



DEVELOPMENT AGREEMENT

THIS AGREEMENT (the Agreement), made on the ____ day of _____, 2023 (“Effective Date”) between the City of Dickinson, a political subdivision, hereinafter called the City, and the Owner as identified herein.

Current Owner Name & Address: TCB Rentals, LLC
1475 Atascosita Dr.
Dickinson, ND 58601

Lucky’s, LLC
450 12th St. W.
Dickinson, ND 58601

Legal Description:

A TRACT OF LAND LYING WITHIN THE SW1/4 OF SECTION 2, TOWNSHIP 139 NORTH RANGE 96 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF DICKINSON, NORTH DAKOTA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: LOT 1C AND 1D OF THAT IRREGULAR PLAT RECORDED UNDER DOCUMENT NUMBER 3153495, STARK COUNTY RECORDS.

SAID TRACT CONTAINS 192,134 SQ. FT. (4.41 ACRES), MORE OR LESS AND IS SUBJECT TO ANY PREVIOUS EASEMENTS, AGREEMENTS, CONVEYANCES, AND SURVEYS.

Also referred to herein as “**TCB SUBDIVISION**”

Also referred to herein as the “**Subject Property**”

RECITALS

WHEREAS, Owners are the fee Owners of the Subject Properties, located in the City of Dickinson, Stark County, North Dakota, legally-described as provided above; and

WHEREAS, Owner intends on re-platting the Subject Property; and

WHEREAS, Owner and City agree that the Subject Property will be improved and developed pursuant to the terms of this Agreement, "TCB SUBDIVISION" plat, and all applicable City ordinances and regulations;

NOW THEREFORE, in mutual consideration of the promises, covenants and agreements of the parties contained herein, the parties hereby agree as follows:

1. Regulation of Development. This Agreement is executed in conformance with Article 34 of the City of Dickinson Municipal Code effective as of the date of this Agreement and shall satisfy the requirements contained therein for a Subdivision Agreement to be completed prior to the filing and recordation of any **issuance of a Certificate of Occupancy on Subject Property**. This Agreement shall control the development of the Subject Property and the construction of Municipal Improvements necessary to serve the Subdivision or Subject Property with municipal services. Remedies contained in this Agreement shall be in addition to those otherwise provided by law to the City for other violations of the City of Dickinson Municipal Code.

2. Public Infrastructure Improvements – Special Conditions. Public infrastructure improvements will be required to serve the proposed Lots within this development. Owner and City hereby agree that the following are the only public infrastructure improvements required to be constructed as indicated herein and accepted by the City prior to a Certificate of Occupancy being issued in the Subject Property as indicated in Section 1 of this Agreement.

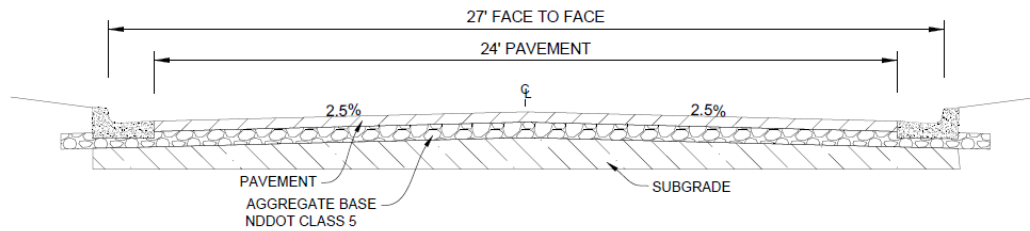
- a) Owner shall prepare or have prepared plans and specifications for the public water system and sanitary sewer system necessary to serve Lots 3 and 4. The public water system shall be located within the 30-foot access and utility easement shown by *TCB* subdivision plat. Final design plans shall be designed in accordance with public standards as defined by State and Local regulations, and submitted to the NDDEQ and City for approval prior to the commencement of construction. The cost of preparing these plans shall be paid by Owner.
- b) Owner shall construct or have constructed and shall pay all expenses for construction of all the public water system, sanitary sewer, and storm sewer improvements as depicted by the plans and specifications approved by the City as noted by Section 2. a) and Section 2. b) of this Agreement. A Certificate of Occupancy for a Lots 3 and 4 within the Subject Property shall not be issued until this necessary water and sewer infrastructure to serve said Lots has been constructed and accepted.
- c) Owner shall allow City to perform inspection of the public infrastructure improvements as needed to ensure proper construction in accordance with the approved plans and specifications noted by this Agreement. Owner shall pay City for said inspection services in accordance with the rates defined by the current City fee schedule.
- d) Title to the public infrastructure noted by this Section shall be as defined by Section 9 of this Agreement.

3. Private Infrastructure Improvements – Special Conditions. Private infrastructure improvements will be required to provide access to the proposed Lots 3 and 4 within this development. Owner and City hereby agree that the following are the only private infrastructure improvements required to be

constructed as indicated herein and accepted by the City prior to a Certificate of Occupancy being issued in the Subject Property as indicated in Section 1 of this Agreement.

- a) Owner shall prepare or have prepared plans and specifications for the construction of an access road within the 30-foot access and utility easement shown by *The TCB Subdivision* plat drawing. This access road shall be constructed according to the following typical section and shall include an emergency vehicle turnaround meeting the current International Fire Code requirements. Final design plans shall be submitted to the City for approval prior to the commencement of construction. The cost of preparing these plans shall be paid by the Owner.

Figure 1: Private Access Road Typical Section



- b) Owner shall prepare a storm water report and construct a storm water detention facility which contains all storm water associated with Lots 1 through 4 as shown in the *TCB Subdivision* plat drawing as per the current version of Article 38 of the City of Dickinson Municipal Code. Final design plans shall be submitted to the City for approval prior to the commencement of construction. The cost of preparing these plans shall be paid by Owner.
- c) Owner shall construct or have constructed and shall pay all expenses for construction of completing the improvements as noted by Section 3. a) of this Agreement. A Certificate of Occupancy for Lots 3 and 4 shall not be issued until these improvements have been constructed.
- d) All private infrastructure noted by this Section shall be privately owned and maintained through a method to be established by Owner.
- e) The City and/or their representative shall have the right to enter the proposed access easement for this access road through the Subject Property to inspect said roadway condition to ensure the condition is adequate for emergency and public works vehicles. If the City and/or their representative finds that the roadway condition has reached a Pavement Condition Index (PCI) of 35 or less as determined in accordance with ASTM D6433, current edition, the City shall notify the Owners of Lots 3 and 4 in writing that improvements are to be made to the roadway within 12 months to improve its condition, or the City will perform said improvements and assess Owner. If no improvements are completed, the City shall send a second written notification 6 months after the first notification, and a third written notification shall be sent 9 months after the first notification. If improvements to the access road are not complete by Owner within 12 months after the first written notification is received, the City and/or their representative shall have the right to reconstruct the access road with a pavement section having a 30-year design life maximum, as determined by industry standard methods at the time of reconstruction, unless otherwise agreed upon by both parties. The City may assess the costs for all surveying, design, testing, engineering, administration, and construction to the Owners of Lots 3 and 4 over a period of ten (10) years unless a different term is agreed upon by both parties. The cost shall be assessed according to N.D.C.C. requirements at the time of assessment, except Owner shall not be allowed the right to protest this assessment if the criteria indicated herein are met.

4. **Assurance of Infrastructure Completion.** In the event that construction of the required public infrastructure that is to be paid for directly by Owner as indicated in Section 2, herein, is not complete at the time of final plat recording for a particular phase of the project, Owner hereby agrees that no private improvements shall be constructed within any land located within the Subject Property unless and until a plan for developing and constructing such improvements and infrastructure is approved by the City. Such approval will be memorialized by a public infrastructure permit which will be valid for one year from the date of issuance at a fee listed in the current City fee schedule. Prior to the City recording the Final Plat of the Subject Property, Owner shall post with the City security in the amount of 130% of the lesser of the estimated construction cost as approved by the City Engineer or actual bid amounts, if available, for said improvements to assure the completion of the required public infrastructure that is to be paid for directly by Owner for the Subject Property, as required under Dickinson City Code §34-60. The security posted by Owner shall be a line of credit held by the City and Owner until the cost of each approved phase(s) of the infrastructure for the whole of the Subject Property has been completed, but this line of credit may be drawn down by Owner to make payments for work completed. A full release of the security remaining upon the completion of construction shall be made upon completion of the work, inspection, and final acceptance of the same. The Security remaining upon completion of construction shall remain in effect through warranty examination and final inspection by the City as indicated by Section 10, herein.

5. **City Engineer Approval Required.** No improvements within the Subject Property shall be made unless and until necessary plans and specifications therefore have been submitted to and approved by the City Engineer in accordance with the City of Dickinson Municipal Code for the Subject property covered by such plans and specifications.

6. **Subdivision of Land.** Owner shall otherwise conform to all requirements regarding the subdivision of land enacted by the City of Dickinson, as set forth in Chapter 34 of the City of Dickinson Municipal Code, as may be amended from time to time. The provision of remedies in this Agreement shall be in addition to those otherwise provided by law to the City for other violations of the City of Dickinson Municipal Code.

7. **Permits.** The City's approval of this Agreement does not include approval of permits for construction within the Subject Property. Owner shall separately apply to the City for any building permits, certificates of occupancy, right-of-way permits, or similar approvals for any and all construction within the Subject Property. Owner shall notify all prospective lot owners within the Subject Property that the City will not accept any building permit or development applications until the City has approved the final storm water management plan.

8. **Repairs and Replacements.** Owner shall replace, or have replaced, or repair, or have repaired, as the case may be, any and all pipes and monuments within the Subject Property that have been destroyed or damaged by Owner or Owner's agents. Owner shall replace, or have replaced, or repair, or have repaired, as the case may be, the entire cost of such replacement or repair, of any and all property damaged or destroyed by reason of any work done pursuant to this Agreement, whether such property is owned by the United States, or any agency or entity thereof, or the State of North Dakota, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer or their designee.

9. **Title to Public Improvements.** Title to, and ownership of, any and the public infrastructure in the Subject Property, which shall include the water system and sanitary sewer system discussed

in Section 2 within the water and sanitary sewer easements as dedicated and granted within the Subject Property by *TCB Subdivision* plat, shall vest in the City upon completion, acceptance, and satisfaction of any warranty issues for such improvements with the following additional requirements:

- a) The real property encumbered by water, storm and sanitary sewer easements for public infrastructure within the Subject Property shall be privately owned, but the City shall have the rights to access, maintain, repair, improve, remove, and replace the public infrastructure that is to be owned and maintained by the City within these easements. Owner shall not build, create, construct, or permit to be built, created, or constructed, any obstruction, building, engineering works, or other structures upon, over, or under the strip of land herein described or that would interfere with said public infrastructure. Owner shall not change the existing grade within the easements without prior approval from the City. This shall not restrict Owner from constructing pavements, fences, landscaping, or utilities within the easement that do not adversely affect the public infrastructure. Upon completion of any work within the easements, the City shall leave the Subject Property in good repair so that there is no unreasonable damage, which shall include, but not be limited to, repair of any damage to the private access road above this infrastructure. The damages, if not mutually agreed upon, may be determined by three disinterested persons, one to be selected by Owner and one by the City, and these two shall select a third person. The award determined by these three persons shall be final and conclusive.
- b) The public infrastructure to be owned and maintained by the City shall include the water and sewer pipes, services lines, hydrants, structures, inlets, castings, valves, fittings, and all other necessary appurtenances for these systems that are located within said water, storm and sanitary sewer easements in the Subject Property.

10. Maintenance Warranty. For all public municipal improvements within the Subject Property constructed privately by Owner, and in accordance with Dickinson City Code §34-60 and Section 4, herein, assurance shall be provided by Owner. The amount of this assurance remaining at the completion of construction is to remain in full effect for a warranty period of no less than one (1) year following substantial completion of said improvements. Until the end of this one-year warranty period, Owner shall remedy at Owner's expense any damage to real or personal property, when that damage is the result of: (1) Owner's failure to conform to the requirements of the City; or (2) any defect of equipment, material, workmanship, or design furnished. Owner shall restore any work damaged in fulfilling the terms and conditions of this Section. Owner shall: (1) use commercially reasonable efforts to obtain all warranties that would be given in normal commercial practice; (2) to the extent possible, require all warranties be executed, in writing, for the benefit of the City; and (3) enforce all warranties for the benefit of the City. In the event Owner's warranty as provided herein has expired, the City may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty. Owner shall have no liability for the improvements made upon expiration of the warranty period.

11. Agreement Runs with the Land. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, administrators, representatives, successors, and assigns. This Agreement shall run with the land and shall be recorded with the Office of the Stark County Recorder against the Subject Property. As Owner sells individual lots within the Subject Property, Owner shall specifically notify the purchaser thereof of this Agreement. All obligations, promises and covenants of Owner contained herein shall similarly be binding upon purchasers of lots within the Subject Property, and shall no longer apply to previous Owner upon conveyance of ownership.

12. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.

13. Non-waiver. Each right, power or remedy conferred upon the City or Owner by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City or Owner at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City or Owner and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

14. Governing Law – Venue. This Agreement shall be governed by and construed according to the laws of the State of North Dakota. The parties hereby stipulate and agree that the District Court, Southwest Judicial District, State of North Dakota, shall have personal jurisdiction over the parties hereto, and that such District Court, Southwest Judicial District, State of North Dakota, is the appropriate and proper venue for resolving any dispute under this Agreement.

15. Entire Agreement. This Agreement contains the entire agreement between and among the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF DICKINSON

By: _____
Scott Decker, President
Board of City Commissioners

ATTEST:

By: _____

Title: _____

Signature: _____

STATE OF NORTH DAKOTA)
) ss
COUNTY OF STARK)

On this _____ day of _____, 2023, before me personally appeared **Scott Decker** and _____ known to me to be, respectively, the President of the Board of City Commissioners and the _____ of the City of Dickinson, the persons who are described herein and who executed the within and foregoing instrument and acknowledged to me that the City of Dickinson executed the same.

Notary Public
Stark County, North Dakota

OWNER – TCB Rentals, LLC

By: _____

Title: _____

Signature: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, the **Owner** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.

OWNER – Lucky’s, LLC

By: _____

Title: _____

Signature: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, the **Owner** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.