

**SETTLEMENT AGREEMENT, RELEASE,  
AND COVENANT NOT TO SUE**

This Settlement Agreement, Release of Claims, and Covenant Not to Sue (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Polaris Limited Partnership, whose mailing address is, PO Box 1445, Minot, North Dakota, 58702, (“Polaris”), and the City of Minot, North Dakota, a political subdivision, (“City”). The City and Polaris are referred to collectively in this agreement as the “Settling Parties.”

**RECITALS**

1. WHEREAS, Polaris owns three 16-plex buildings in Minot, North Dakota located at 300 27<sup>th</sup> Avenue NW; 310 27<sup>th</sup> Avenue NW; and 320 27<sup>th</sup> Avenue NW (collectively “Property”); and
2. WHEREAS, Polaris now alleges claims for monetary damages due to overcharging on the storm sewer utility account relating to the Property from October 2012 through current; and
3. WHEREAS, the City denies all allegations of fault, wrongdoing, and/or liability; and
4. WHEREAS, the Settling Parties wish to fully, finally, and completely resolve the dispute that has arisen concerning the alleged overcharges and have reached an agreement resolving their differences; and
5. WHEREAS, the purpose of this Agreement and the payments recited herein is to obtain peace from litigation, provide for full and final settlement and compromise of all claims, disputes, damages, fees (including attorney’s fees), costs and expenses which could have been litigated and to discharge the City, as well as the City’s representatives, agents, employees, and insurance, from any and all liability for Polaris’s claims, disputes, damages, fees (including attorney’s fees), costs, and expenses concerning the claims

described in paragraph 3 which could have been litigated.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, the Settling Parties agree to settle their dispute regarding the claims described in paragraph 3 on the following terms:

1. **PAYMENT.** Within fifteen business days of the date of final approval of this Agreement by the Settling Parties, the City shall pay to Polaris the total sum of fourteen thousand five hundred forty-six dollars and sixteen cents (\$14,546.16) less any balance on utility accounts, inclusive of any and all costs and attorneys' fees, in consideration for the release of all claims as articulated in paragraph 2 below. Payment shall be delivered to Polaris Limited Partnership PO Box 1445, North Dakota, 58702, via certified mail, return receipt requested.
2. **RELEASE OF ALL CLAIMS.** In consideration of payment of the total sum of fourteen thousand five hundred forty-six dollars and sixteen cents (\$14,546.16) inclusive of any and all costs and attorneys' fees, Polaris, its predecessors, successors, and assigns, hereby absolutely, fully and forever releases, relieves, remises, and discharges the City, including any and all of its officers, agents, employees, insurers, successors, contractors and agents of and from any and all manner of claims, demands, rights, causes of action, whether present and future, whether known or unknown, which Polaris has or may have relating to alleged overcharging on the Property's storm sewer utility account with the City, including, but not limited to, the damage of the structure located on Property, if any, damage to Property, and all other claims that relate thereto, whether arising out of contract, tort, or constitutional law, including any loss or damage to personal property, loss of income or rents and loss of use of Property.

Polaris hereby certifies that it has made this settlement and executed this Release with the understanding that it is giving up and releasing its right to bring suit or other claims against the City, including its officers, agents, employees, insurers, successors, contractors and agents for monetary damages, or otherwise, now or in the future, with respect to the alleged overcharging on the Property's storm

sewer utility account with the City, described herein or any matters related thereto or arising therefrom.

Polaris further covenants and agrees not to institute, maintain, collect, or proceed against the City, or its officers, agents, employees, insurers, successors, contractors and/or agents, individually or as a member of any class, any claims referred to herein, or that otherwise arise out of or relate to, in whole or in part, any subject or matter covered by this Agreement.

3. **NO ADMISSION OF LIABILITY OR WRONGDOING.** Polaris and the City agree that payment referred to in Section 1 of this Agreement is intended to resolve disputed claims and obtain peace from litigation and is not an admission of any past or present liability or wrongdoing by the City or any employee of the City. The City denies and continues to deny any allegation that it overcharged Polaris for storm sewer utilities. Furthermore, the Settling Parties agree that the making of this Agreement does not constitute an adjudication in favor of any party, nor shall this Agreement constitute or be construed as evidence that any party has prevailed in this matter.
4. **ADEQUATE CONSIDERATION.** Polaris agrees and acknowledges that it has reviewed the terms of this Agreement and that it voluntarily accepts payment of the sum of fourteen thousand five hundred forty-six dollars and sixteen cents (\$14,546.16) as full, complete, final, and binding compromise of matters involving disputed issues, regardless of whether too much or too little may have been paid. Polaris further agrees and acknowledges that no further amounts will be paid to compensate it for the overpayment allegations articulated in paragraph 3 of the Recitals to this Agreement by the City, or any City officers, agents, employees, insurers, successors, contractors and/or agents.
5. **AUTHORITY TO EXECUTE AGREEMENT.** Each party represents and warrants that this Agreement has been duly authorized, executed, and delivered by it; that the undersigned representatives are duly authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a

valid and binding obligation, enforceable against the parties, its successors, and assigns in accordance with its terms.

6. **AMENDMENT OF AGREEMENT.** This Agreement may be amended, modified, and supplemented only by a written instrument signed on behalf of each of the Settling Parties.
7. **ASSIGNMENT.** This Agreement shall be binding and insure to the benefit of the Settling Parties and their respective successors and permitted assigns, provided however, that no right, privilege, or obligation arising under this Agreement is assignable by any Settling Party without the prior written consent of the other Settling Party. The Settling Parties, as of the effective date of this Agreement, represent and warrant that they have not assigned or transferred to any other person (natural person or otherwise), any claim or portion thereof or interest therein that is released by this Agreement.
8. **GOVERNING LAW.** This Agreement shall be deemed to have been made in the State of North Dakota. This Agreement and the rights of the parties hereunder, shall be governed by and construed according to the substantive law of the State of North Dakota without regard to conflicts-of-laws principles that would require the application of any other law.
9. **EFFECTIVE DATE.** This Agreement shall become effective immediately following the execution by each of the parties.
10. **COUNTERPARTS.** The Settling Parties may execute this Agreement in counterparts. Each counterpart shall be deemed an original, but all counterparts collectively shall constitute only one instrument. Delivery of executed signature pages in one or more counterparts shall be sufficient to render this Agreement effective.
11. **SEVERABILITY.** In the event any paragraph of this Agreement, or any sentence within any paragraph, is declared by a court to be void or unenforceable, such paragraph or sentence shall be deemed severed from the remainder of this Agreement and the remainder of this

Agreement shall remain in full force and effect.

12. **ATTORNEY REPRESENTATION.** The Settling Parties acknowledge that they have the opportunity to be represented by counsel in connection with this Agreement, any claimed ambiguities in this Agreement, and any transactions contemplated hereby.

13. **NOTICE.** Any notices, requests, demands, or other communications provided for by this Agreement shall be sufficient if in writing and personally delivered or sent by certified U.S. Mail, return receipt requested, to the following:

a. If to the City: City Finance Department, P.O. Box 5006, Minot, ND 58701 (Attention: Finance Director)

b. If to Polaris Limited Partnership PO Box 1445, Minot ND 58702

Any Settling Party may modify its address from time to time by delivering notice to the others pursuant to this paragraph.

14. **ENTIRE AGREEMENT.** The Recitals are substantive and are incorporated as material terms of this Agreement.

This instrument contains the entire understanding of the Settling Parties with respect to its subject matter. There are no terms, conditions, promises, warranties, or covenants other than those expressly set forth in this Agreement. This Agreement supersedes all prior negotiations, representations, agreements and understandings, written or oral, between the Settling Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the Settling Parties to this Agreement or their respective successors or assigns.

Dated: \_\_\_\_\_

CITY OF MINOT – MAYOR

a North Dakota Municipal

Corporation

\_\_\_\_\_  
By: Shaun Sipma

Mayor

CITY OF MINOT – FINANCE DIRECTOR

a North Dakota Municipal

Corporation

By: David Lakefield  
Finance Director

State of North Dakota )

)ss

County of Ward )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me a notary public within and for said county and state personally appeared Shaun Sipma, Mayor of the City of Minot, and David Lakefield, Finance Director for the City of Minot, known to me to be the persons who are described in and who executed the foregoing document as their free act and deed.

\_\_\_\_\_

Notary Public

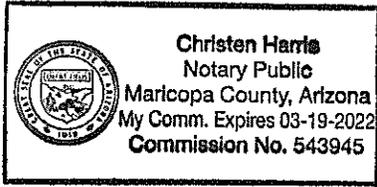
Dated: 10-22-18



Polaris Limited Partnership  
Authorized Representative

On this 22 day of October, 2018, before me a notary public within and for said county and state personally appeared Donald Dewson, a representative authorized to sign the Release and Settlement on behalf of Polaris Limited

Partnership, known to me to be the persons who are described in and who executed the foregoing document as their free act and deed.



*Christen Harris*  
\_\_\_\_\_  
03/19/2022  
Notary Public