



DEVELOPMENT AGREEMENT

THIS AGREEMENT, made on the _____ day of _____, 20____
("Effective Date") between the City of Dickinson, a political subdivision, hereinafter called the
CITY, and OWNER as identified herein.

Owner: Winn Family Revocable Real Estate Trust

Address: 1872 7th St W

Dickinson, ND 58601

Legal Description of Property:

Real property in the City of Dickinson, County of Stark, State of North Dakota, described as follows:

Lots 32, 33, 34, 35, and 36, Block 1, Heart River 4th Subdivision.

Said property is being re-platted as described as follows:

Lots 1, 2, and 3, Block 1, Heart River 6th Subdivision.

Also referred to herein as "Subject Property".

RECITALS

WHEREAS, the Owner is the fee owner of the Subject Property, located in the City of Dickinson, Stark County, North Dakota, legally described as provided above; and

WHEREAS, the Owner intends on subdividing, improving, and developing the Subject Property into a Residential Development; and

WHEREAS, the Owner agrees that the Subject Property will be improved and developed pursuant to the terms of this Agreement and all applicable federal and state laws and 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 Chapter 52 of the Dickinson City Code effective as of the date of this agreement and shall satisfy the requirements contained therein for a Subdivision Agreement to be completed for the Subject Property. This Agreement shall control the development of the Subject Property and the construction of Municipal Improvements necessary to serve the 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 Dickinson City Municipal Code.

2. Infrastructure Improvements – Special Conditions. The following outlines the special conditions for the improvement, development, and use of this site that the City and the Owner hereby agree to.

- a) Public water and sanitary sewer improvements are required in the existing right-of-way for 2nd Ave SW directly east of the Subject Property to serve the proposed development within the Subject Property. The following provisions are hereby agreed to for the construction and maintenance of this infrastructure:
 - i. Owner shall prepare or have prepared and submitted to the City plans and specifications for the construction of public water and sanitary sewer mains, valves, fittings, service lines, fire hydrant assemblies (valves, pipe, fittings, and hydrant), and sanitary manholes within the 2nd Ave SW Right-of-way directly east of the Subject Property as needed to provide water and sanitary sewer service to the property line of each proposed Lot in the Subject Property. The cost of preparing these plans shall be paid by the Owner. These plans shall be reviewed and approved by the City Engineer prior to construction of these improvements. These planned improvements shall conform to the City of Dickinson Standards and Details and shall be approved by the North Dakota Department of Environmental Quality (NDDEQ).
 - ii. Owner shall construct or have constructed and shall pay all expenses for construction of the water and sanitary sewer improvements as described by the approved plans and specifications as noted by Section 2. a) i. of this Agreement.
 - iii. Owner shall allow City to perform inspection of these improvements as needed to ensure proper construction in accordance with the approved plans and specifications noted by Section 2. a) i. of this Agreement. Owner shall reimburse fees accrued by the City for said inspection services in accordance with the rates defined by the current City fee schedule.
 - iv. Upon completion of the construction of the water and sanitary sewer improvements as noted by Section 2. a) ii. of this Agreement, the City shall review or have reviewed and approve the construction of this infrastructure as long as it is found to be in conformance with the approved plans and specifications noted by Section 2. a) i. of this Agreement. Upon approval of this infrastructure by the City, the City shall be responsible for all future maintenance of these water and sanitary sewer improvements, except for any maintenance or improvements required by the

“Maintenance Warranty” defined by Section 8 of this Agreement, which shall be paid for by Owner.

- v. This public water and sanitary sewer infrastructure shall be complete and approved prior to a Certificate of Occupancy being issued for any Lot in Heart River 6th Subdivision.
- b) A private driveway connecting to 7th Street SW is required within the access easement depicted by the Heart River 6th Subdivision Plat to provide access between the proposed Lots in the Subject Property. The following provisions are hereby agreed to for the construction and maintenance of this infrastructure:
- i. This access easement shall allow for the movement of vehicles and pedestrians, including emergency management vehicles, between each Lot of the Subject Property.
 - ii. The current Owner, and any future Owner(s), shall be responsible for all design, construction, maintenance, and reconstruction of a paved driveway within the access easement depicted by Heart River 6th Subdivision plat in perpetuity.
 - iii. This driveway shall be paved with asphalt or concrete that is able to support emergency vehicles as required by City Codes and Ordinances.
 - iv. The current Owner, and any future Owner(s), shall be responsible for the condition of this driveway lying within the portion of the access easement within their property. The driveway shall be maintained by the Owner(s) to a condition that is sufficient for vehicular access, including emergency vehicle access in accordance with City Codes and Ordinances, between the Lots of said Heart River 6th Subdivision.
 - v. Paved access within this easement from 7th Street SW must be provided prior to a Certificate of Occupancy being issued for a Lot in the Subject Property. Construction of this access may be phased for each Lot as long as the Lot requesting a Certificate of Occupancy has paved access connecting the Lot to 7th Street SW.
 - vi. City shall have the right to enter the proposed access easement area to inspect the driveway to ensure its condition is adequate for emergency vehicles. If the City and/or their representative finds that the driveway 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 Owner 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 Owner 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.

- c) It is agreed that access from the existing right-of-way for 2nd Ave SW on the east side of the Subject Property is not necessary after construction of the improvements indicated by Section 2 b) of this agreement. Therefore, the Owner shall not be required to construct a City standard roadway within this right-of-way as part of this development. Should access from the right-of-way of the unconstructed portion of 2nd Ave SW between 7th Street SW and 8th Street SW become necessary to provide access to the Subject Property or any other property abutting the right-of-way of 2nd Ave SW between 7th Street SW and 8th Street SW, Owner shall be responsible for the cost of the engineering and infrastructure improvements for the half of the portion of this roadway that is located in the right-of-way adjacent to the Subject Property at the time this roadway is constructed.

3. Assurance of Infrastructure Completion. In the event that construction of required public infrastructure in Section 2 a) is not completed at the time of building permit approval, the Owner hereby agrees that no improvements or infrastructure 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. Prior to the City issuing any building permit for any structure within a phase of the Subject Property, the Owner shall post with the City sufficient security to assure the completion of the required infrastructure for the Subject Property, as required under Dickinson City Code §52-6. The security posted by Owner shall be held by the City until the cost of each approved phase(s) of the infrastructure for the whole of the Subject Property has been completed. A full release of the security shall be made upon completion of the work, inspection, acceptance of the same, and a one-year warranty period. The financial security will remain in effect through warranty examination and final inspection by the CITY per paragraph eleven of this Agreement.

4. 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 City Code for the lot or parcel covered by such plans and specifications. The City Engineer or his designee reserves the right to make any necessary changes in the design of the public infrastructure prior to its construction. The City Engineer or his designee shall also have the authority to reject all work and materials which do not conform to the City approved Plans and Specifications and to decide all questions which arise in the execution of the work as to whether or not the work complies with the City approved Plans and Specifications.

5. 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 52 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.

6. Permits. The City's approval of this Agreement does not include approval of permits for construction within the Subject Property. The Owner shall separately apply to the City for any building permits, certificates of occupancy, right-of-way permits, stormwater permits, or similar approvals for any and all construction within the Subject Property.

The City shall waive the fees associated with all building-related permits, and water and sewer connection fees associated with any residences constructed in the Subject Property within the timeframe outlined in Section 7 of this Agreement. This Agreement does not govern any tax incentives regarding the Subject Property. Owner is responsible for submitting the Property Tax Exemption Application for any new residential construction associated with the Subject Property.

7. Construction Timeline. To obtain the waiver of fees indicated by Section 6, of this Agreement, Owner shall submit all building permit applications within ten (10) years of the day of the approval of this agreement. Any building permits submitted for the Subject Property after the timeframe listed above must be paid in full based on the City's fee schedule rates at that time. Water and sewer connection fees for residences constructed within the timeframe above shall be waived in full.

8. Construction and Inspections. The City shall provide for engineering inspection and construction material testing of all construction within the platted rights-of-way. Weekly inspection reports shall be submitted to Owner and the City by the engineer providing engineering inspection and construction material testing. Any change orders shall be approved by the City before the work occurs. The inspector shall certify to the City that all construction was performed in general conformance with the Plans and Specifications. At a minimum, engineering inspectors will be onsite when any test is being performed, when asphalt or concrete paving is underway and when connections are being made to the City's water or sewer system. After project completion, the engineer providing engineering inspection and construction material testing shall provide as-built drawings, construction inspection records, and final review & acceptance forms. The as-built drawings shall include the electronic submittal in pdf and shape file to meet the City's GIS standards. Owner shall reimburse City, at Owner's expense, for said site construction inspection costs of municipal infrastructure within the Subject Property up to a maximum of 10% of the City approved construction cost estimate for the public infrastructure.

The Owner shall at all times maintain proper facilities and provide safe access for inspection by City of Dickinson personnel to all parts of the work and to any and all facilities wherein the work is in preparation. The Owner shall immediately cease work if ordered to do so by City personnel in order to protect to the life, health or safety of the public, or to prevent deficient work within public rights-of-way.

9. Repairs and Replacements. The 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. The Owner shall replace, or have replaced, or repair, or have repaired, and incur 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 his designee.

10. Title to Public Improvements. Title to, and ownership of, any and all public improvements within public rights-of-way, having been constructed by the Owner or its agents or assignees, shall vest in the City upon substantial completion, acceptance, and satisfaction of any warranty issues for such improvements.

11. Maintenance Warranty. For the public improvements noted by Section 2 a) if this Agreement, at the time of construction commencement through substantial completion and acceptance of such improvements, the Owner shall provide to the City a security acceptable to the City in accordance with Section 2 of this Agreement, that is to remain in full effect for no less than one year following substantial completion.

Until the end of this one year warranty period, the Owner shall remedy at the Owner's expense any damage to real or personal property, when that damage is the result of: (1) the Owner's failure to conform to the requirements of the City; or (2) any defect of equipment, material, workmanship, or design furnished. The Owner shall restore any work damaged in fulfilling the terms and conditions of this Section. The 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 the 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.

12. 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. 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.

13. 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.

14. Non-waiver. Each right, power or remedy conferred upon the City or the 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 the 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 the 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.

15. 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.

16. Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that any other provisions contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than expressly stated herein.

17. 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 – City of Dickinson

By: _____
Scott Decker, President
Board of City Commissioners

ATTEST:

Dustin Dassinger
City Administrator

STATE OF NORTH DAKOTA)

:ss

COUNTY OF STARK)

On this _____ day of _____, 20____, before me personally appeared **Scott Decker**, known to me as the President of the Board of City Commissioners of the City of Dickinson, and **Dustin Dassinger**, known to me as the City Administrator of the City of Dickinson, and who executed the within and foregoing document and acknowledged to me that the City of Dickinson executed the same.

Notary Public

OWNER – Winn Family Revocable Real Estate Trust

By: _____
Willis. D Winn

Its: _____
Trustee

STATE OF _____)
): ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared **Willis D. Winn**, the Authorized Representative of 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.

Notary Public