

# LEASE AGREEMENT

This Lease is effective the first day the property is acquired by the Lessor by and between:

LESSOR: Minot State University Development Foundation, a nonprofit corporation  
500 University Avenue West  
Minot, North Dakota 58701-0001

LESSEE: Dakota College at Bottineau  
105 Simrall Blvd.  
Bottineau, ND 58318

1. **PROPERTY:** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the following described real property located in Ward County, North Dakota commonly known as “120 Burdick Expressway East” (the “**Property**”):

**Lot 7 LESS the South 75’ of the West 50’ thereof and Lots 8, 9, 10 and 11, Block 1,  
Ramstad’s Fourth Addition to the City of Minot**

The Property shall include all buildings and improvements situated upon the Property (the “**Improvements**”). Unless indicated otherwise, all references to the Property shall be deemed to refer to the Property and all Improvements. Lessee has examined the Property and Lessee hereby accepts the Property in its present condition.

2. **TERM:** The initial term of this Lease shall be for approximately ten (10) years commencing on first day that Lessor has acquired title to the Property and expiring on a date ten years following the issuance of a certificate of occupancy following completion of all renovations by the Lessee unless sooner terminated as provided by this Lease.

2.1. **Renewal.** Following the initial term, this Lease will automatically renew for successive one-year periods (each a “**Renewal Term**”) unless Lessor or Lessee notify the other party, in writing, of its election not to renew at least sixty (60) days prior to the end of the then-current term. Each Renewal Term shall be upon all the same terms and covenants as for the preceding term, except that the parties shall negotiate a rental fee for each Renewal Term prior to the beginning of each Renewal Term. The rental fee shall not increase by an amount greater than one percent (1%) for each year the lease has been in effect.

3. **RENT:**

3.1. **Base Rent.** Lessee covenants and agrees to pay to Lessor, without deduction or setoff of any kind, as base rental for use of the Property, the sum of Six Thousand Dollars (\$6,000.00) per year, in monthly installments of Five Hundred Dollars (\$500.00) due and payable in advance on first day of the month following the month in which the certificate of occupancy is issued and on the first day of each month thereafter during the term of this Lease.

3.2. **Additional Rent.** Lessee covenants and agrees to pay Lessor as additional rent (“Additional Rent”) an amount equal to Lessor’s cost to provide liability insurance for the Lessor on the Property and Improvements. Lessor shall obtain a general liability policy in the amount of \$2,000,000.00 or such greater or lesser amount as Lessor shall determine is appropriate to cover Lessor’s liability risk. Lessor shall submit to Lessee an invoice for the actual cost of such liability coverage on an annual or more frequent basis. Lessee shall pay the amount of the invoice within 30 days of receipt of the same.

3.3. **Additional Payments.** It is expressly understood and agreed that the rent provided for under this Lease shall be absolutely net to Lessor throughout the term of this Lease free of any and all real estate taxes, costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Property, it being the intent of the parties that by execution of this Lease, Lessee assumes every obligation with respect to the Property which the ownership thereof would entail and which, but for this Lease, would be borne by Lessor. Therefore, as additional rent for use of the Property, Lessee shall promptly pay:

3.3.1. **Renovation, Repairs and Alterations.** Landlord and Tenant acknowledge that Tenant will be remodeling and renovating the Property and Improvements for use as a CTE center. Tenant shall be in complete control of any and all renovation, construction, remodeling, repair and replacement of any kind or nature on the Property and shall pay all costs and expenses of any kind or nature associated with such renovation, construction, remodeling, repair and replacement. Neither Landlord’s consent nor approval shall be required for any work done on the premises by the Tenant. Tenant shall perform all work on the Property in a good and workmanlike manner with appropriate materials and equipment and shall insure that no liens or claims by contractors, subcontractors, workers or materials are asserted or filed against the Property.

3.3.2. **Operating Expenses.** Lessee shall pay all Operating Expenses (as defined by this Lease) incurred with respect to the Property and any buildings or improvements thereon. The term “Operating Expenses” shall mean all costs and expenses of every kind and nature whether paid or incurred by Lessee or the Lessor with respect to the operation and maintenance of the Property such as (without limitation) repairs, replacements and maintenance of the buildings, structures, parking areas, landscaping, signage or lighting located upon the Property, all snow removal, lawn care, trash removal, landscaping, lighting.

3.3.3. **Utilities.** Lessee shall pay all charges for gas, electricity, water, sewer, telephones and internet services, alarm system monitoring, janitorial, garbage collection or other sanitary services and any other utilities supplied to the Property.

- 3.3.4. **Property Taxes.** The parties anticipate that the Property and Improvements will be “tax exempt” during the term of this Lease. Notwithstanding that anticipation, Lessee shall pay all real estate taxes and installments of special assessments levied against the Property before any fine or penalty is added for non-payment.
- 3.3.5. **Insurance.** Lessee shall obtain and maintain, at its expense, insurance coverage as required by section 12 of this Lease.

4. **USE:** The Property shall be exclusively occupied and used by Lessee for the sole purpose of operating a Career and Technical Education Center (“**CTE Center**”) operated by Lessee. Lessee’s operations shall comply with all federal, state and municipal laws and regulations governing such activities. If Lessee uses the Property for any purpose which causes the accessibility or other requirements of the Americans With Disabilities Act (“**ADA**”) or the rules and regulations thereunder to be applicable to the Property or any building or improvement thereon, Lessee agrees, at Lessee’s expense, to pay for any modification to the Property or any building or improvement thereon imposed by the ADA or the rules and regulations thereunder. Lessee shall not use or occupy or permit the use or occupancy of the Property or any part thereof for any purpose other than the sole purpose set forth herein nor shall Lessee permit the premises to be used in any unlawful manner or for any illegal purpose or in such a manner as to constitute a nuisance or violate the terms and conditions of any laws, rules, regulations and ordinances of applicable governmental authorities and their agencies or in any manner which would cause the Property or Improvements to be subject to property taxes.

4.1. **Reporting.** During the term of the Development Agreement, Lessee will provide to Lessor and to the City of Minot, quarterly status reports on January 10, April 10, July 10 and October 10 of each year. Said reports shall include: (i) the number of programs offered at the Center and a description of each program; (ii) the total number of students enrolled at the Center and the number of students in each program; (iii) the number of full-time and part-time employees employed at the Center; and (iv) such other information and documentation concerning the operation of the Center as the Lessor may reasonably require.

5. **REPAIRS AND ALTERATIONS:**

5.1. **General.** Throughout the term of this Lease or any extension thereof, Lessee will keep and maintain the Property and all appurtenances and improvements including (but not limited to) buildings, fixtures, facilities, equipment, sidewalks, curbs, gutters, parking areas, entrances, plumbing systems, electrical systems, ventilating systems, heat and air conditioning system, glass and windows, doors, ceilings, walls, floors, alarm/monitoring systems, etc. in a good state of repair and keep them free from waste or nuisance of any kind. Lessee shall, at its expense, remove the snow and ice from the sidewalks on the Property and shall keep the landscaping in good condition and repair. Lessee further agrees to deliver up and surrender to Lessor possession of the Property upon the expiration or other termination of this Lease in as good condition as when taken, ordinary wear and tear excepted. Lessee shall promptly report any defective condition to Lessor, in writing.

5.1.1. **Alterations and Improvements After Initial Remodel/Renovation.** After the Property has been remodeled and renovated by the Lessee, Lessee shall make no significant alterations in or additions or improvements to the Property (structural or otherwise) without the written consent of Lessor. In the event any permitted alterations, additions, or improvements in or to the Property are made by Lessee, Lessee covenants and agrees that Lessee will make all such alterations, additions or improvements to the Property at Lessee's own expense. In making such alterations, additions or improvements, Lessee shall cause such work to be done in a good workmanlike manner, with materials of equal quality to those now comprising the buildings or improvements on the Property, and without impairing the esthetic qualities, structural integrity or soundness of the buildings or improvements on the Property. Any such alterations, additions, or improvements shall also comply with all applicable laws and ordinances pertaining to such work and/or such use or occupancy. Any additions, alterations or improvements made by Lessee shall be done so in a good and workmanlike manner and shall become and remain part of the Property and remain the property of the Lessor upon termination of this Lease.

5.2. **Signs.** Lessee shall have the right to install and erect signs inside or outside the Property in conformity with local ordinances without the Lessor's consent or approval. Lessee shall have the right to remove any such signs provided that any damage caused by the erection and removal of such signs shall be repaired by Lessee at Lessee's expense.

5.3. **Trade Fixtures.** Lessee shall have the right to remove all Lessee's trade fixtures, furnishings and other personal property provided that the removal of such items shall be affected before expiration of the term of this Lease and all damage caused to the Property by such removal shall be repaired by Lessee at Lessee's expense. Subject to other provisions of this Lease, all Lessee's property not removed from the Property upon vacation or abandonment of the Property, expiration of the Term of Lease, or within fourteen (14) days of the termination of this Lease, for any cause whatsoever, shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Lessor without notice to Lessee or any other person and without obligation to account therefor and Lessee shall pay Lessor upon demand for all expenses incurred in connection with the disposition of such property.

## 6. **SUBORDINATION:**

6.1. **Subordination to Development Agreement.** Lessee acknowledges that Lessor's ownership of the Property is subject to certain terms and conditions contained in an agreement by and between Lessor and the City of Minot, North Dakota (the "**Development Agreement**"). A copy of the Development Agreement shall be attached to this Lease as Exhibit A. It is understood and agreed that the terms of the Development Agreement shall supplement those of this Lease while such Development Agreement is in effect and that this Lease is subordinated to the terms and conditions of said Development Agreement. This subordination shall be self-operative and no further instrument of subordination shall

be required. Lessee shall, nevertheless, execute and deliver, from time to time, all instruments and certificates affirming and confirming such subordination that Lessor or the City may reasonably request. During the term of the Development Agreement and any extensions thereof, the City of Minot, North Dakota (the “City”) shall be a third-party beneficiary of this Lease.

6.2. **Subordination to Mortgages.** Lessee acknowledges that Lessor may desire to place a mortgage upon all or part of the Property and the buildings and improvements thereon. It is understood and agreed that the mortgagee may require that this Lease be subordinated to said mortgage, in which event Lessee agrees to execute any document required by such mortgagee to evidence such subordination *provided*, however, that the mortgagee shall covenant, in writing, that the Lessee’s interest under this Lease shall not be foreclosed in any action brought under such mortgage or in the event of the sale of the Property as a result of said action if at the time of bringing an action to foreclose or the time of said sale Lessee is not in default. It is further understood that the mortgagee may require Lessee to attorn to any purchaser of the Property in the event that the same is sold through foreclosure proceedings, Lessee agrees to waive any and all right to treat such foreclosure proceedings as a breach by Lessor.

7. **LIENS:** Lessee shall promptly pay and discharge all bills for labor and materials employed and used in the making of repairs and improvements upon the Property and shall not permit any lien(s) to be filed against the Property for work done or materials furnished Lessee. Should any lien(s) attach to the Property, Lessee shall, at its own cost and expense, within sixty (60) days after actual or constructive notice of such lien, cause any such lien(s) to be discharged or provide Lessor with a bond or other security to indemnify and hold harmless Lessor from any loss or expense therefrom, in amount and form acceptable to Lessor and Lessor. No provision hereof shall prevent Lessee from contesting any such lien, provided Lessee shall indemnify, defend and hold harmless the Lessor from any expense thereof and cause any such lien to be discharged prior to any foreclosure sale with respect to the enforcement thereof.

7.1. **Notice.** Lessee shall, at all times during its occupancy of the Property, post the following notice in a conspicuous place or places on the Property:

**NOTICE TO ALL CONTRACTORS, REPAIRMEN  
AND OTHERS PROVIDING SKILLS, LABOR OR  
MATERIALS TO THE IMPROVEMENTS OF THE PROPERTY:**

**This is a leased property. The owner of this property has not, and will not approve any improvements or repairs without prior receipt of a valid lien waiver from the person or company providing any skill, labor or materials. Any improvements made to this property are made at the instance of the Lessee, and not at the instance of the owner. This property shall not be subject to lien by any person providing such skill, labor or materials pursuant to the provisions of N.D.C.C. chapter 35-27.**

8. **CONDEMNATION AND CASUALTY:**

8.1. **Lessee's Property.** All trade fixtures, equipment, inventory and other personal property belonging to the Lessee, Lessee's agents or Lessee's guests, located in or about the Property, shall be at the sole risk of Lessee. Lessor shall not be liable for the theft or misappropriation, nor for any damage or injury thereto, nor for any damage or injury to Lessee, any of Lessee's officers, agents, employees, licensees, or other persons, or any property caused by fire, explosion, wind, water, rain, snow, frost, steam, gas, electricity, any acts of God, heat or cold, or by any act or neglect of any other Lessee or any person provided, however, Lessor shall not be relieved of liability for the negligence, intentional wrongful acts or omissions of Lessor, its agents and employees.

8.2. **Damage to or Destruction of Property.** If during the term of this Lease, the Property is destroyed or damaged in whole or in part by fire or other casualty (even if only part of the building other than the Property is damaged), Lessee shall promptly report such damage to Lessor in writing. Lessee shall promptly and diligently repair the Property and Lessor shall assign to Lessee any interest Lessor may have in insurance proceeds to accomplish such repair, unless the Lease is terminated as hereinafter provided. To the extent the Property is not useable for its intended purpose, rent shall be equitably abated until such repairs and restoration are made, or until the Lease is terminated as hereinafter provided; further provided, however, that if such fire or other casualty is caused by the fault or negligence of Lessee, its employees or agents, Lessee shall not be entitled to any such abatement. If the Property, or any part thereof is destroyed or damaged and the costs of repair or reconstruction are reasonably estimated to exceed the insurance proceeds paid or payable as a result of such damage or destruction, Lessor may, within ninety (90) days of such damage or destruction, elect to terminate this Lease by delivering written notice of termination to the Lessee.

8.3. **Eminent Domain.** If any part of the Property shall be taken or condemned by eminent domain or sale in anticipation thereof and such condemnation or sale renders the Property unsuitable for the business of Lessee, the term of this lease shall cease and terminate as of the date title to the Property vests in the condemning authority. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Property, shall be the property of the Lessor, whether awarded as compensation for diminution in the value of the leasehold or to the fee of the Property or otherwise, and Lessee hereby assigns to Lessor all of Lessee's right, title and interest in and to any and all such compensation; *provided*, however, that Lessor shall not be entitled to any award properly belonging to Lessee, including, but not limited to, an award for the taking of Lessee's trade fixtures or furniture.

9. **DEFAULT:**

9.1. **Events of Default.** The following shall constitute events of default for purposes of this Lease:

- (a) Lessee defaults in payment of rent, any additional charge or amount to be paid by Lessee as provided in this Lease and such default shall continue uncorrected for a period of ten (10) days after written notice to the Lessee.
- (b) Lessee defaults in the prompt and full performance and observance of any of the terms and conditions of this Lease to be performed or observed by Lessee not relating to the payment of money and such default continues uncorrected for a period of thirty (30) days after written notice to the Lessee. If such default cannot be reasonably corrected within thirty (30) days, then Lessee shall have commenced correction of such default in good faith.
- (c) Lessee violates any of the terms and conditions of the Development Agreement and such default continues uncorrected for a period of thirty (30) days after written notice to the Lessee. If such default cannot be reasonably corrected within thirty (30) days, then Lessee shall have commenced correction of such default in good faith.
- (d) Lessee abandons or vacates the Property or a substantial portion thereof.
- (e) Any execution, attachment or other order shall be issued upon or against Lessee's interest in the Property and shall continue for a period of thirty (30) days after Lessee has notice of such condition.
- (f) Lessee becomes insolvent or makes a transfer in fraud of its creditors or an assignment for the benefit of its creditors.
- (g) Lessee files a petition under any section or chapter of the Federal Bankruptcy Act as amended, or under any similar law or statute of the United States or any state thereof or Lessee is adjudged bankrupt or insolvent.
- (h) A receiver or trustee is appointed for all or substantially all of the assets of Lessee.

9.2. **Lessor's Right Upon Default.** All rights, powers and privileges conferred upon the parties shall be cumulative of, but not restrictive to, those given by law. Accordingly, upon occurrence of an event of default, in addition to all rights and remedies allowed by law and equity, Lessor may, with or without further notice, terminate this Lease and Lessee's right to possession of the Property hereunder.

9.3. **Optional Performance by Lessor.** In addition to, but without limitation or qualification of any other right or remedy of the Lessor, should Lessee default in the performance of any covenant, condition or stipulation contained in this Lease (except those pertaining to the payment of rent or other sums), the Lessor may after thirty (30) days written notice to Lessee or without notice if, in the Lessor's opinion an emergency exists, perform the same for the account and at the expense of Lessee. The rights granted Lessor

pursuant to this section shall be permissive only and shall not be construed as requiring Lessor to perform any condition or covenant or correct any default.

9.4. **Termination.** Upon termination of this Lease, Lessee shall surrender possession and vacate the Property immediately and Lessor may enter into and repossess the Property with or without process of law and remove all persons and property therefrom in the same manner as if this Lease had not been made. For purposes of such entry and repossession, Lessee waives any notice provided by law or otherwise. In addition to the foregoing, Lessor may remove from the Property any and all property found therein without such repossession releasing Lessee from Lessee's obligations to pay sums required by this Lease.

9.5. **Lessee's Property.** Any and all property removed from the Property by Lessor may be handled, removed, stored or otherwise disposed of by Lessor, at Lessee's risk and expense, and Lessor shall in no event be responsible for the preservation or safekeeping thereof. Upon demand made by Lessor, Lessee shall pay any and all expenses incurred in connection with such removal and all storage charges against such property so long as the same shall be Lessor's possession or under Lessor's control. Any property remaining on the Property or in the possession of Lessor not retaken by Lessee within ten (10) days after written notice to Lessee shall be conclusively deemed to have been abandoned by Lessee.

9.6. **Force Majeure.** In the event Lessor or Lessee is delayed, hindered or prevented from performing any act or thing required hereunder, except for payment of monies, by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, pandemics, epidemics, acts of God, or other causes beyond the reasonable control of Lessor or Lessee, neither party shall be liable for the delay, and the period for the performance by either party shall be extended for a period equivalent to the period of such delay, *provided* that the party entitled to such extension shall give prompt notice to the other party of the occurrence or event.

## 10. **ASSIGNMENT:**

10.1. **Assignment by Lessee.** The Lessee may not, voluntarily or involuntarily, assign, encumber or sublet all or any part of the Property or any interest Lessee may have under this Lease without the prior written consent of Lessor. Any attempt to assign, encumber or sublet all or any part of the Property or any interest Lessee may have under this Lease without the prior written consent of Lessor shall be null and void. If the Development Agreement is then in effect, the prior written consent of the City shall also be required. In the event of any such permitted assignment or subletting, Lessee shall remain liable for the performance of all of the conditions and covenants on the part of Lessee to be performed under this Lease unless Lessor otherwise expressly consents in writing. Any assignment on the part of Lessee pursuant to this Lease shall be upon the express condition that the assignee shall, in consideration of such assignment, agree to assume, perform and be bound by all the terms, obligations and conditions on the part of Lessee under this Lease and that a copy of such executed assignment shall be delivered to Lessor within ten (10) days after



its execution. If the Development Agreement is then in effect, a copy of the assignment shall also be delivered to the City within ten (10) days after its execution.

10.2. **Assignment by Lessor.** In the event of any transfer of title to the Property by Lessor, the Lessor shall be freed and relieved from and after the date of such transfer and conveyance of all liability with respect to performance of any covenants or obligations on the part of Lessor contained in this Lease. Without further agreement or notice to Lessee, the transferee of such title shall be deemed to have assumed and agreed to observe and perform all obligations of the Lessor under this Lease during the transferee's ownership of the Property. Lessor may transfer Lessor's interest in the Property without the consent of Lessee and such transfer or subsequent transfer shall not be deemed a violation of Lessor's obligations under the terms of this Lease.

11. **ENTRY BY LESSOR:** Lessor reserves the right to enter the Property during normal business hours or at any time in case of emergency for the purpose of examining, repairing and protecting the Property or for the purposes of evaluating compliance with the terms of this Lease and/or the Development Agreement. During the last six (6) months of the term of this Lease, Lessor may enter the Property for the purpose for the purpose of exhibiting the Property to prospective Lessees.

12. **INSURANCE:**

12.1. **Casualty Insurance.** Lessee shall, at its sole cost and expense but for the mutual benefit of Lessor and Lessee as named insureds or Lessor as an additional insured, through an insurance company agreeable to Lessor or through the state of North Dakota's Risk Management Fund or through other "self-insurance" accepted by the Lessor in writing, keep the Property insured during the term of this Lease against loss or damage by fire and other risks embraced by coverage of the type now known as the broad form of extended coverage, in an amount not less than Four Million Six Hundred Thousand Dollars (\$4,600,000.00). Except as otherwise provided by this Agreement, the Development Agreement or otherwise agreed by the City, in writing, any insurance proceeds paid to the Lessee and/or the Lessor as a result of damage or destruction of the Property or Improvements shall be used to repair, rebuild and restore the Property. Lessee shall also, at its sole cost and expense, obtain and maintain during the term of this Lease insurance to cover physical loss of Lessee's personal property on the Property in amounts sufficient to cover Lessee's interest. Lessee expressly waives any right of recovery against the Lessor for any and all liability and expense for loss, damage or destruction of Lessee's property resulting from perils ordinarily covered by standard fire insurance policies notwithstanding that such damage may be due to the negligent acts or omissions of Lessor, Lessor's agents or employees.

12.2. **Liability Insurance.** Lessee at its sole cost and expense shall maintain insurance through the State Risk Management Fund as required or provided for by state statute. Lessor shall, for the benefit of Lessor, maintain:

- (a) comprehensive general liability insurance on an occurrence basis against claims for personal injury, including without limitation, bodily injury, death or property damage, occurring upon, in or about the Property and adjoining sidewalks, streets, and passageways, such insurance to afford immediate protection, at the time of the inception of this Lease, and at all times during the term of this Lease, having limits of not less than Two Million Dollars (\$2,000,000.00) for injury to all persons in any one incident and/or damages caused to all property in any one incident; and
- (b) public liability insurance on an occurrence basis against claims for personal injury, including without limitation, bodily injury, death or property damage, occurring upon, in or about the Property and adjoining sidewalks, streets, and passageways, such insurance to afford immediate protection, at the time of the inception of this Lease, and at all times during the term of this Lease, having limits of not less than Two Million Dollars (\$2,000,000.00) for injury to all persons in any one incident and/or damages caused to all property in any one incident.

Lessor's cost of such insurance shall be invoiced to Lessee as Additional Rent as provided for in Paragraph 3.2, above.

**12.3. Mandatory Provisions.** All policies of insurance required by this Lease:

- (a) shall specifically designate Lessor as an additional insured;
- (b) shall contain an agreement by the insurer that such policy will not be canceled without at least ten (10) days' prior written notice by certified mail to Lessor;
- (c) may be provided under a blank policy of insurance or by a combination of primary, excess, and umbrella policies; provided, however that (i) those policies must be absolutely concurrent in all respects regarding the coverage afforded by the policies, (ii) the coverage of any excess or umbrella policy must be at least as broad as the coverage of the primary policy, and (iii) the coverage afforded to Lessor hereunder shall in no way be limited, diminished, or reduced under such blanket policy or policies.
- (d) shall be self-insurance specifically agreed to in writing by the Lessor, or insurance issued by an insurer of recognized responsibility which is authorized to write insurance in the State of North Dakota and has current AM Best rating of no less than A or is otherwise acceptable to Lessor; or is provided by the state of North Dakota's Risk Management Fund..

**13. INDEMNIFICATION:** Lessee agrees that Lessor shall not be liable for any use to which the Property is put or any damage either to person or property due to injury, loss of life, loss or damage to or total destruction of property resulting from such use.

14. **ESTOPPEL CERTIFICATE:** Lessee will execute, acknowledge and deliver to Lessor, upon request, a certificate certifying:

- (a) This Lease is unmodified and in full force and effect or, if there have been modifications, that the Lease is in full force and effect as modified;
- (b) The dates on which basis rent and additional sums payable under this Lease have been paid; and
- (c) No notice has been received by Lessee of any default which has not been cured. It is the intent of the parties that any such certificate may be relied upon by any prospective purchaser or mortgagee of the Property or any part thereof.

15. **WAIVER:** Neither the failure on the part of Lessor or Lessee to enforce strictly all of the terms and provisions of this lease, nor acceptance of rent by Lessor, or payment of rent by Lessee, after breach by Lessee or Lessor, as the case may be, of any covenant or condition herein contained, nor any delay on the part of either party to enforce strictly the terms and provisions hereof shall operate as, or be deemed to be, a waiver of any rights or remedies which, under the terms of this lease or by law, may accrue to a party by reason of any subsequent breach of the terms and conditions hereof by the other party.

16. **NOTICES:** The parties can be notified by certified or registered mail or overnight delivery service with verification of delivery as follows:

<b>Lessor</b>	<b>Lessee</b>
Minot State University Development Foundation Attn: Rick Hedberg 500 University Ave. W. Minot ND 58707 (701) 858-3399	Dakota College at Bottineau 105 Simrall Blvd. Bottineau, ND 58318 <hr/> Telephone

17. **CAPTIONS:** The titles and headings of this Lease are for convenience and reference only and shall not in any way be deemed a part of this Lease for the purpose of construing or interpreting the meaning thereof, or for any other purpose.

18. **RELATION OF PARTIES:** Nothing in this Lease shall cause Lessor to be construed as a partner, or joint venturer with Lessee, or otherwise associated with Lessee in the operation of any business located upon the Property.

19. **GOVERNING LAW:** This Lease shall be governed and interpreted under the laws of the State of North Dakota.

20. **BINDING EFFECT:** The terms, provisions, covenants and conditions of this Lease shall apply to, inure to the benefit of, and be binding upon the parties and their respective successors in interest, legal representatives and assigns unless otherwise expressly provided in this Lease.

21. **JOINT DRAFTING:** This Lease is the product of negotiation and preparation by and between the Lessor and Lessee and their respective attorneys. Accordingly, both parties shall be conclusively presumed to have jointly drafted this Lease, which shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

22. **SEVERABILITY:** If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect. Further, the parties agree that this Lease shall be reformed to replace any such stricken provision(s) or part(s) with a valid and enforceable provision that comes as close as possible to expressing the intention of the provision or part stricken.

23. **ENTIRE AGREEMENT:** This Lease, including the exhibits or other writings referred to herein or delivered pursuant hereto, contains the entire agreement and understanding between Lessor and Lessee relating to the leasing of the Property and obligations of Lessor and Lessee. This Lease supersedes any and all prior or contemporaneous agreements and understandings between Lessor and Lessee, and shall not be modified or amended unless Lessor and Lessee consent in writing. If the Development Agreement is then in effect, the consent of the City shall also be required.

24. **COUNTERPARTS:** This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signatures by facsimile, .pdf document or other electronic means shall be as effective as delivery of original signatures.

**END OF PAGE**

**LESSOR:**

Minot State University Development  
Foundation, a nonprofit corporation

\_\_\_\_\_

By: Rick Hedberg

its: Executive Vice President

**LESSEE:**

Dakota College at Bottineau

\_\_\_\_\_

by \_\_\_\_\_

STATE OF NORTH DAKOTA            )  
COUNTY OF WARD                    )

The foregoing Lease Agreement was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_ by Rick Hedberg, Executive Director of the Minot State University Development  
Foundation, a nonprofit corporation.

\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA        )  
COUNTY OF \_\_\_\_\_)

The foregoing Lease Agreement was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_ on behalf of Dakota College at Bottineau.

\_\_\_\_\_  
Notary Public

**EXHIBIT**  
**A**

**DEVELOPMENT AGREEMENT**

This agreement is made effective \_\_\_\_\_, 2021 by and between:

**MINOT STATE UNIVERSITY DEVELOPMENT FOUNDATION**

a North Dakota nonprofit corporation  
500 University Ave W  
Minot, ND 58707-0001

and

**CITY OF MINOT**

a North Dakota Municipal Corporation  
PO Box 5006  
515 2nd Avenue SW  
Minot, North Dakota 58702-5006

**RECITALS**

- A. Career and Technical Education Centers (CTEs) promote economic development and enhance the economic climate of the communities in which they are located by helping to prepare students to enter the workforce, retaining human talent and resources in the community, assisting the recruitment to and retention of businesses in the community, providing opportunities for training the incumbent workforce and providing the communities in which they are located with resources to more quickly adapt to changing workforce needs, thereby diversifying the local economy and increasing the welfare and prosperity of the people who live and work there.
- B. Despite its status as one of North Dakota’s 10 largest cities, the City of Minot (the City) currently lacks a post-secondary CTE. For the reasons identified above, location and operation of a post-secondary CTE in the City would promote the general welfare, security and prosperity of the City, its inhabitants and surrounding communities.
- C. Minot State University Development Foundation (the Foundation) is a nonprofit corporation established to promote and stimulate financial support for the benefit of Minot State University and address the long-term priorities of the university.
- D. Dakota College at Bottineau (Dakota College) is a public college offering Associate of Applied Science programs in a variety of areas including (but not limited to) accounting technology,

bookkeeping, finance, human resource management, small business management, information technology, web design, paraprofessional education, medical assistant, paramedic technology, etc.

- E. Although its main campus is located in Bottineau, North Dakota, Dakota College is an affiliate campus of Minot State University and its operations are overseen by the Minot State University President. Through the sharing of facilities, technology and faculty, Dakota College offers 1-year and 2-year Career and Technical Programs in Minot, thereby benefitting the entire Minot region. Those programs also enable students who choose to earn a Bachelor's degree to make a seamless transition to Minot State University.
- F. Operation of a CTE Center is an enterprise (i.e. a project or undertaking that is especially difficult, complicated, or risky, or a systematic purposeful activity). Dakota College has the technology, faculty and resources to undertake that enterprise and operate a CTE Center at the Property under a lease with the Foundation.
- G. Article 3 of the City of Minot's Home Rule Charter authorizes the City to control its finances and fiscal affairs and engage in any utility or enterprise permitted by the constitution or not prohibited by statute.
- H. Minot City Ordinance Section 28.5-103 imposes a one percent (1%) sales tax. Minot Ordinance Section 28.5-108 dedicates a portion of sales tax proceeds to economic development.
- I. Minot City Ordinance Section 32-2 authorizes the City to donate money from city sales tax proceeds and/or other funds to certain private and/or nonprofit entities for the enhancement and improvement of community facilities or other enterprise activities that meet criteria established by the City for promotion or economic benefit, promotion of the City of Minot as a trade, service, recreation, tourism or manufacturing center, and other purposes.
- J. On September 18, 2020 the MAGIC Fund Steering Committee recommended approval of an \$800,000.00 grant to be used to purchase 120 Burdick Expressway East (the Property) in Minot, North Dakota (the Grant) for the operation of a CTE Center at the Property. The Grant constitutes less than twenty-five percent of the \$4.2 million it is estimated will be necessary to acquire and remodel the Property, equip, staff and commence operation of a CTE Center at the Property.
- K. The Foundation is willing to accept and utilize the grant proceeds to acquire the Property for the purpose of operating a CTE Center at that location (the Center). The Foundation is also

willing to enter into a lease agreement with Dakota College for the purpose of rehabilitating and operating the Center at the Property.

- L. After rehabilitation of the Center at the Property, the parties estimate that the operator of the Center will initially be able to offer 3 programs for approximately 50 students at the Center. The Center will also require instructors, an onsite manager, administrative staff support and part-time staff jobs employed by the operator of the Center. As the number of programs offered increases, both the student population and the number of full-time and part-time employees at the Center is also expected to increase.

**NOW, THEREFORE**, in consideration of the Parties' promises and other valuable consideration, the receipt and adequacy of which are acknowledged by each Party, the City and the Foundation **AGREE**, as follows:

1. **THE GRANT (\$800,000.00)**. The City agrees to extend a grant to the Foundation in the amount of Eight Hundred Thousand Dollars (\$800,000.00) (the "Grant") subject to the following conditions, all of which shall be satisfied unless waived by the City, in writing:
  - 1.1. The execution and delivery of this Agreement by the Foundation and consummation of the transactions contemplated herein shall have been duly authorized by all requisite action on the part of the Foundation and this Agreement shall constitute a valid and binding agreement of the Foundation in accordance with its terms.
  - 1.2. The Foundation shall be and remain duly qualified to do business in the State of North Dakota and have the power and authority to fully perform its obligations under this Agreement.
  - 1.3. Grant proceeds shall be exclusively used to purchase the Property, which shall be used for the sole purpose of operating the Center as provided by this Agreement and the grant shall be funded directly to the closing agent which is closing the purchase of the Property.
  - 1.4. The Foundation shall comply with federal, state, and local laws applicable to the Property, including, but not limited to, regulations, rules, ordinances, codes and decrees.
2. **OPERATION OF THE CENTER**.
  - 2.1. The Foundation (or its Lessee under the terms of its Lease) commits to continue operation of the Center at the Property for a period of not less than ten (10) years after the earlier of (a) 1<sup>st</sup> day of the month following the date a certificate of occupancy is issued for the Center at the Property or (b) September 1, 2023 (the "Use Commencement



Date”). Failure of the Foundation (or its Lessee under the terms of its Lease) to continue operation of the Center at the Property for at least ten (10) years from the Use Commencement Date will be deemed to be a material breach of the terms and provisions of this Agreement. A memorandum of this Agreement, in a form acceptable to the City, shall be filed in the office of the Ward County Recorder by the City.

- 2.2. The Foundation (or its Lessee under the terms of its Lease) assumes sole responsibility for the condition, operation, maintenance and management of the Property or the Center. The City’s sole obligation under this Agreement is distribution of the Grant funds to the Foundation. The City shall have no liability or responsibility for operation of the Property or the Center nor for costs, fees, claims, losses, damages or expenses of any kind, related to or arising out of operation of the Property or Center or the acts or omissions of the agents, employees, contractors or representatives of the Foundation or Dakota College in connection therewith. The Foundation will not represent to the public or any person that the Property or the Center is operated by the City or under its authority, control or supervision nor shall the Foundation authorize or permit Dakota College to do so.
- 2.3. The Foundation will lease the Property to Dakota College for a term not less than ten years (10 years) (the Lease). The Lease must:
  - A. provide that the rights of the parties thereunder are subject and subordinate to the rights of the City and the provisions of this Agreement and the rights of the City hereunder, including (but not limited to) the provisions of section 6 of this Agreement;
  - B. prohibit the use of the Property for any purpose other than operation of the Center without the prior, written consent of the Foundation and the City;
  - C. prohibit the assignment or transfer, in whole or in part, voluntarily or involuntarily, of the lessee’s rights under the Lease without the prior, written consent of the Foundation and the City;
  - D. prohibit the voluntary or involuntary attachment of any lien or encumbrance against the Property and require the lessee to secure a release or waiver of any lien or encumbrance that may attach to the Property as a result of the acts or

omissions of the lessee, its agents, employees or representatives within sixty (60) days of attachment; and

- E. prohibit any amendment or modification of the Lease without the written consent of the Foundation and the City;
- F. provide that the lease is triple net (NNN) to the Foundation with Dakota College being absolutely responsible for all renovation, improvement and modification costs, repairs, maintenance, replacements, operating costs, including but not limited to insurance as required by this Agreement, real estate taxes if any, and utilities of the Property and the Center. A copy of the lease in substantially its final form is attached hereto as Exhibit 1.

A copy of the duly-executed Lease (and any amendments thereto) shall be delivered to the City by the Foundation within ten days (10 days) of execution.

- 2.4. During the term of this Agreement or any extension thereof, the Foundation (or its Lessee under the terms of the Lease) shall promptly pay all real property taxes (if any) and special assessments (if any) levied with respect to the Property.
- 2.5. During the term of this Agreement or any extension thereof, the Foundation (or its Lessee under the terms of the Lease) shall not permit any liens to attach, voluntarily or involuntarily, to the Property or any part thereof except with the written consent of the City. The Foundation (or its Lessee under the terms of the Lease) shall discharge and/or satisfy of record, any lien attached to the Property without the written consent of the City within sixty (60) days after attachment or perfection, whichever occurs later. Legal action initiated by the Foundation or the Lessee to discharge or contest a lien attached to the Property within the sixty (60) days of attachment or perfection of the lien shall be sufficient to satisfy the Foundation's obligation hereunder, provided, that any lien against the Property shall be discharged no later than 30 days after any judgment affirming a lien becomes final. If the Foundation (or its Lessee under the terms of a Lease) fails to satisfy or discharge any such lien within 31 days after any judgment affirming the lien's perfection or attachment has been finalized, the City may declare the Foundation in breach of its obligations under this Development Agreement. If the Foundation delivers to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City as a result of the breach of this

Development Agreement, and the Property is subject to any lien, the Foundation may, at the Foundation's sole and absolute option: 1) satisfy the lien; or, 2) assign the City the Foundation's claim against the Lessee for Lessee's failure to keep the Property free from liens. If the Foundation exercises its option to assign its breach of lease claim to the City, the City's sole remedy for breach of the terms of this Development Agreement shall be to pursue the Lessee for its failure to keep the Property free from liens. If the Foundation does not assign its claim against Lessee to the City, or if the attached or perfected lien does not result in a breach of contract claim against the Lessee, the City may pursue claims against the Foundation to require the Foundation to satisfy the lien.

2.6. During the term of this Agreement or any extension thereof, the Foundation shall require its Lessee under the terms of the Lease to maintain the Property, including all buildings, structures and improvements, water, sewer and gas connections, pipes and mains, plumbing, heating and ventilation, and electrical systems, parking lots, driveways and sidewalks in good condition and repair, reasonable wear and tear excepted. The Foundation shall promptly and in a good and workmanlike manner make all necessary repairs, structural and otherwise, to the Property, complying in all cases with all applicable governmental regulations, laws or ordinances.

2.7. During the term of this Agreement or any extension thereof, the Foundation shall require its Lessee to secure and maintain one or more insurance policies:

- A. insuring the buildings and improvements on the Property against loss or damage from perils customarily included in a standard form of fire and extended coverage in an amount not less than \$4,600,000.00.
- B. insuring against claims for bodily injury, death, and property damage occurring upon the Property in an amount not less than \$2,000,000.00; and
- C. comprehensive general public liability insurance policies for said claims in an amount not less than \$2,000,000.00.

If the Property is not subject to a lease, the Foundation shall insure the Property as provided in this section 2.7 (A)-(C), or shall execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City. If the Property, or any part thereof is destroyed or damaged, the Foundation shall deliver written notice thereof to the City within ten (10) days of the damage or

destruction. Except as provided by section 6.4, any insurance proceeds paid to the Foundation as a result of such damage or destruction shall be used by the Foundation to repair, rebuild and restore the Property unless otherwise agreed by the City, in writing. Within ten (10) days of the delivery of the deed to the Foundation, and from time to time thereafter as requested by the City, the Foundation shall provide a certificate of insurance evidencing all coverages as required by this section 2.7.

**3. REPORTING AND INSPECTION.**

3.1. Within ten (10) days of its delivery to the Foundation, the Foundation shall provide to the City a copy of the deed vesting title to the Property in the name of the Foundation, bearing the recording information affixed by the Ward County Recorder.

3.2. During the term of this Agreement or any extensions thereof, the Foundation (or its Lessee under the terms of the Lease) shall provide quarterly status reports to the City on January 10, April 10, July 10 and October 10 of each year. Said reports shall include: (i) the number of programs offered by the Center and a description of each program; (ii) the total number of students enrolled at the Center and the number of students in each program; (iii) the number of full-time and part-time employees employed at the Center; and (iv) such other information and documentation concerning the operation of the Center as the City may reasonably require.

3.3. The City shall, upon advance notice to the Foundation and its Lessee of not less than 24 hours, have the right to inspect the Property at any reasonable time for the purpose of evaluating compliance with the terms of this Agreement.

**4. SALE OR ASSIGNMENT.** Except as otherwise provided by this Agreement, the Foundation may not, voluntarily or involuntarily, sell the Property or assign all or any part of its rights or obligations under this Agreement without the City's prior, written consent provided, however, that the Foundation may assign its obligations to Dakota College under the Lease, which lease shall be deemed to have the City's prior written consent. Any attempt to sell the Property or assign all or any part of the Foundation's rights or obligations (except assigning its obligations to Dakota College as referenced in the preceding sentence) under this Agreement without the City's prior written consent provided shall be null and void.

**5. FORCE MAJEURE.** If a party cannot perform an obligation under this Agreement due to causes, facts, or circumstances beyond the control of such party, then the non-performance will

not be deemed to be an event of default. Such causes, facts or circumstances include but are not limited to war; insurrection; strikes; lock-outs; riots; floods; earthquake; public enemy; pandemics; epidemics; quarantine restrictions; governmental restrictions or priorities enacted subsequent to execution of this Agreement; litigation (including eminent domain actions); unusually severe weather; inability to secure necessary labor, materials, or tools; acts of another party; acts or failures to act of public or governmental agencies or entities (except acts or failures to act pursuant to this Agreement by the City will not excuse performance of the City), or other causes mutually agreed upon in writing and beyond the control or without the fault of the party claiming an extension of time to perform.

## 6. **TERMINATION.**

6.1. Failure to begin operation of the Center at the Property by the Use Commencement Date or continue operation of the Center at the Property for at least ten (10) years from the Use Commencement Date will be deemed to be a material breach of the terms and provisions of this Agreement. If the Center fails to begin to operate at the Property by the Use Commencement Date or ceases to operate at the Property (as defined by this Agreement) during the term of this Agreement or any extension thereof, the Foundation, upon demand by the City, shall execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City. For purposes of this Agreement, the Center shall be deemed to have ceased operation if two (2) of the following conditions are satisfied:

- A. the Center fails or ceases to have at least 50 students enrolled in the second year of operation, 100 students in the third year of operation, or an average of 150 students in years 4 -10 of operation;
- B. the Center fails or ceases to employ at least five (5) full-time employees- during the first year of operation, six (6) full-time employees during the second year of operation, or an average of seven (7) full-time employees during years 3 – 10 of operation;
- C. the Center fails or ceases to offer at least three (3) academic programs during the first year of operation, four (4) academic programs during the second year of operation, or an average of five (5) academic programs during years 3 – 10 of operation;

- D. the Center fails or ceases to be operated by Dakota College or other party acceptable to the City; or
- E. the Lease is terminated or breached and such breach is not cured within ninety (90) days.

6.2. The City may terminate this Agreement for cause under this section 6.2 if the Foundation materially fails to comply with any terms of this Agreement not addressed in section 6.1. If termination for cause is initiated under this section 6.2, the City shall give the Foundation written notice of default, specifying the non-compliance with the terms of this Agreement. The Foundation shall have thirty (30) days after receipt of such notice to either correct the non-compliance or, in the case of non-compliance that cannot be corrected in thirty (30) days, begin in good faith to correct such non-compliance and diligently proceed to complete such correction. If appropriate curing of the non-compliance issue does not occur within thirty (30) days after receipt of such notice, then the City may formally declare the Foundation to be in default of this Agreement. Upon a declaration of default, this Agreement shall terminate on the date specified in such notice. The Foundation, upon termination of this Agreement and demand by the City, shall execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City.

6.3. If all of the Property or such portion thereof as will substantially interfere with the Center's operation on the Property shall be condemned or taken by any governmental authority then the Foundation may elect to terminate this Agreement by delivering written notice of termination to the City. Such notice of termination must: (i) indicate that the Foundation is electing to terminate this Agreement pursuant to the terms of this section 6.3, (ii) state that the Foundation has, in good faith, determined that the condemnation or taking prevents or substantially interferes with the ability to operate the Center on the Property, (iii) identify the portion of the Property condemned or taken and the governmental authority exercising the taking or condemnation, (iv) identify the total amount of proceeds paid or payable to the Foundation as a result of such condemnation or taking, (v) be accompanied by payment to the City of all proceeds paid or payable to the Foundation as a result of such condemnation or taking and (vi) be accompanied by a

duly executed quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City.

6.4. If the Property or any part thereof is destroyed or damaged and the costs of repair or reconstruction are reasonably estimated to exceed the insurance proceeds paid or payable to the Foundation as a result of such damage or destruction, the Foundation may, within ninety (90) days of such damage or destruction, elect to terminate this Agreement by delivering written notice of termination to the City. Such notice of termination must: (i) indicate that the Foundation is electing to terminate this Agreement pursuant to the terms of this section 6.4, (ii) identify the date of occurrence and describe the damage or destruction to the Property, (iii) be accompanied by a written estimate of the cost of repair or reconstruction prepared by a neutral party, (iv) identify the total amount of insurance proceeds paid or payable to the Foundation as a result of such damage or destruction excluding, however, that portion of the insurance proceeds allocated by the insurer to equipment, inventory, furniture and personal property of the Foundation, (v) be accompanied by payment to the City of all insurance proceeds paid or payable to the Foundation as a result of such damage or destruction to the Property *less* those proceeds used by the Foundation to safeguard and secure the Property; and *less* those proceeds allocated by the insurer to equipment, inventory, furniture and personal property of the Foundation or its Lessee and (vi) be accompanied by a duly executed quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City.

**7. LIMITATION OF DAMAGES AND REMEDIES. Notwithstanding any other provision of the Agreement, the Parties agree that the remedy available to the City for breach of this Agreement by the Foundation shall be an order of specific performance directing that the Foundation execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City. In addition to the remedy described in the preceding sentence, if the Property: 1) has suffered a casualty loss which is covered by a policy of insurance; or, 2) has suffered a condemnation such that the Foundation has received a condemnation award; or 3) is subject to a lien and the Foundation has not elected to assign its claim against the Foundation's Lessee under paragraph 2.5, above or the attached or perfected lien does not result in a breach**

**of contract claim against the Foundation's Lessee, such remedy may include a provision requiring the Foundation to pay to the City any insurance proceeds received by the Foundation which have not been expended to safeguard or rehabilitate the Property; or a condemnation award received by the Foundation; or a requirement that the Foundation satisfy liens against the Property. In no event shall the Foundation be responsible to any party to this Agreement or any third party beneficiary of this Agreement for any monetary damages except as specifically provided for in this paragraph 7.**

8. **RELATION OF PARTIES.** This Agreement does not constitute either party as the legal representative of the other for any purpose. Neither party has authority to assume or create any obligation whatsoever, express or implied, on behalf or in the name of the other party, nor to bind the other party in any manner.
9. **COOPERATION.** The parties have entered into this Agreement with the intention of cooperating with each other in performing the terms of this Agreement. To that end, each party agrees to perform its duties and obligations, to extent it may legally do so, in a manner that will best promote the interests of all the parties and render the highest benefit to the public concerned.
10. **SURVIVAL.** The terms and conditions of this Agreement shall survive execution of any additional documents contemplated by this Agreement unless the subsequent documents clearly reference this Agreement and contain a statement or statements that the terms and conditions of this Agreement are amended or are superseded.
11. **AUTHORITY TO EXECUTE AND PERFORM 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 Foundation, its successors and assigns in accordance with its terms. The Foundation represents that the terms, conditions, and provisions of this Agreement do not conflict with and will not result in or constitute a breach of or default under any agreement, contract, judgment, order, rule or statute to which the Foundation is subject.



12. **NOTICES.** All notices, certifications, or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested, or delivered by a recognized overnight delivery service, prepaid, addressed to the respective parties, as follows:

To the City:                   CITY OF MINOT  
  PO Box 5006  
  515 2nd Avenue SW  
  Minot, North Dakota 58702-5006  
  Attention: Shaun Sipma, Mayor  
  Phone #: 701-857-4750  
  Fax #: 701-857-4751

Copy to:                        City Attorney  
  PO Box 5006  
  515 2nd Avenue SW  
  Minot, ND 58702-5006  
  Phone #: 701-857-4190  
  Fax #: 701-857-4751

To the Foundation:       Minot State University Development Foundation  
  500 University Avenue West  
  Minot, ND 58707  
  Attention: Executive Director/Vice President for Advancement  
  Phone: 701.858.4483

Copy to:                        McGee, Hankla & Backes, P.C.  
  Attn: Jon W. Backes  
  P.O. Box 998  
  Minot, ND 58702-0998

**13. CONSTRUCTION OF AGREEMENT.**

13.1. This Agreement contains the entire agreement between the parties. No statements, promises or inducements made by any party or any agent of any party that are not contained in this Agreement shall be valid or binding.

13.2. This Agreement may be amended only by agreement of the parties evidenced in writing, signed by both parties to this Agreement.

13.3. This Agreement shall be deemed to have been prepared jointly by the parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by

reason of its drafting of this Agreement, but shall be interpreted according to the application of the general rules of interpretation for arm's length agreements.

- 13.4. If any provision of this Agreement shall be determined to be invalid, or inoperative or unenforceable, such determination shall not render any other provision(s) of this Agreement invalid, inoperative or unenforceable and, under such circumstances, the parties shall be deemed to have automatically inserted in substitution for such provision(s), an alternative provision(s) which is enforceable and bears as close a resemblance as possible to such provision(s) determined to be invalid, inoperative or unenforceable.
- 13.5. The recitals set forth at the beginning of this Agreement are deemed incorporated in this Agreement, and the parties represent that they are true and correct.
- 13.6. The captions and headings in this Agreement are for convenience only and do not limit, define, or describe the scope or intent of any provision of this Agreement.
- 13.7. This Agreement shall be governed in all respects, whether as to validity, construction, performance, or otherwise, by the laws of the State of North Dakota. All parties agree the proper forum for the resolution of any dispute or claim pursuant to this Agreement shall be the District Court of Ward County, North Dakota or a federal district court located in the State of North Dakota of competent jurisdiction, and irrevocably consent to the jurisdiction of these courts, waiving all defenses of inconvenient forum or otherwise.
14. **WAIVER.** No delay or failure by any party to exercise any right under this Agreement and no partial single exercise of any right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
15. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto have all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

**END OF PAGE**

**IN WITNESS WHEREOF**, The City has caused this Agreement to be duly executed and delivered as of the date first written above.

Attest:

CITY OF MINOT  
a North Dakota Municipal Corporation

\_\_\_\_\_  
By:  
City Clerk

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

The foregoing Development Agreement was acknowledged before me by Shaun Sipma, Mayor of the City of Minot and Kelly Matalka, City Clerk, on behalf of the City of Minot, North Dakota, a municipal corporation, on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**END OF PAGE**

**IN WITNESS WHEREOF**, Minot State University Development Foundation, a nonprofit corporation, has caused this Agreement to be duly executed and delivered as of the date first written above.

MINOT STATE UNIVERSITY DEVELOPMENT FOUNDATION  
a nonprofit corporation

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By: Rick Hedberg  
Executive Director

The foregoing Development Agreement was acknowledged before me by Rick Hedberg on behalf of Minot State University Development Foundation, a nonprofit corporation, on \_\_\_\_\_, 2021.

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Notary Public  
My Commission Expires:

**END OF INSTRUMENT**