Subdivision Development Agreement

Volochenko Addition

Leslie Volochenko

This Agreement is made and entered into on this **15** of **April, 2015**, (hereinafter the "effective date") by and between the City of Mandan, hereinafter referred to as the "City", and Leslie Volochenko, herein after referred to as the "Developer". The address for the City of Mandan is 205 2nd Avenue NW, Mandan, North Dakota 58554. The address of the Developer is 506 Collins Avenue, Mandan, North Dakota 58554.

WHEREAS, the Developer is the owner of property whose legal description is Part of Auditors Lot AE of the NE ¼ of Section 26, Township 139 North, Range 81 West (herein after referred to as the "Property"); and

WHEREAS, the Developer wishes to develop the Property into a Development named Volochenko Addition (hereinafter referred to as the "Development"; and

WHEREAS, the plat depicting the boundaries of the Development is attached hereto as Exhibit A and made a part of this Agreement by reference; and

WHEREAS, the Development is currently planned to include five lots reserved for residential and/or limited commercial development; and

WHEREAS, the Developer intends to market the parcels to others for development; and

WHEREAS, a new agreement will be required for each parcel with the eventual buyer of each parcel; and

WHEREAS, the Developer has requested and the City has approved that the zoning be changed from agricultural zoning to PUD District 2015-1 including modified CB; and

WHEREAS, the Developer intends to require that the purchasers of the land construct water system, sanitary sewer system, stormwater management system and street improvements required to provide service to the individual lots within the Development and connect same to City facilities; and

WHEREAS, the Developer intends to require that purchasers of the land accommodate the existing storm drainage and electric transmission facilities located on the land when developing the land; and

WHEREAS, the City finds it necessary to have the purchaser construct or install said infrastructure facilities to City design and construction standards; and

WHEREAS, the Developer desires to cooperate with the City and will require the purchasers of individual lots to construct or install said facility improvements as specified by this Agreement.

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NOW THEREFORE, it is agreed between the parties as follows:

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1. **Parties to this Agreement.**
   1.1. City. The City is a North Dakota Home Rule Charter City vested with the authority to control access to its streets and municipal infrastructure. The City has authority to approve or disapprove of all subdivision plats within its territorial jurisdiction. The City has the express authority to withhold building permit approval for any structure or residence on the Property for a failure by the Developer to comply with the terms and conditions of this Agreement.
   1.2. Developer. The Developer is the legal and equitable owner of the Property.
2. **Developer responsibilities.**
   2.1. Design and installation of facilities. The Developer or purchaser of each lot shall design and construct or install all facilities within the proposed Development, including those that will be dedicated to the City for ownership, operation and maintenance after construction or installation and acceptance by the City.
   2.2. Designation of ownership responsibility. The Developer or purchaser of each lot shall clearly designate those facilities that will be owned and operated by a maintenance association. The proposed legal structure of the maintenance association shall be provided to the City. A written operation plan for maintenance association maintained facilities shall be prepared by the Developer or purchaser of each lot. Covenants or other documents specifying ownership, operation and maintenance requirements shall be recorded and a copy of the recorded document provided to the City by the Developer or purchaser of each lot.
   2.3. Commencement of construction. Construction shall not commence until plans for all new facilities that will be dedicated to the City have been reviewed and approved by the City, three way construction agreements have been signed and construction permits have been issued by the City. The stormwater management plan as it impacts the designated floodplain. The stormwater management plan for the Development or each lot must be reviewed and approved by the City engineer prior to commencement of any earthmoving.
   2.4. Responsible party. The Developer or purchaser of each lot is the "responsible party" for compliance with all federal and state environmental statutes, rules and regulations including storm water runoff regulations.
   2.5. Inspection of construction. The Developer or purchaser of each lot shall provide daily inspection of all construction activities impacting facilities that will be dedicated to the city. Inspection reports shall be submitted to the City at least once per week during any week that there is construction activity. The inspection reports shall include an estimate of percent complete for various items of construction. Any issues that arise during construction that require a change to the improvements that will be dedicated to the City shall be promptly communicated to the City. Deviations from the approved plans for facilities that will be dedicated to the City shall not be constructed until written approval has been issued by the City.

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2.6. Third parties. If a third party is responsible for construction or installation of any facilities that will be dedicated to the City, the agreement and plan between the Developer or purchaser of each lot and the third party shall be forwarded to the City for information. All contractors employed by the Developer or purchaser of each lot shall be properly licensed in North Dakota.

2.7. Statutes, rules, regulations, approvals and permits. The Developer or purchaser of each lot must comply with all applicable state and federal statutes, rules and regulations. The Developer or purchaser of each lot is responsible to obtain all approvals and permits from agencies other than the City having jurisdiction over any aspect of the Development. Verification of same shall be submitted to the City.

2.8. Utility services not provided by City. The Developer or purchaser of each lot is responsible to arrange for the installation of all utility services not provided by the City. Utilities are to be installed in designated easements shown on the plat unless prior written approval has been issued by the City to construct or install said utilities within or across a City right-of-way. The Developer or purchaser of each lot must provide documentation to the City of approval from the appropriate state agency for installation of a utility within a state right-of-way or easement.

2.9. Bonds and insurance. The Developer or purchaser of each lot is responsible to obtain all required bonds and insurance coverage and provide the City with appropriate documentation.

2.10. As-built drawings and maintenance manuals. The Developer or purchaser of each lot shall prepare, or cause to have prepared, sealed and signed as-built drawings of all facilities that will be dedicated to the City. As-built plans and maintenance manuals shall be submitted in an electronic format designated by the City along with the number of paper copies designated by the City.

2.11. Temporary stormwater construction facilities. The Developer or purchaser of each lot is responsible for removal of all temporary stormwater construction facilities after completion of the improvements.

2.12. Designated access routes. Heavy construction or delivery vehicles shall follow routes approved by the City. The Developer, purchaser of each lot or contractor shall obtain approval for these routes from the City Public Works Director in advance in writing. The Developer or purchaser of each lot acknowledges that any vehicles being used at the site of the development or delivering materials or supplies to the site of the development that use non-approved routes to get to the site may result in the City issuing a stop work order to the Developer, purchaser of each lot and/or any contractor working at the site.

2.13. Indemnity. The Developer or purchaser of each lot shall indemnify the city against any claims for damages arising out of the actions of the Developer or purchaser of each lot, Developer's or purchaser of each lot's engineer or contractors employed by the Developer or purchaser of each lot.

3. **City responsibilities.**

3.1. Review. The City will provide prompt review and comment on all plan submittals. The Developer or purchaser of each lot is encouraged to submit plans electronically to insure faster review. The Developer or purchaser of each lot shall designate the person with whom the City is to correspond regarding plan review.

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3.2. Plan development. Plans may be developed in phases and the City may grant approvals and issue permits to commence site preparation and grading work prior to finalization of street and utility plans.

3.3. Issuance of building permit. The City will not issue a building permit for construction of any above ground improvements on a parcel within a lot unless and until:

3.3.1. Underground and above ground utilities serving the parcel within a lot that will be dedicated to the City have been constructed or installed, inspected and approved by the City;

3.3.2. Curb, gutter and street drainage improvements from the parcel within a lot to an existing public street have been completed, inspected and approved by the City;

3.3.3. An aggregate base course with a minimum width of 24 feet from the parcel within a lot to an existing public street has been constructed or installed, inspected and approved by the City;

3.3.4. If the street is a dead end, either temporary or permanent, a 60 foot diameter or other suitable configuration turnaround with a 12 foot wide aggregate base course has been constructed, inspected and approved by the City;

3.3.5. Street signs identifying each street between the parcel within a lot and an existing public street have been installed, inspected and approved by the City;

3.3.6. All sidewalks and driveway aprons have been installed or appropriate financial arrangements have been made to insure completion.

3.3.7. All stormwater management control elements required for construction on the parcel within a lot have been installed, inspected and approved by the City;

3.3.8. Best management practices are in place to prevent damage to newly constructed or installed facilities and existing public facilities;

3.3.9. The plat has been properly recorded and the City has been provided with documentation of same; and

3.3.10. A bond or letter of credit has been posted by the Developer or purchaser of each lot for 130% of the value of the work required to complete the streets and related improvements.

3.4. Substantial completion and warranty period. The City will issue a formal notice of substantial completion for those improvements that will be owned and operated by the City, at which time the one year warranty period shall commence. The City will notify the Developer or purchaser of each lot as to whom to contact regarding takeover of operation and maintenance by the City. Any required operation and maintenance manuals shall be forwarded to designated City staff prior to the date that the City takes over operation and maintenance.

3.5. Certificate of occupancy. A certificate of occupancy will not be issued for any structure until all improvements between the parcel within a lot and an existing public street have been constructed or installed, inspected and a formal notice of substantial completion for public improvements has been issued by the City.

3.6. Acceptance of Developer constructed or installed improvements. The Developer or purchaser of each lot constructed or installed public improvements will not be formally accepted until the City has approved as-built and maintenance manual submittals. Formal acceptance of the Developer or purchaser of each lot constructed or installed improvements shall be by Board of City Commissioners resolution with an attached listing of improvements being accepted.

3.7. End of warranty inspection. The City will schedule with the Developer or purchaser of each lot an end of warranty inspection no sooner than one month prior to the end of

the warranty period. If deficiencies are found that require correction, the warranty period for those items will be extended. For minor repairs, the Developer or purchaser of each lot and the city will agree on the length of the warranty extension. For major repairs or replacement, the warranty period shall be extended a full year from the date the city accepts the repairs or replacements. If all as-built plans and operation and maintenance manuals have not been provided to the City, the warranty period shall be extended until they have been received, reviewed and accepted by the City.

4. **Developer constructed or installed facilities.** The Developer or purchaser of each lot is responsible for the construction or installation of all improvements required for the Development. The Developer or purchaser of each lot has the option to petition the City to have the City construct or install certain improvements.
   - 4.1. Connection to existing City water system. The Developer or purchaser of each lot shall connect to the public potable water line located in Division Street / Missouri Drive.
   - 4.2. Water system within the Development. The Developer or purchaser of each lot shall fund, design and construct or install all facilities within the Development required to provide service to a parcel within a lot. Fire hydrants shall be installed between two and seven feet behind the back of curb unless an alternative location is approved in writing in advance by the City Engineer and Fire Chief. The City Engineer and Fire Chief may require the installation of protective bollards around certain fire hydrants. Water service connections must be installed to the property line prior to issuance of a building permit.Fire hydrants are located on Missouri Drive and Division Street.
   - 4.3. Connection to existing City sanitary sewer system. The Developer or purchaser of each lot shall connect to the existing public sanitary sewer located at the southeast corner of the Development.
   - 4.4. Sanitary sewer system within the Development. The Developer or purchaser of each lot shall fund, design and construct or install all facilities within the Development required to provide service to a parcel within a lot. All sanitary sewer service connections must be installed to the property line prior to issuance of building permits.
   - 4.5. Connection to existing City storm sewer system. The Developer or purchaser of each lot shall connect to the existing stormwater system located on the Development and adjacent to the Development in Division Street / Missouri Drive.
   - 4.6. Stormwater management system within the Development. The Developer or purchaser of each lot shall fund, design and construct or install, after City review and approval, a stormwater management system meeting City, state and federal requirements.
     - 4.6.1. The stormwater management system shall be designed such that the post development peak discharge flow rate at any point where drainage leaves the boundary of the development is no greater than the pre-development peak discharge flow rate at that point for a 50 percent probability six hour, 10 percent probability six hour, 1 percent probability six hour, 50 percent probability twenty-four hour, 10 percent probability twenty-four hour and 1 percent probability twenty-four hour storm event.
     - 4.6.2. Except for sheet flow conditions due to roadway cross slopes, stormwater runoff shall not be channeled across roadway surfaces. Drainage system inlets shall be placed to capture water before it can pond or travel across a roadway.
     - 4.6.3. If there is a designated floodplain within or adjacent to the Development, the stormwater management plan must be submitted to FEMA for review and approval concurrently with submittal to the City. The City may indicate

tentative approval but the City will not issue any form of final approval until FEMA approval has been received. Building permits may be issued after tentative approval by the City but the City reserves the right to place a stop work order on any building permit if there is a problem receiving FEMA approval of the stormwater management plan.

4.6.4. All stormwater management plans and calculations must be sealed and signed by a professional engineer registered in the state of North Dakota.

4.6.5. Those facilities that will be owned, operated and maintained by a homeowner's association shall be clearly delineated on the stormwater management plan. Occupancy permits will not be issued until these facilities are designed, constructed and operational.

4.7. Augmentation of existing City owned storm sewer facilities. The Developer or purchaser of each lot shall fund, design and construct or install an augmentation or reconstruction of existing stormwater facilities located on the Development that is necessary to accommodate development of the site.

4.8. Connection to existing City street system. The Developer or purchaser of each lot shall provide access to each lot from Division Street or Missouri Drive.

4.9. Street system within Development. The Developer or purchaser of each lot shall fund and arrange for the design and construction or installation of all streets and related improvements within the Development. Certain improvements must be completed to a condition acceptable to the City Engineer and Chief Building Official in order to issue building permits or approve occupancy permits.

4.9.1. Streets within the Development shall be private unless the Developer or purchaser of a lot requests that the City create an assessment district to construct a public street.

4.9.2. Streets within the Development may serve individual lots or provide service to multiple lots with the appropriate recorded common use operation and maintenance agreement.

4.9.3. All street and traffic signs must be installed prior to issuance of building permits.

4.9.4. The first lift of pavement is required before building permits can be issued.

4.9.5. Multi-use paths providing access to facilities outside the Development shall be completed prior to issuance of the first occupancy permit along the multi-use path. Sidewalks fronting individual parcels within a lot must be constructed prior to issuance of occupancy permits for those individual parcels.

4.9.5.1. Sidewalks or multi-use paths that cross driveways shall be 6 inches thick.

4.9.5.2. Sidewalks or multi-use paths may be 4 inches thick outside of the area where the sidewalk or multi-use path crosses a driveway.

4.9.5.3. Sidewalks and multi-use paths at intersections must meet ADA design requirements.

4.9.6. Final paving is required prior to issuance of occupancy permits.

4.10. Neighborhood mailboxes. The Developer or purchaser of each lot is required to fund and install neighborhood mailboxes to United States Postal Service requirements. The City shall review mailbox plans for potential conflicts with City facilities and services.

5. **City constructed or installed assessment district facilities.**

5.1. Developer request to create assessment district. If formally requested by the Developer or purchaser of a lot, the City may consider forming an assessment district to construct or install certain street improvements within the Development.

5.2. No guarantee district will be created. The City cannot guarantee that creation of an assessment district will be approved.

5.3. Dollar limit on assessments. The City may impose a dollar limit for assessments when creating an assessment district. If that is the case, the Developer or purchaser of each lot is responsible to fund any cost over and above the assessment limit set by the City.

5.4. Developer notification to proceed with formation of assessment district. Once bids have been received that provide a cost for the project and an estimate of the cost to the Developer or purchaser of each lot, the Developer or purchaser of each lot shall notify the City in writing whether or not to proceed with the assessment district.

5.5. Developer bond or letter of credit. If the Developer or purchaser of each lot wishes to proceed with the assessment district, the Developer or purchaser of each lot shall post a bond or letter of credit in an amount equal to 130% of the amount the Developer will be obligated to pay for the assessment district. The City shall not approve moving forward with the assessment district until the bond or letter of credit has been received from the Developer or purchaser of each lot.

5.6. No guarantee of time of completion. If creation of an assessment district is approved, the City cannot guarantee a time of completion for assessment district funded improvements. Issuance of building or occupancy permits within the Development may be delayed pending completion of assessment district funded improvements. Lots within the Development will be assessed for assessment district funded improvements.

5.7. Developer selection of facilities to be included in assessment district. The Developer or purchaser of a lot may request any or all of the listed facilities be funded and constructed through an assessment district:

- 5.7.1. Construct street drainage facilities.
- 5.7.2. Construct curb and gutter.
- 5.7.3. Construct initial paving required for issuance of building permit.
- 5.7.4. Construct final paving required for issuance of occupancy permit.
- 5.7.5. Construct multi-use paths, sidewalks and driveway aprons.
- 5.7.6. Install street lights.
- 5.7.7. Install street and traffic control signs.

6. **Buyer disclosure.**

6.1. Assessment district. The Developer or purchaser of each lot shall disclose to each buyer of a parcel within a lot within the Development at time of closing if there will be assessments imposed on the parcel by the City. The discloser shall be a separate document with a bold heading and readable font. The document shall explain the assessment process. The document shall require buyer acknowledgement and be included in the documentation provided to future buyers of the parcel.

6.2. Sidewalks and boulevards. The Developer or purchaser of each lot shall disclose to each buyer of a parcel within the Development at time of closing that the parcel owner is responsible to maintain the sidewalk and boulevard in the public right-of-way bordering the parcel. The buyer is responsible to establish an acceptable vegetative cover on the boulevard within one year of issuance of an occupancy permit. The buyer is responsible to obtain any permit required for planting within the boulevard. The document shall

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require buyer acknowledgement and be included in the documentation provided to future buyers of the parcel.

6.3. Water and sewer service lines. The Developer or purchaser of each lot shall disclose to each buyer of a parcel within the Development at time of closing that the parcel owner is responsible to maintain the water and sewer service lines within the parcel. The Developer or purchaser of each lot shall disclose to the purchaser of a parcel if the purchaser's responsibility for water and sewer lines extends into the public right-of-way. The buyer is responsible to obtain any permit required for excavation or repair of water and sewer service lines. The disclosure shall require buyer acknowledgement and be included in the documentation provided to future buyers of the parcel.

7. **Financial Guarantee.**

7.1. Developer guarantee for selected improvements. The maintenance association is responsible for providing common use facilities including water lines, sanitary sewers, stormwater detention facilities and streets.

7.2. Developer guarantee for damage to public infrastructure. The Developer or purchaser of each lot shall post a bond or letter of credit in the amount of 10% of the cost of utility and street improvements to be constructed by the Developer, purchaser of each lot or maintenance association to be used to repair damage to public facilities caused by construction activity or equipment. The city shall advise the Developer or purchaser of each lot in writing of any damage. The Developer or purchaser of each lot shall have the option to repair the damage. If the Developer or purchaser of each lot fails to complete repairs within a reasonable time as specified by the City, the City may notify the bonding company or complete the repairs and deduct the money from the letter of credit.

8. **Property Maintenance.**

8.1. Developer maintenance until developed. The Developer or purchaser of each lot is responsible to maintain any undeveloped portion of the Development to city standards.

8.2. City right to correct violations. The City shall have the right to take action to correct property maintenance violations and bill the Developer or purchaser of each lot.

Malcolm Brown, City Attorney

Justin Froseth, City Engineer

Mayor Arlyn Van Beek
City of Mandan

Leslie Volochenko
Property Owner
April 16, 2015

Attest:

Jim Neubauer
City Administrator

Attest: