August 11, 2026

Board of City Commissioners
City Hall
225 4th Street N.
Fargo, ND 58102

RE: City of Fargo v. Curtis H. Kesselring and Deborah J. Kesselring, as Trustees of the Kesselring Joint Trust UA dated January 1, 2017
Case No. 09-2025-CV-00698

Dear Commissioners:

Attached is a proposed Settlement Agreement and Release and Occupancy Agreement between the City of Fargo and the Kesselring Joint Trust UA dated January 1, 2017, which is intended to fully resolve the eminent domain action filed by the City of Fargo to acquire the Kesselring Trust's real property located at 635 Harwood Drive South. The Settlement Agreement and Release is the result of mediation efforts of the parties conducted on July 9, 2026.

The City's obligation in eminent domain proceedings is to pay just compensation for acquisition of private property for public benefit. The City may also be obligated to pay moving and relocation expenses, attorney's fees, expert witness fees, and other costs and expenses incurred by the City and the property owner. The settlement amount contained in the Settlement Agreement and Release includes any and all previously referenced costs and expenses to acquire the property and resolves the eminent domain action. The settlement will be paid with funds from the Diversion Authority.

> **SUGGESTED MOTION:** Move to accept and approve the Settlement Agreement and Release and Occupancy Agreement between the City of Fargo and the Kesselring Joint Trust UA dated January 1, 2017, as presented, and authorize the Mayor and City Auditor, or designee, to execute the same.

Sincerely,

Kasey D. McNary
kmcnary@serklandlaw.com

Attachment

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Settlement Agreement") is made and entered into by and between the **City of Fargo** (hereinafter "City of Fargo" or "City")), a North Dakota municipal corporation, and the **Kesselring Joint Trust UA dated January 1, 2017,** by and through its Trustees, Deborah J. Kesselring and Bell Bank (hereinafter the "Kesselring Trust"). The above-named parties shall be collectively referred to herein as "the Parties."

RECITALS

A. The City of Fargo brought an eminent domain action against the Kesselring Trust by Complaint dated February 11, 2025, in Cass County North Dakota, Case No. 09-2025-CV-00698, served on February 18, 2025.

B. The City is in the process of finalizing permanent flood protection for multiple areas in the City of Fargo as part of the City-wide Comprehensive Plan for Flood Risk Reduction projects. The Harwood Drive neighborhood is bounded by the Red River. Properties in this area have been acquired and designated for acquisition for the construction of flood protection measures as part of the Harwood, Hackberry, & River Drive Flood Risk Management project (COF #FM-15-F).

C. The City Commission approved acquisition of 635 Harwood Drive South on or about May 26, 2015.

D. On March 27, 2017, the City Commission passed a Resolution of Necessity authorizing the commencement of eminent domain/condemnation proceedings to acquire 635 Harwood Drive South.

E. The Kesselring Trust is the owner of real estate located at 635 Harwood Drive South in the City of Fargo, situated in the County of Cass and State of North Dakota, and legally described as follows:

> **Lot 2, Block 1, less the westerly 74.83 feet thereof, all of Lot 3, Block 1, and the northwesterly 10 feet of Lot 4, Block 1, all in Harwood Groves Sixth Addition to the City of Fargo, Cass County, North Dakota.**

("Subject Property").

F. The Kesselring Trust answered the Complaint on March 10, 2025. The Kesselring Trust disputed necessity and just compensation.

G. The Parties mediated the dispute by private mediation held on July 9, 2026. The Parties were thereafter able to reach a settlement and entered a Mediation Memorandum of Settlement Agreement dated July 22, 2026.

H. The Parties now desire to enter into this Settlement Agreement to provide for a comprehensive and complete settlement and discharge of all claims and defenses which any party made or could have made by reason of the events described above and upon the terms and conditions set forth below.

AGREEMENT

The Parties agree as follows:

1.0 Release and Discharge

1.1 In consideration of the payment amount set forth below, the Kesselring Trust, on behalf of its settlors, trustees, beneficiaries, heirs and assigns, hereby releases and forever discharges, the City of Fargo, its insurers, agents, representatives and employees, from any and all past, present, and future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever related to the Subject Property, which the Kesselring Trust might have brought against the City of Fargo as pertains to the condemnation action in Case No. 09-2025-CV-00698 and which could, in any way, arise out of the events described in the Recitals above.

1.2 In further consideration of the payment amount set forth below, the Kesselring Trust specifically waives any rights to any further statutory moving, relocation, and replacement housing expenses, which may have been available under N.D.C.C. § 54-01.1-03 and N.D.C.C. § 54-01.1-04, or any applicable federal law. In addition, the Kesselring Trust waives any additional attorney fees, statutory costs, and filing fees not otherwise described herein.

1.3 The City of Fargo, in exchange for obtaining a conveyance of the Subject Property in fee simple, hereby releases and forever discharges the Kesselring Trust, its settlors, trustees, beneficiaries, heirs and assigns, from any and all past and present claims, causes of action, demands, damages, costs, expenses and compensation related to the Subject Property. This release is not intended to apply to any future claims pertaining to or resulting from the Kesselring Trust's continued occupancy of the Subject Property as provided for herein.

1.4 The Kesselring Trust acknowledges and agrees that the release and discharge set forth above is a waiver of all claims and defenses the Kesselring Trust, its settlors, trustees, and beneficiaries might have asserted in Case No. 09-2025-CV-00698, and a general release regarding causes of action they might have brought regarding the events described in the above Recitals, including any obligation to pay damages, attorney's fees, and costs. It is understood and agreed by the parties that this settlement is a compromise reached in order to finally resolve the action described in the Recitals above.

1.5 The Parties waive the provisions of N.D.C.C. § 9-13-02, or any similar or other applicable state or federal statute or regulation, which provides that a general release does not extend to claims a creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected the settlement with the debtor.

2.0 Payment Terms

2.1 The City of Fargo will pay to the Kesselring Trust the total purchase amount of Three Million Dollars and No/Cents ($3,000,000.00) for the Subject Property (the "Acquisition Payment"). The City of Fargo's purchase of the Subject Property shall include the real estate, the dwelling located upon the Subject Property, all other buildings located upon the Property, and all items affixed to the Subject Property.

2.2 In addition to the Acquisition Payment, the City of Fargo will pay to the Kesselring Trust the amount of Twenty-Five Thousand Dollars and No/Cents ($25,000.00) for moving and relocation expenses. The City of Fargo will also pay to the Kesselring Trust the actual attorney's fees and expert expenses incurred by the Kesselring Trust since January 1, 2017, in an amount not to exceed One Hundred and Twenty-Five Thousand Dollars and No/Cents ($125,000.00). The amount to be paid for moving expenses, attorney's fees, and expert expenses shall be referred to herein as the "Additional Expenses Payment."

2.3 The Acquisition Payment for the Subject Property and the Additional Expenses Payment are to be paid to the Kesselring Trust at closing in cash or certified funds and upon delivery of a Trustee's Deed warranting title and conveying the Subject Property to the City of Fargo, free and clear of all mortgages, liens, and encumbrances, except all covenants, conditions, restrictions, easements, and right of ways of record. No other payments shall be made by any party.

2.4 The Kesselring Trust hereby agrees to provide unto the City an abstract of title to ensure marketable title. The City shall pay for the cost of continuation of the abstract of title to the Subject Property to a recent date. The abstract of title must show the Kesselring Trust to have good and marketable title free and clear of all liens and encumbrances (other than those that will be paid at closing). The closing shall take place within sixty (60) days of the complete execution of this Settlement Agreement by the Parties but may be extended by the City in the event of a title defect impacting the City's ability to obtain marketable title within the sixty (60) day period. The City of Fargo shall acquire ownership of the Subject Property on the day of closing, subject to the Kesselring Trust's continued occupancy until July 1, 2029, in accordance with the terms herein and the Occupancy Agreement attached hereto as <u>Exhibit A</u>, which is hereby incorporated and made part of this Settlement Agreement.

2.5 Any and all mortgages, liens, and encumbrances against the Subject Property (except for real estate taxes and special assessments) will be paid by the Kesselring Trust from the Acquisition Payment at the time of closing and the Kesselring Trust shall then receive the balance of the Acquisition Payment, less other incidental closing costs, on the date of closing.

2.6 The real estate taxes for the year in which closing occurs shall be prorated between the Parties, based on the most current tax information available from the County Treasurer, as of the date of closing. The City of Fargo shall be responsible for real estate taxes for the date of closing and thereafter. The City of Fargo shall also be responsible for insuring the Property for liability and other purposes from the date of closing and thereafter.

3.0 Terms for Occupancy Beyond Date of Closing

3.1 The City of Fargo agrees to allow Deborah J. Kesselring to continue her occupancy of the Subject Property after closing until July 1, 2029. Neither the Kesselring Trust nor Deborah J. Kesselring will be required to pay rent to the City of Fargo for this permitted period of occupancy. The Kesselring Trust and/or Deborah J. Kesselring, however, must obtain a policy of tenant's insurance or other similar coverage on the Subject Property for the period of time of her continued occupancy. The City shall be named as an additional insured on the policy.

3.2 If Deborah J. Kesselring decides to vacate the Subject Property prior to July 1, 2029, the Kesselring Trust shall notify the City of Fargo at least thirty (30) days prior to vacation of the Subject Property. In the event Deborah J. Kesselring vacates prior to July 1, 2029, then at such time of her vacation of the Subject Property possession will revert entirely to the City of Fargo and the City of Fargo may elect to immediately commence demolition of the house and other structures located upon the Subject Property and proceed with construction of flood protection measures upon the Subject Property.

3.3 Upon the period of occupancy for Deborah J. Kesselring terminating, she and the Kesselring Trust shall immediately vacate the premises and remit all keys and garage door openers to the City of Fargo by no later than three (3) business days thereafter.

3.4 Deborah J. Kesselring will occupy the Subject Property "as is." The Kesselring Trust and Deborah J. Kesselring shall pay all utilities to the Subject Property until such time as they vacate the Subject Property. The Kesselring Trust and/or Deborah J. Kesselring shall be solely responsible for all maintenance, repairs, and upkeep of the Subject Property that she desires or feels necessary for her continued occupancy. The Kesselring Trust and/or Deborah J. Kesselring are not obligated to perform any particular maintenance or upkeep except as necessary to abide by applicable City ordinances, including but not limited to snow and ice removal, lawn care, and control of noxious weeds, and to avoid the Subject Property becoming a nuisance or danger to public safety. The City of Fargo shall not be responsible for any maintenance, upkeep, or repairs of any kind to the Subject Property or any buildings, fixtures, or mechanical systems located upon the Subject Property. If the Subject Property, for any reason, becomes uninhabitable, the Kesselring Trust's and Deborah J. Kesselring's sole remedy is to vacate the Subject Property.

3.5 The Kesselring Trust agrees that the City of Fargo will not be responsible for security or protection of the Subject Property during the post-closing occupancy period, including providing any flood protection for the structures located upon the Subject Property. The Kesselring Trust and Deborah J. Kesselring hereby acknowledge that during the period of post-closing occupancy if there is a flood emergency that requires the City to construct flood protection in the area of the Subject Property, such flood protection measures, including but not limited to a temporary clay levee, will be erected in such a manner as to leave the Subject Property on the river side of the line of protection, and the City may need to disconnect services, including sewer and water, to the Subject Property to protect public infrastructure. The City shall not be responsible for restoring, repairing, or reconstructing any structures located on the Subject Property to a habitable condition if such structures are flooded during the period of occupancy by Deborah J. Kesselring, nor will the City be responsible for any damage to personal property in the event of a flood. The City will remove the temporary clay levee from the neighborhood if one is erected during a flood event.

3.6 The Kesselring Trust shall be allowed to remove and keep any personal property from the Subject Property, including but not limited to plants, landscaping materials, cabinets, light fixtures, building materials, appliances, and other structural materials from the interior and exterior of the home, so long as such property is removed prior to the Kesselring Trust/Deborah J. Kesselring vacating the Subject Property. Prior to removal of any personal property, the Kesselring Trust must notify the City so the City Engineer may confirm such removals will not impact the structural integrity of the home, result in termination of mechanical services to the home, nor leave any open holes in the home that will jeopardize the security of the home or Subject Property. Notwithstanding the foregoing, the Kesselring Trust may remove windows and doors from the home so long as any such holes in the exterior walls are filled or otherwise covered and secured. Mechanical appurtenances serving the structure, including but not limited to the sump pumps, furnaces, gas lines, sewer lines, and water lines, shall be left in place to ensure the removal of materials does not create a liability for contractors removing the remainder of the home after the period of post-closing occupancy ends.

4.0 Representation of Comprehension of Document

In entering into this Settlement Agreement and Release, the Parties represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, concerning the legal consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained by their attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted.

5.0 Warranty of Capacity to Execute Agreement

The Kesselring Trust represents and warrants that no other person or entity has any interest in the Subject Property, causes of action, or defenses referred to in this Settlement Agreement; that the Kesselring Trust, acting through its Trustees, Deborah J. Kesselring and Bell Bank, has the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified herein; and that the Kesselring Trust has not sold, assigned, transferred, conveyed or otherwise disposed of any of the Subject Property or premises, which is the subject of this Settlement Agreement.

6.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota.

7.0 Additional Documents

All parties agree to cooperate fully and approve and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement, including, but not limited to, a Stipulation for Dismissal with prejudice and without costs or attorney's fees to any party in the action listed in the Recitals above, as well as a proposed Order of Dismissal and proposed Judgment of Dismissal.

8.0 Entire Agreement and Successors in Interest

This Settlement Agreement and Release contains the entire agreement between the Kesselring Trust, its settlors, trustees, and beneficiaries and the City of Fargo, its insurers, employees, agents and representatives with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the trustees, beneficiaries, executors, administrators, personal representatives, heirs, successors and assigns of each.

9.0 Effectiveness

This Settlement Agreement and Release shall become effective immediately following execution by each of the Parties.

THIS IS A RELEASE. READ BEFORE SIGNING.

Dated: July 30, 2026 Deborah J Kesselring

Deborah J. Kesselring as Trustee of the
Kesselring Joint Trust UA dated January 1, 2017

Dated: ____________________

____
Bell Bank as Successor Trustee of the
Kesselring Joint Trust UA dated January 1, 2017
By:____
Its:____

Dated: ____________________

____
City of Fargo
By: Joshua Boschee
Its: Mayor

ATTEST:

____
Angie Bear
Deputy Auditor on behalf of City Auditor

Dated: ____________________

____
Deborah J. Kesselring as Trustee of the
Kesselring Joint Trust UA dated January 1, 2017

Dated: July 30, 2026

____
Bell Bank as Successor Trustee of the
Kesselring Joint Trust UA dated January 1, 2017
By: KRISTEN TRAISER
Its: VP & SENIOR WEALTH & FIDUCIARY ADVISOR

Dated: ____________________

____
City of Fargo
By: Joshua Boschee
Its: Mayor

ATTEST:

____
Angie Bear
Deputy Auditor on behalf of City Auditor

EXHIBIT A

OCCUPANCY AGREEMENT

THIS OCCUPANCY AGREEMENT (this "Agreement") is made by and between **DEBORAH J. KESSELRING** ("Occupant") and the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation ("City"), related to property located at 635 Harwood Drive South, Fargo, North Dakota (the "Premises").

WHEREAS, City has acquired the Property from Occupant in a settlement incident to an eminent domain action (the "Action"); and

WHEREAS, as a part of that agreement, City has agreed to allow Occupant to occupy the Premises on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. City agrees to allow Occupant to remain in the Premises until **July 1, 2029**. Occupant shall not be required to pay the City any rent.

2. **Occupant shall furnish to the City a copy of a tenant's policy of insurance insuring against liability in at least the principal sum of $500,000 per occurrence.** City shall be named as an additional insured on said policy. Other than the requirement of this Section 2, Occupant shall not be required to maintain any insurance of any kind or nature including specifically (but without limitation) flood insurance.

3. Occupant agrees to indemnify and hold City harmless from any and all claims, demands or causes of action that may be asserted as a result of Occupant's continued occupancy of the Premises, other than claims resulting from or arising out of the actions of the City or its agents or employees. Occupant shall pay all utilities to the Premises until she vacates the Premises.

4. Occupant is occupying the Premises "as is." Accordingly, City shall not be responsible for any maintenance, upkeep, or repairs of any kind. Occupant shall not be required to maintain the Property in its current condition or in any particular condition provided that the Property does not become a nuisance or violate otherwise generally

applicable regulations of property.

5. If the Premises should become uninhabitable, Occupant's sole remedy is to repair or vacate the Premises. Notice must be immediately provided to City upon vacation.

6. Occupant agrees that City will not be responsible for security or protection of the occupied Premises.

7. Occupant shall notify the City thirty (30) days prior to vacating the Premises.

8. The provisions of the Settlement Agreement and Release between the parties resolving the Action are incorporated herein by reference.

[The remainder of this page intentionally left blank.]

Dated this 30 day of July 2026.

Deborah J. Kesselring

Deborah J. Kesselring

Dated this ____ day of __________, 2026.

THE CITY OF FARGO, NORTH DAKOTA

By________________________________

Joshua Boschee, Mayor

ATTEST:

____

Angie Bear

Deputy Auditor on behalf of the City Auditor