived, discharged, or terminated orally, but only by instrument in writing, signed by both Parties hereto.

If a Court finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.

This agreement shall be recorded in the Ward County Recorder’s Office, and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any property association.

IN WITNESS WHEREOF, the parties hereto, after due authorization by its respective governing bodies/partners, hereby sign this agreement on the day and year first above written.

CITY OF MINOT, ND

By: _____
Shaun Sipma, Mayor

Attest: _____
Kelly Matalka, City Clerk

