
PARKING GARAGE MANAGEMENT AGREEMENT

BY AND BETWEEN

CITY OF WEST FARGO, NORTH DAKOTA

AND

WEST FARGO EVENTS, INC.

Dated as of December 16, 2019

**An agreement pertaining to the management of a parking garage at the
Lights at Sheyenne 32.**

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PARKING GARAGE MANAGEMENT AGREEMENT

THIS PARKING GARAGE MANAGEMENT AGREEMENT (the “Agreement”) is made and entered into on December 16, 2019 (the “effective date”), by and between City of West Fargo, North Dakota, a North Dakota municipal corporation, having an address of 800 4th Avenue E., Suite 1, West Fargo, ND 58078 (hereinafter “City”), and West Fargo Events, Inc., a North Dakota non-profit corporation, having an address of 400 10th Street SE, Minot, ND 58701 (hereinafter “Manager”).

WHEREAS, on February 19, 2018, the City entered into a Master Development Agreement with Sheyenne 32, LLC and EagleRidge Development, LLC; and

WHEREAS, on December 17, 2018, the City entered into the First Amendment to Master Development Agreement with Sheyenne 32, LLC and EagleRidge Development, LLC (the “Amended Development Agreement”), for the development of Lots 3, 4, 5, 6, 7, and 8, Block 1, Eagle Run Plaza Sixth Addition to the City of West Fargo, Cass County, North Dakota (collectively, the “Property”); and

WHEREAS, the City created Tax Increment Financing District 2017-1 (the “District”) with jurisdictional boundaries contemporaneous with the Property to facilitate high density development of the Property; and

WHEREAS, pursuant to the Amended Development Agreement, Sheyenne 32, LLC committed to constructing a parking garage (the “Parking Garage”) on Lot 4, Block 1 of Eagle Run Plaza Sixth Addition to the City of West Fargo, Cass County, North Dakota (“Lot 4”); and

WHEREAS, following the completion of the Parking Garage and certain conditions and terms of the Amended Development Agreement, the City committed to purchasing Lot 4 and the Parking Garage from Sheyenne 32, LLC, in an amount not to exceed \$7,500,000; and

WHEREAS, the Parties wish to set forth terms and conditions with regard to the management of the Parking Garage by the terms of this Agreement.

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

ARTICLE I. DEFINITIONS AND INTERPRETATION

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

“**Amended Development Agreement**” means the First Amendment to Master Development Agreement, dated December 17, 2018, by and between the City, Sheyenne 32, LLC, and EagleRidge Development, LLC.

“Applicable Law” means, collectively, the Constitutions of the United States and of the State of North Dakota, all common law and principles of equity, and all federal, state, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with any governmental authority, and, with respect to any Person, articles of incorporation, bylaws, or other organizational or governing documents of such Person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the City; (b) the Manager; (c) Lot 4; or (d) the Parking Garage.

“Best Efforts” means acting in Good Faith, acting in accordance with generally accepted commercial practices, and using due diligence to undertake all action contemplated by this Agreement, in accordance with Applicable Law.

“City” means the City of West Fargo, North Dakota, a North Dakota municipal corporation, having an address of 800 4th Avenue East, Suite 1, West Fargo, North Dakota 58078.

“City Commission” means the West Fargo City Commission, the governing body of the City of West Fargo.

“City Representative” means the West Fargo City Administrator or his/her designee.

“District” means TIF District 2017-1 of the City, as more fully described in Exhibit A to this Agreement.

“Emergency Maintenance” means maintenance of the Parking Garage that must be performed in an immediate and swift fashion to avoid damage to the Parking Garage or other structures or to remedy a dangerous condition.

“Event of Default” means those events described in Article V hereof.

“Extraordinary Maintenance” means maintenance with an anticipated expense of greater than \$10,000.

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

“Lease and Use Agreement” means the Lease and Use Agreement by and between the City and Sheyenne 32 East LLC, Sheyenne 32 West LLC, Sheyenne 32 South LLC, Sheyenne 32 North LLC, and Northern Lights on Sheyenne, LLC, dated as of December 16, 2019.

“Lot 4” means Lot 4, Block 1 of Eagle Run Plaza Sixth Addition to the City of West Fargo, Cass County, North Dakota.

“Manager” means West Fargo Events, Inc., a North Dakota nonprofit corporation.

“Parking Garage” means the parking garage constructed on Lot 4 in accordance with the terms and conditions of the Amended Development Agreement.

“Parking Garage Fiscal Year” means the Effective Date of this Agreement through December 31 and January 1 through December 31 of each and every year of the Agreement thereafter.

“Person” means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

“Property” means Lots 3, 4, 5, 6, 7, and 8, Block 1 of Eagle Run Plaza Sixth Addition to the City of West Fargo, Cass County, North Dakota.

“Routine Maintenance” means sweeping the Parking Garage, removing unwanted water, collecting garbage, maintaining Lot 4, and completing minor repairs up to a maximum cost of \$10,000 per occurrence.

“Special Event” means an event that is open to the general public, is not by invite only, and can be limited by age only (youth vs. adult), estimated attendance to exceed one hundred (100) attendees.

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

“West Fargo Events, Inc.” means a North Dakota non-profit corporation, having a business address of 400 10th Street SE, Minot, ND 58701.

Section 1.02 INTERPRETATION.

A. The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. Any and all exhibits to this Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as “shall.” Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (ii) any reference herein to any person shall be construed to include such person’s permitted assigns, (iii) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references

herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and sections to, this Agreement, and (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”

B. This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it or because that Party relies on a provision of this Agreement to protect itself. The Parties acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm’s length and careful negotiation, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it.

ARTICLE II. INTENT AND PURPOSE

Section 2.01 INTENT. The City is the owner of the Parking Garage and desires to hire and employ a Parking Garage manager to operate and maintain the Parking Garage in order to achieve a financially viable parking garage that is properly maintained and available for use by the general public.

Section 2.02 PURPOSE. The purpose of this Agreement is to establish the procedure by which the City will contract with a Parking Garage manager to operate and maintain the Parking Garage. The City will retain the exclusive authority to terminate the Parking Garage manager for failure to perform its duties as set forth herein.

ARTICLE III. EMPLOYMENT OF MANAGER

Section 3.01 EMPLOYMENT OF MANAGER. West Fargo Events, Inc. is appointed to serve as the Manager of the Parking Garage for the initial management term and any additional terms as set forth and defined herein.

Section 3.02 TERM. West Fargo Events, Inc. shall be appointed to serve as Manager of the Parking Garage for a period of five (5) years commencing on February 1, 2020, and ending December 31, 2024 (the “Initial Management Term”). Thereafter, the City Commission may re-appoint West Fargo Events, Inc. as the Manager of the Parking Garage for additional five (5) year management terms, as follows:

A. commencing on January 1, 2025, and ending December 31, 2029 (the “Second Management Term”);

B. commencing on January 1, 2030, and ending December 31, 2034 (the “Third Management Term”);

C. commencing on January 1, 2035, and ending December 31, 2039 (the “Fourth Management Term”); and

D. commencing on January 1, 2040, and ending December 31, 2044 (the “Fifth Management Term”).

Section 3.03 MANAGER DUTIES. The Manager shall perform the following duties:

A. Perform any and all Routine Maintenance of the Parking Garage at the same standard as other City of West Fargo buildings. For any Extraordinary Maintenance of the Parking Garage, the Manager shall notify the City, and the City will be responsible for performing such maintenance.

B. Perform any and all Emergency Maintenance and notify the City of such as soon as reasonably possible. The City will be responsible for covering the costs and expenses of Emergency Maintenance.

C. Ensure security of the Parking Garage, including but not limited to monitoring patrons’ personal safety while using the facility, preventing transients, unauthorized use, and loitering, and ensuring the facility is well lit with clear signs for public movement.

D. Sweep and clean the Parking Garage, remove abandoned vehicles, junk, and/or other items of rubbish.

E. Remove snow and ice, including but not limited to making arrangements for the transportation of snow from the facility to an off-site location.

F. Set and collect fees, including daily parking, parking event, and Special Event fees, in accordance with the budget approved in accordance with Section 3.06 of this Agreement and submit all such fees to the City.

G. Provide the City with quarterly reports regarding all maintenance activities, financial reports regarding the amounts of fees and income collected from the Parking Garage and Parking Garage expenses, and any incident reports/logs related to Parking Garage security.

Section 3.04 MANAGER AS INDEPENDENT CONTRACTOR. Manager is an independent contractor and agrees and acknowledges that it will perform all services as set forth in this Agreement as necessary to fulfill the duties and responsibilities required by the City.

Section 3.05 SUBCONTRACTORS. Manager may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the City Commission, which approval shall not be unreasonably withheld.

Section 3.06 YEARLY OPERATIONS AND MAINTENANCE BUDGET. Manager shall, by July 10 of each and every year of this Agreement, submit to the City a detailed, proposed budget showing the estimated expenditures, profits, and anticipated Routine Maintenance and Extraordinary Maintenance for the Parking Garage for the upcoming Parking Garage Fiscal Year. The City Representative shall have the sole authority to approve or reject the proposed budget. If the City Representative objects to the proposed budget or any part thereof, the Manager shall be obligated to promptly respond to each such objection and revise the proposed annual budget in connection therewith. If the Manager desires funds in addition to those included in the budget, it must seek written approval for such funds from the City Representative. The City Representative may approve or deny such request by the Manager in its sole discretion.

Section 3.07 MONTHLY MANAGEMENT FEE. As part of the budget described in Section 3.06, the Manager shall include its proposed management fee for the upcoming Parking Garage Fiscal Year. The City will approve a monthly management fee for the upcoming Parking Garage Fiscal Year as part of its review of the annual operating budget. By the first of each month, the City shall pay the monthly management fee to the Manager for the performance of its services the ensuing month.

Section 3.08 PROFIT AND LOSS SHARING. The Manager shall not be entitled to any profit sharing from Parking Garage operations and must remit all profits to the City. Additionally, the Manager will be responsible for losses incurred from Parking Garage operations to the extent not covered by the City. The City's liability for costs and expenses from Parking Garage operations, including for insurance and utilities as set forth in Section 3.13 and 3.16 herein, is limited to the annual lease revenue received by the City pursuant to the Lease and Use Agreement.

Section 3.09 RELATIONSHIP WITH MANAGER. Manager is retained by the City only for the purposes and to the extent set forth in this Agreement, and its relationship to the City shall, during the period or periods of services under this Agreement, be that of an independent contractor.

Section 3.10 STANDARD OF CARE. The standard of care applicable to Manager's services will be the degree of skill and diligence normally employed by persons performing the same or similar services at the time said services are performed.

Section 3.11 LEASE AND USE AGREEMENT PAYMENTS. The Manager shall not be entitled to any lease or use payments remitted to the City by the parties to the Lease and Use Agreement pursuant to the terms and conditions of the Lease and Use Agreement.

Section 3.12 MANAGER'S INSURANCE. Manager shall maintain throughout this Agreement the following insurance:

A. Manager shall purchase and maintain throughout this Agreement such insurance as is required by this Agreement in the categories and amounts set forth below:

(1) Claims under workers' compensation, disability benefits, and other similar employee benefit acts;

(2) Claims for damages because of bodily injury, occupational sickness or disease, or death of Manager's employees;

(3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than Manager's employees;

(4) Claims for damages insured by reasonably available personal injury liability coverage which are sustained:

(a) by any person as a result of an offense directly or indirectly related to the employment of such person by Manager, or

(b) by any other person for any other reason;

(5) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

(6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance required by this Section will:

(1) With respect to insurance required by above paragraphs 3.12(A)(3) through 3.12(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional Liability and Workers' Compensation) the City and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;

(a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability policies, must be from insurers rated "A-" or better by the A.M. Best Company, Inc.

(2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Applicable Law, whichever is greater;

(3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given to the City and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by Manager pursuant to this section will so provide);

(4) Remain in effect at least until final payment and at all times thereafter when Manager may be correcting, removing, or replacing defective work;

(5) Include completed operations coverage:

(a) Such insurance will remain in effect for two (2) years after final payment.

(b) Manager will furnish the City and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the City and any such additional insured of continuation of such insurance at final payment and one (1) year thereafter.

(6) Not limit in any way Manager's duties to defend, indemnify, and hold harmless the City, its officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 8.02;

(7) Either in the policies or in endorsements, contain a "waiver of subrogation" (except for in the Professional Liability Policy and Workers' Compensation policy) that waives any right to recovery any of Manager's insurance companies might have against the City;

(8) Either in the policies or in endorsements, contain a provision that Manager's insolvency or bankruptcy will not release the insurers from payment under the policies, even when Manager's insolvency or bankruptcy prevents Manager from meeting the retention limits under the policies;

(9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers' Compensation and Professional liability policies);

(10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the City must be free of any conflict of interest, even if retention of separate legal counsel is necessary;

(11) Either in the policies or in endorsements, contain a provision that Manager's policies will be primary and noncontributory regarding any other insurance maintained by or available to the City, and that any insurance maintained by the City will be in excess of Manager's insurance and will not contribute with it (except for Workers' Compensation and Professional Liability Policies).

C. The limits of liability for the insurance required by this Section will provide coverage for not less than the following amounts or greater where required by Applicable Law:

(1) Workers' Compensation, and related coverages under Paragraphs 3.12(A)(1) and 3.12(A)(2):

- (a) State: Statutory;
- (b) Applicable Federal (e.g. Longshoreman's): Statutory;
- (c) Employer's Liability: \$1,000,000.

(2) Manager's General Liability under Paragraphs 3.12(A)(3) through 3.12(A)(6) which will include premises or operations coverage, completed operations and product liability coverages, and will eliminate the exclusion with respect to property under the care, custody, and control of Manager:

- (a) General Aggregate: \$2,000,000
- (b) Products- Completed Operations Aggregate: \$2,000,000
- (c) Personal and Advertising Injury: \$2,000,000
- (d) Each Occurrence (Bodily Injury and Property Damage): \$2,000,000
- (e) Property damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
- (f) Excess or Umbrella liability:
 - i. General Aggregate: \$2,000,000
 - ii. Each Occurrence: \$2,000,000

(3) Automobile Liability under Paragraph 3.12(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):

- (a) Bodily injury:
 - i. Each person: \$2,000,000
 - ii. Each accident: \$2,000,000
- (b) Property Damage:
 - i. Each accident: \$2,000,000
 OR
- (c) Combined Single
 - i. Limit of: \$2,000,000

(4) Professional Liability coverage will provide coverage for not less than the following amounts:

- (a) Each claim made: \$2,000,000
- (b) Annual Aggregate: \$2,000,000

(5) The City will be included as an additional insured on all of Manager's general liability and automobile insurance policies required under this Agreement.

D. If any required policy is written on a "claims made" form, Manager must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the City's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.

E. Before Manager begins performing services, Manager must send the City certificates of insurance and any applicable endorsements attesting to the existence of coverage. Manager will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the City. The certificates of insurance issued to confirm Manager's compliance must reference this Agreement.

F. If required insurance lapses during the term of this Agreement, the City is not required to process invoices after such lapse until Manager provides evidence of reinstatement that is effective as of the lapse date.

G. The City shall have no specific responsibility to provide any general liability coverage or workers' compensation coverage for the benefit of Manager's employees during the terms of this Agreement.

Section 3.13 CITY INSURANCE. The City will procure and maintain property insurance for the Parking Garage in an amount as determined in its sole discretion.

Section 3.14 TERMINATION OF MANAGER. The City Commission may terminate the Manager for any reason upon giving a ninety (90) day written notice to Manager, delivered in accordance with Section 10.07 of this Agreement.

Section 3.15 CITY STEP-IN RIGHTS. During the term of this Agreement, the City may terminate the Manager and step-in to serve as the Manager and/or hire another company to perform the duties of the Manager.

Section 3.16 UTILITY EXPENSES. The City is responsible for covering any and all Utility expenses incurred at the Parking Garage.

ARTICLE IV. MANAGEMENT OF PARKING GARAGE

Section 4.01 MANAGER. Subject to the terms and conditions of this Agreement, the Manager shall be the exclusive Manager of the Parking Garage.

Section 4.02 ADVERTISING. The Manager shall have the exclusive right to control the advertising on both the interior and exterior of the Parking Garage during the term of this Agreement.

Section 4.03 SPECIAL EVENTS. Notwithstanding other exclusive use rights as granted by the City, of which the City will make the Manager aware, the Manager shall have the right to temporarily restrict access to the Parking Garage and may override exclusive rights for Special Events, such Special Events not to exceed fifty (50) per year. Special Events may include Parking Garage access.

Section 4.04 SECURITY. The Manager is responsible for providing security for the Parking Garage, and the City is responsible for installing security cameras for the Parking Garage.

**ARTICLE V.
USE OF PARKING GARAGE**

Section 5.01 RIGHTS RESERVED TO THE GENERAL PUBLIC. Except as otherwise expressly granted by the City, the Parking Garage shall be available to the general public for public parking at any time.

**ARTICLE VI.
DEFAULTS AND REMEDIES**

Section 6.01 EVENT OF DEFAULT. The occurrence of any one of the following events will constitute an Event of Default by a Party pursuant to this Agreement:

A. A Party fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Agreement which failure materially and adversely affects another Party's rights or obligations under this Agreement and such failure continues without cure for a period of thirty (30) calendar days following the date a non-defaulting Party delivers written notice thereof to the defaulting Party, giving particulars of the default in reasonable detail.

B. The Manager files a notice of bankruptcy or is dissolved.

Section 6.02 REMEDIES. Upon the occurrence of an Event of Default under this Agreement, a non-breaching Party may give the defaulting Party and the other Party notice declaring the defaulting Party in default and may do any or all of the following in its discretion:

A. Terminate this Agreement to the extent provided in Article VII; and

B. Exercise any other rights and remedies provided for hereunder or under Applicable Law.

**ARTICLE VII.
TERM AND TERMINATION**

Section 7.01 TERM. This Agreement will take effect on the Effective Date and will remain in effect for a term of five (5) years (the "Initial Term"). Following the Initial Term, this Agreement will automatically renew for four (4) additional five (5) year terms unless a Party provides the other Party at least one hundred eighty (180) days written notice prior to the end of the respective term.

Section 7.02 TERMINATION FOR DEFAULT. Subject to the provisions of this Agreement, at any time after the occurrence of an Event of Default by a Party, the non-defaulting Party may terminate this Agreement. The non-defaulting Party must deliver a written notice of intent to terminate this Agreement to the other Party thirty (30) days prior to the date of termination.

Section 7.03 AGREEMENT. The Parties may agree, in writing, to terminate this Agreement.

**ARTICLE VIII.
INDEMNIFICATION**

Section 8.01 INDEMNIFICATION BY MANAGER. In addition to the Manager's indemnification obligations set forth elsewhere in this Agreement, the Manager will indemnify, defend, and hold harmless the City from and against any losses actually suffered or incurred by the City (except to the extent such losses are solely caused by the Manager's conduct, negligence, or other culpable act, error, or omission of the City, its agents or representatives) due to third party claims that are based upon:

A. Any actual or alleged failure by the Manager to comply with, observe or perform any of the covenants, obligations, agreements, terms, or conditions in this Agreement or, any actual or alleged breach by the Manager of its representations or warranties set forth herein;

B. Any actual or alleged misconduct, negligence, or other culpable act, error, or omission of a subcontractor in connection with the services provided by Manager;

C. Any actual or alleged violation of any federal or state securities law by Manager;
or

D. Any actual or alleged claim for brokerage commissions, fees, or other compensation by any person who acted on behalf of the Manager.

Section 8.02 DEFENSE AND INDEMNIFICATION PROCEDURES.

A. In the event that any third-party claim for which the Manager may be required to indemnify the City hereunder is asserted in writing against the City, it will as promptly as practicable notify the Manager in writing of such claim, and such notice will include a copy of the claim and any related correspondence or documentation from the third party asserting the claim; *provided*, that any failure to give such prompt notice will not constitute a waiver of any rights of the City, except to the extent that the rights of the Manager are actually and materially prejudiced thereby.

B. The Manager will be entitled and obligated to appoint counsel of its choice at the expense of the Manager to represent the City in any action for which indemnification is sought; *provided*, that such counsel will be satisfactory to the City. Notwithstanding the Manager's appointment of counsel to represent the City in any action, the City will have the right to employ separate counsel, and the Manager will bear the reasonable fees, costs, and expenses of such counsel, if:

(1) The use of counsel chosen by the Manager to represent the City would present counsel with a conflict of interest;

(2) The actual or potential defendant in, or targets of, any such action include both the City and the Manager and the City will have reasonably concluded that there may

be legal defenses available to it which are different from or addition to those available to the Manager;

(3) The Manager will not have employed counsel to represent the City within a reasonable time after notice of the institution of such action; or

(4) The Manager authorizes the City to employ separate counsel at the Manager's expense.

C. The Manager will not be liable for any settlement or compromise by the owner of a third-party claim except with the Manager's prior written consent, which consent will not be unreasonably withheld or delayed, or except where the settlement or compromise is approved by the court after the Manager receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

ARTICLE IX. DISPUTE RESOLUTION

Section 9.01 INTENT AND PROCEDURE. The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally, the Parties will utilize the following procedure.

Section 9.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator, and each Party will equally share in the costs for mediation services.

Section 9.03 LITIGATION. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to Section 9.02, any Party may choose to litigate the matter.

Section 9.04 VENUE. All litigation between the Parties arising out of or pertaining to this Agreement or its breach will be filed, heard, and decided in a court of competent jurisdiction in Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 9.05 WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) TO ACTIONS OF ANY PARTY RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION ONLY APPLIES TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

**ARTICLE X.
MISCELLANEOUS**

Section 10.01 AMENDED DEVELOPMENT AGREEMENT. This Agreement is in no way intended to amend or modify the terms or conditions of the Amended Development Agreement, and the Amended Development Agreement remains in full force and effect following the Effective Date of this Agreement. In the event the terms of this Agreement conflict with the terms and conditions of the Amended Development Agreement, the Amended Development Agreement shall prevail and control.

Section 10.02 ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the City to make any payment for services rendered in any period after the termination of Manager's retention by the City.

Section 10.03 SUCCESSORS AND ASSIGNS. The Parties agree that this Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties in accordance with the terms and conditions of this Agreement and any Applicable Law. No assignment of any interest of any Party may be made without the express written consent of the other Party.

Section 10.04 AMENDMENTS. This Agreement, or any part thereof, may be amended, modified, or waived only by a written instrument duly executed by the Parties, specifying with particularity the nature and extent of such amendment, modification, and waiver.

Section 10.05 WAIVER. The failure or delay of any Party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement or the right to enforce each and every term of this Agreement.

Section 10.06 AUTHORIZED REPRESENTATIVES.

A. The City and Manager each hereby designates the following individual as its initial representative to administer this Agreement on its respective behalf:

- (1) City Representative: City Administrator
- (2) Manager Representative: Mike Amundson

B. The representatives will be reasonably available to each other during the term of this Agreement and will have the authority to issue instructions and other communications on behalf of the City and Manager, respectively, and will be the recipients of notices and other communications from the other Parties pursuant to this Agreement. Such representatives, however, will not have the authority to make decisions or give instructions binding on the City and Manager, except to the extent expressly authorized by the City and Manager, as the case may be.

Section 10.07 NOTICE.

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

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

City of West Fargo
800 4th Avenue East, Suite 1
West Fargo, North Dakota 58078

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

West Fargo Events, Inc.
745 31st Avenue East, Suite 105
West Fargo, North Dakota 58078

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

Section 10.08 NO THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement is intended or will be construed as creating or conferring any right, benefit, or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a Party, except those rights expressly contained herein.

Section 10.09 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

Section 10.10 SEVERABILITY. If any term or provision of this Agreement or any application thereof to any person or circumstances shall to any extent be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Applicable Law.

Section 10.11 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 10.12 ENTIRE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof, and this Agreement

supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to the subject matter.

Section 10.13 NOT A GENERAL OBLIGATION. Nothing in this Agreement shall be construed as creating a general obligation of the City.

Section 10.14 FORCE MAJEURE. No Party will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming delay must undertake reasonable action to notify the other Parties of the same.

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

(Remainder of page intentionally left blank.

Signature Page for the City

The Governing Body of the City of West Fargo approved this Agreement on December,
2019.

CITY OF WEST FARGO, a municipal
corporation

By: 

Bernie L. Dardis, President of the
Board of Commissioners

ATTEST:


Tina Fisk, City Auditor

Signature Page for West Fargo Events, Inc.

WEST FARGO EVENTS, INC., a North
Dakota non-profit corporation

By: 

Its: PRESIDENT

Date: 1/27/2020

EXHIBIT A – TIF DISTRICT MAP

(See the following page.)

EXHIBIT A TAX INCREMENT FINANCING DISTRICT #2017-1

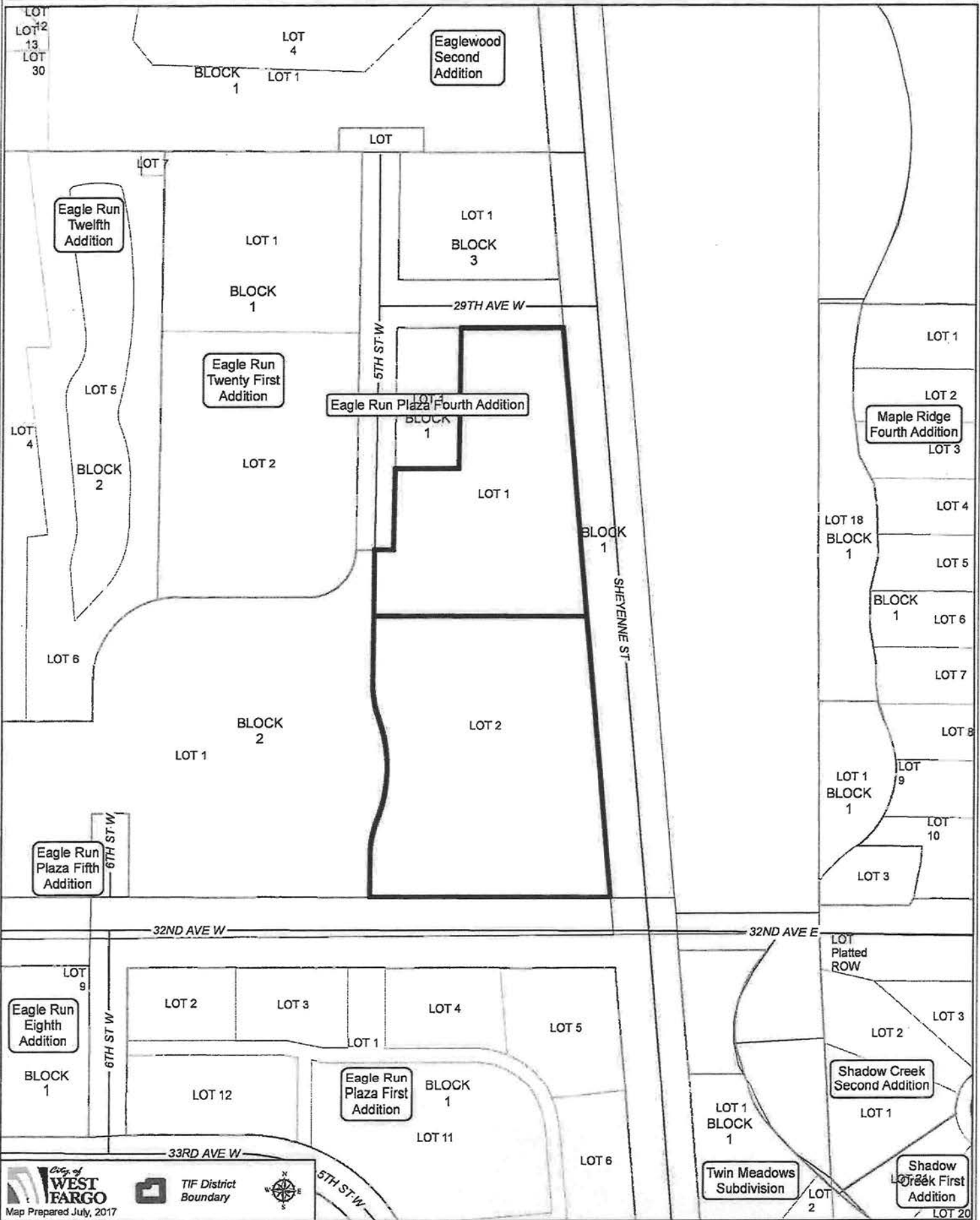


EXHIBIT B – DIAGRAM OF PARKING GARAGE

(See the following page.)

