

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** ("Agreement") is made between the City of Baltic, South Dakota ("City"), Grant Park Capital, LLC, a South Dakota limited liability company, with its principal office at 47526 252<sup>nd</sup> Street, Baltic, South Dakota 57003 ("GPC").

1. GPC is the owner of the residential subdivisions known as Grant Park and Phillips Crossing, respectively ("Development").

2. City suspended the issuance of building permits in the Development and GPC thereafter commenced the following civil actions and proceedings: Notice of Injury Pursuant to SDCL Chapter 3-21 and Notice of Appeal Pursuant to Baltic Zoning Regulations Chapter 17.03, dated November 10, 2022, 49CIV22-002968, 49CIV22-002973, and 49CIV23-000310, in the Second Judicial Circuit Court, inclusive of City's pending motions in 22-002968 and 22-002973 for recovery of attorney fees, costs and disbursements ("Legal Proceedings").

3. The specific terms and conditions of this Agreement are described below, and specifically include City's agreement to remove the suspension on the issuance of building permits in the Development. In exchange, GPC agrees to payments or donations totaling \$735,000 to City, the Baltic School District ("School"), and the Baltic Athletic Association ("BAA"), and GPC agrees to construct a Detention Pond as hereinafter described.

4. City and GPC specifically intend this Agreement to move forward together in a unified manner to accomplish the following: (1) promote the positive economic development of the City of Baltic, (2) provide funding to reduce the tax burden for the citizens of Baltic and offset certain expenses associated with public improvements needed for infrastructure, drainage, and stormwater control, (3) provide funding to enhance the City's parks and recreation facilities and

programs, (4) provide funding to enhance the City’s baseball facilities and equipment, and (5) provide funding to support the Baltic School District.

In consideration of the foregoing and the mutual agreements and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE 1**  
**TERMS**

**Section 1.01. Detention Pond.** GPC agrees to construct a Detention Pond at no cost to City that is located on the site identified in the Banner Associates Conceptual Detention Pond – Grant Park, dated September 21, 2022, and the Banner Associates Supplemental Drainage Analysis – NW Grant Park Detention Pond, dated October 20, 2022 (“Banner Detention Pond Report”) or on a location in the area to the North of Bulldog Avenue and to the East of Murphy’s Pond. City understands and agrees that a Detention Pond in the area to the North of Bulldog Avenue and to the East of Murphy’s Pond may be located in part on City property. The City will not charge GPC any amount for the use of City property for the purpose of construction the Detention Pond. The parties acknowledge and agree that the amount of water the Detention Pond is designed to detain need only account for the surface water drainage attributable to the Grant Park Addition, as determined in the Banner Detention Pond Report, which is incorporated into this Agreement by reference for the clear understanding of the parties. In the event the Detention Pond is located in the area to the North of Bulldog Avenue and to the East of Murphy’s Pond and is designed to detain surface water drainage greater than the amount in the Banner Detention Pond Report, City shall not require GPC to incur additional cost or expense for engineering reports or studies to construct this Detention Pond, and City shall not be required to incur any cost or expense other than the potential for a permanent easement on City property in the event the Detention Pond is located in part on City property. GPC shall provide City with copies of all reports, plans and specifications for the Detention Pond. It is GPC’s intention that the Detention Pond will be completed and operational within one hundred twenty (120) days from the approval of this Agreement by the City Council. GPC will inform City of any delays. Upon completion and construction of the Detention Pond and final inspection, City agrees to be responsible for maintenance of the Detention Pond after acceptance. GPC agrees that the four (4) lots identified in the Grant Park Addition will not be sold until such time as the Detention Pond is completed and operational.

**Section 1.02. 12’ Drainage Easements.** GPC agrees that twelve (12) foot drainage easements shall be located on the western lots of the Phillips Crossing Addition. Specifically, the drainage easements are to be located on South 7<sup>th</sup> Street in Block 2 between Lots 2 and 3, in Block 3 between Lots 3 and 4, running East to West, and the West side of Block 2, Lots 3 and 4. City shall provide the drainage easements to GPC for execution and recording, at City’s cost and expense.

**Section 1.03. Payments to City from GPC.** GPC agrees to pay as a development fee the fixed sum of \$235,000 within ninety (90) days of the approval of this Agreement by the City Council, and following the events described Sections 1.05 and 1.06.

**Section 1.04. Future Amounts to City, Baltic School District, and BAA.** GPC agrees that it will make or cause the following donations to be made by its owners or by other entities which share ownership in common with the ownership of GPC, with the first donation commitment to be made by July 1, 2024, and thereafter to be made annually, with the last donation to be made by July 1, 2034. City agrees that these donations can be made in a manner that maximizes the income tax benefits to GPC or the donating person or entity. The donations will be as follows:

- (a) **\$250,000 to City over the next ten (10) years.** Of this \$250,000, the first \$100,000 to be donated will be payable in annual installments of \$25,000 and may be expended by City for any purpose or use by City, without restriction for the first four (4) annual amounts. The remaining \$150,000 of the \$250,000 shall be restricted to use by City to the Parks and Recreation Department/Budget and contributed during years five (5) through ten (10) or over six (6) years. Therefore, beginning with the donation due by July 1, 2028 (unless larger donations accelerate the timing), these \$25,000 annual donations shall be restricted to use by City to the Parks and Recreation Department/Budget.
- (b) **\$150,000 to Baltic School District over the next ten (10) years.** Unless larger donations accelerate the timing, the donations shall be \$15,000 annually.
- (c) **\$100,000 to the BAA over the next ten (10) years.** Unless donations accelerate the timing, the donations shall be \$10,000 annually. To the extent BAA is an unorganized association, the donations to BAA will be made in accordance with GPC's discretion to restrict these funds to BAA projects, facilities, and equipment.

**Section 1.05. Building Permits.** City agrees that the suspension of issuance of building permits will be lifted upon approval of this Agreement by the City Council. City further agrees that applications for building permits by owners of individual lots in the Development shall be reviewed for compliance with the applicable ordinances and regulations of City and shall be issued without regard to any act or omission of GPC. To the extent allowed by law, the parties intend to release each other from any and all claims of every kind.

**Section 1.06. Acceptance Through Dedication.** City and GPC shall proceed with efforts to accept the entirety of the Development as soon as practicable following approval of this Agreement by the City Council. GPC acknowledges and agrees that the Development must comply with all applicable laws, ordinances, and regulations. City agrees that acceptance of the Development is a material term of this Agreement, and the parties will proceed expeditiously to complete this process. The parties believe that there are no material outstanding issues that would preclude acceptance of the public improvements on the Development property, and the process of acceptance shall be performed pursuant to generally accepted engineering standards and practices.

**Section 1.07. Legal Proceedings.** The parties shall dismiss the Legal Proceedings, with prejudice, and dismissal shall include all pending motions.

**Section 1.08. Mutual Release of All Claims – except Agreement has no effect on GPC claims against its prior counsel.** This Agreement between GPC and City is a mutual release of all claims between City and GPC, and their respective elected or appointed officials, employees, owners, officers, partners, members, agents, heirs and assigns, insurers, underwriters, or joint ventures—in relation to the Development and the claims, demands, and causes of action in the Legal Proceedings. However, this Agreement expressly does not apply to any claims, demands or causes of action that GPC may have against its prior counsel, namely the law firms of Goosmann Law and Rinke Noonan, and the attorneys that worked for each respective firm.

**Section 1.09. Entire Agreement.** This document and the Banner Detention Report contain the entire Agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. City and GPC further state that each party has been represented by counsel in connection with the negotiation of this Agreement and the terms of this Agreement, and has carefully read and understands this Agreement and the Banner Detention Report, that each party knows the contents thereof, and that this Agreement has been executed as the free act and deed of each party.

**Section 1.10. Governing Law.** City and GPC agree that this Agreement is to be governed solely by the laws of the state of South Dakota to the extent any dispute arises related to this Agreement, the parties agree that South Dakota shall retain jurisdiction over this matter and shall have sole authority to resolve disputes.

**Section 1.11. No Modification.** No change, modification, addition, amendments, or supplement to this Agreement shall be valid, unless set forth in a writing and signed and dated by City and GPC subsequent to the approval and execution of this Agreement.

**Section 1.12. Counterpart.** This Agreement may be executed in counterparts, which counterparts together shall constitute and have the same force and effect as a single original executed by City and GPC.

**Section 1.13. Entire Agreement.** This Agreement contains and sets forth the entire agreement by the parties hereto and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject-matter hereof. The terms of this Agreement are contractual and not merely recitals.

**Section 1.14. Execution of Documents.** The parties shall execute other documents to carry out the terms and conditions of this Agreement to include, without limitation, drainage easements and documents related to construction of the Detention Pond, as may be necessary for the implementation of the terms of this Agreement.

**Section 1.15. This Agreement Deemed Not to Have Originated With Either Party.** Each of the parties acknowledges and agrees that he or it has materially participated in the negotiation and drafting of this Agreement and that each party has been represented by his or its own legal counsel. The parties further acknowledge and agree that this Agreement, and all of its terms and conditions, shall not be deemed, interpreted, or construed, to have originated with either party.

**IN WITNESS HEREOF**, the parties have executed this Agreement by and through a duly authorized representative.

**CITY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Deborah McIsaac

Its: Mayor

**ATTEST:**

\_\_\_\_\_  
Finance Officer

**ACKNOWLEDGMENT**

**STATE OF SOUTH DAKOTA )**

**: ss**

**COUNTY OF MINNEHAHA)**

On this the 30<sup>th</sup> day of June, 2023, before me, the undersigned officer, personally appeared Deborah McIsaac, who acknowledged herself to be the Mayor of the City of Baltic, a South Dakota municipal corporation, and that she, as such Mayor being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing her name as Mayor.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public - South Dakota

My Commission Expires: \_\_\_\_\_

(S E A L)

**GRANT PARK CAPITAL, LLC**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Brian Hefty

Its: President

**ACKNOWLEDGMENT**

**STATE OF SOUTH DAKOTA )**

**: ss**

**COUNTY OF MINNEHAHA)**

On this the 30<sup>th</sup> day of June, 2023, before me, the undersigned officer, personally appeared Brian Hefty, who acknowledged himself to be the President of Grant Park Capital, LLC, a South Dakota limited liability company, and that he, as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing his name as President.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public - South Dakota

My Commission Expires: \_\_\_\_\_

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