

REVOCABLE ENCROACHMENT PERMIT
(Artificial Turf)

1. **Permit Granted.** The City of Minot (“the City”) hereby authorizes Valley Properties, LLP (“Grantee”), the owner of 2124 Elk Drive, to place approximately 1700 square feet of artificial turf in the Encroachment Area. Each piece of artificial turf shall be installed in the manner, location, and consist of the materials as authorized by the City of Minot and in compliance with all City ordinances.

2. **Encroachment Area Defined.** This encroachment permit pertains to an area and portion of property located within the City right-of-way located in the boulevard along the northwest property line, adjacent to 2124 Elk Drive in Minot, Ward County, North Dakota (“Encroachment Area”) The following Exhibits shall be attached hereto and are incorporated into this permit:
 - a. **Exhibit 1,** consisting of 2 page(s), shall contain a site plan containing a description of the proposed Encroachment Area and approximate location and square footage of the artificial turf;

 - b. **Exhibit 2,** consisting of 5 page(s), shall contain a document describing (1) the type of artificial turf to be installed; (2) a brief description of the methods that will be employed to install and maintain the artificial turf; and (3) a photograph of the artificial turf to be installed.

3. **Notification of Installation Required.** The Grantee agrees that it shall notify the City at least 48 hours in advance of the time when work will be started, and upon completion of the work, immediately notify the City of such completion. This permit shall be presented upon demand to any City employee or agent at the site of work being performed. Failure to produce this permit shall be grounds for immediate suspension of work and immediate remedial measures as may be determined necessary by the City’s Director of Public Works and/or City Engineer.
 - a. **City may impose special conditions.** The City may impose, without prior notification, special conditions limiting the hours of operation or other conditions as deemed necessary to ensure public safety, health, or convenience. Violation of these or any other conditions may result in the immediate revocation of the permit and forfeiture of any personal guarantees, performance bonds, or cash deposits on hand with the City pertaining to this permit.

4. **Maintenance.** As an express condition of this permit, the encroaching condition of the artificial turf must be maintained in accordance with such reasonable conditions, limitations, and other restrictions as may be imposed by Minot City Ordinance or from time to time by the City’s Engineering Department. At all times the artificial turf must be installed and maintained in compliance with Minot City Ordinances and effectively simulate the

appearance of a well-maintained lawn. All costs of installation, maintenance, and replacement of the encroachment conditions shall be the sole responsibility of the Grantee.

5. **City Right-of-Way Rights.** Grantee acknowledges and agrees that nothing in this permit alters or restricts the City's rights with respect to the City right-of-way, and that the City's rights to perform any work whatsoever in the right-of-way are superior to any rights granted to the Grantee by this permit. Grantee acknowledges that City or other entities, including franchise utility companies, may need to perform work on, in, or under the City right-of-way and City will have no obligation whatsoever to repair or reinstall any artificial turf and/or landscape materials removed by or damaged by the City or other entities that are within the City right-of-way. With full knowledge of these facts, Grantee acknowledges and agrees that it is their sole responsibility to maintain, repair, or reinstall any artificial turf and/or landscape materials disturbed on the City right-of-way as is necessary to simulate the appearance of a well-maintained lawn.
 - a. **Grantee responsible to remove artificial turf from right-of-way when requested by the City.** Grantee understands that it must remove its artificial turf from the City right-of-way, at its expense, as requested by the City. Grantee expressly understands that if it fails to remove its artificial turf from the right-of-way, as requested by the City, that this permit shall automatically terminate and the City may remove such artificial turf by any means it deems appropriate.
 - b. **Grantee responsible for any and all replacement costs, including all costs to replace artificial turf due to right-of-way work, construction, and routine maintenance.** Grantee understands that the City and the public shall have no obligation or duty of care to Grantee to treat their artificial turf any differently than they would natural turf. Grantee shall be responsible for any and all turf replacement as is necessary to simulate the appearance of a well-maintained lawn as determined by the City. This is expressly understood to include any turf replacement or repairs that may be necessary due to the City of Minot or any other entity's right-of-way work, construction, or routine maintenance. In the event Grantee fails to cover any costs to repair their artificial turf to a point that it simulates the appearance of a well-maintained lawn, this permit shall immediately terminate, and the City may return the property in the right-of-way to natural turf and special assess the cost thereof to the property owner.
 - c. **Grantee or their contractor responsible to obtain right-of-way permit prior to installation.** Grantee understands that they or their contractor must apply for and receive a right-of-way permit before any work within the right-of-way can begin.
6. **Indemnification/Hold Harmless.** As an express condition of this permit, the Grantee must indemnify and hold harmless the City for all claims, causes of action, or claims for relief

arising out of the grant of permission contained herein and the existence or use of the encroaching conditions authorized herein, including all costs of defense.

- a. **Waiver of claims against the City.** Grantee expressly waives their right to make any claim against the City relating directly or indirectly to the installation, maintenance, or failure to maintain the artificial turf within the City right-of-way.
 - b. **Grantee assumes all risk associated with artificial turf.** Grantee assumes any and all risks of injury, death, and property damage incurred in carrying out the installation and maintenance of the artificial turf placed in the City right-of-way.
 - c. **Grantee agrees to defend the City.** Grantee agrees to defend any action or actions filed in connection to the artificial turf placed in the City right-of-way pursuant to this permit, and pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith.
 - d. **Grantee agrees to pay any judgment that may be rendered.** Grantee further agrees to promptly pay any judgment rendered against the City in connection with their installation of artificial turf in the City right-of-way relating to this permit. In the event the City is made a party to any action or proceeding filed against Grantee for damages or other claims relating to this permit, Grantee agrees to pay to the City any and all costs and expenses incurred by the City in such action or proceeding, including, but not limited to legal costs, and attorney fees.
 - e. **Grantee assumes full responsibility for complying with Federal, State, and County environmental laws.** Grantee expressly agrees that it will be in full compliance with all environmental laws and obtain any necessary environmental clearances and/or permits prior to commencing any work authorized by this permit.
7. **Termination.** Failure of the Grantee to meet the express conditions of this permit will result in automatic termination of this permit. At the City's discretion, the City may order Grantee to remove the encroaching conditions authorized herein by mailing notice of such revocation of this permit to Grantee's last known address. Grantee shall have thirty days after City's mailing notice of revocation to Grantee's last known address to remove the encroaching condition. If Grantee fails to remove the encroaching condition within the time frame specified in this paragraph, the City may perform whatever work is necessary to remove the encroaching condition, and special assess the cost of the removal work to the Grantee.

The City retains the full right to revoke this permit for any reason – for good cause, bad cause, or no cause at all. If it does revoke this permit, the City agrees that it shall provide notice to the Grantee of such revocation, whereupon the Grantee is still under the same obligation to restore the property upon which the encroaching conditions are located to its

original condition before the granting of this permit– or to such a condition as is agreed upon by the Grantee and the City.

8. **Severability.** In the event that any provision of this permit shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remaining terms of this Agreement.
9. **Law and Venue.** This permit shall be governed and construed in accordance with the ordinances of the City of Minot and the laws of the State of North Dakota. Any legal action arising in any way in connection with this permit shall be filed in a court located in Ward County, North Dakota.
10. **Entire Agreement; Amendments/Waivers.** This permit constitutes the entire agreement between the City and Grantee with respect to the installation, maintenance, and removal of artificial turf in the Encroachment Area as defined in this Agreement. This permit supersedes any prior discussions, negotiations, and agreements with respect thereto. This permit may be amended or modified only by a written amendment executed by both Parties. No waiver of any of the terms of this permit shall be effective or binding unless in writing and executed by an authorized representative of the Party waiving its rights hereunder.
11. **Successors.** This Agreement shall be binding upon the heirs, executors, administrators, successors, transferees, and assigns of the Parties. Grantee may not assign this permit without the express written consent of the City.
12. **Execution of Permit.** The persons executing this permit agreement on behalf of each of the Parties hereto represent and warrant that (i) that Party is duly organized and existing; (ii) they are duly authorized to execute this permit on behalf of said Party they purport to represent; (iii) by so signing this permit agreement, such Party is formally bound to the provisions of this permit; and (iv) that signing this permit, doing so does not violate the provisions of any other permit to which said party is bound.
13. **Processing Fee.** Grantee shall pay the City a \$100.00 fee for the processing and issuance of this revocable encroachment permit, with said fee being paid to the Inspection Department of the City after the City Council approves this Encroachment Permit and before the Grantee and/or their contractor applies for a Right-of-Way Permit to perform the work.

Dated at Minot, North Dakota, this ___ day of July, 2019.

CITY OF MINOT:

Shaun Sipma, Mayor

Attest:

Kelly Matalka, City Clerk

STATE OF NORTH DAKOTA)
) ss
COUNTY OF WARD)

On this ____ day of July, 2019, before me, a notary public, personally appeared Shaun Sipma and Kelly Matalka, known to me to be the Mayor and the City Clerk of the City of Minot North Dakota, and who acknowledged to me their execution of the foregoing instrument on behalf of the City.

Notary Public

Receipt and Acceptance of Terms and Provisions
For Encroachment Permit

Comes now, _____, legal representative for _____
(Grantee) herein, and hereby indicates by his/her signature on the date indicated, that he/she has received a copy of this Revocable Encroachment Permit, is authorized to sign on behalf of Grantee, and that Grantee will abide by the terms and provisions specified herein with regard to the issuance and acceptance of this Encroachment Permit.

NAME
Dated:_____