

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MINOT
AND THE MINOT PARK DISTRICT, FOR THE
OVERLOOK PARK ADDITION/MAGIC CITY DISCOVERY CENTER DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this ___day of _____, 2020, by and between the City of Minot, a municipal corporation, hereinafter the “City,” and the Minot Park District, a political subdivision organized under the laws of the State of North Dakota, hereinafter the “Developer.” City and Developer are jointly referred to herein as the “Parties.”

WHEREAS, the City may enter into a development agreement with a person having ownership or control of real property within its jurisdiction; and

WHEREAS, this Development Agreement (hereinafter the “Agreement”), relates to the development known as the Overlook Park Addition/Magic City Discovery Center, owned by the Developer, located within the City of Minot, whose legal description is Overlook Park Addition, Lot 1, Block 2 (hereinafter the “Property”); and more particularly described on the attached Exhibit A; and

WHEREAS, the purpose of this Agreement is to memorialize the specific improvements and conditions the Developer must complete before the City will authorize additional permits for the development of the Property; and

WHEREAS, the following Exhibits are attached and incorporated into this Agreement:

- a) Exhibit A – Overlook Park Addition Plat
- b) Exhibit B - City of Minot Development Policy

WHEREAS, the City Council authorized the following action:

- a) By subdivision plat, Grandview Park Addition and Boulevard less portion west of highway and unplatted SECS 1, 12 & 13-155-83 SE1/4,SW1/4, S1/2 SW1/4SW1/4 SEC.1; NW1/4, S1/2, SW1/4NE1/4 SEC.12;N1/2NW1/4 SEC.13 less platted portions was approved as Overlook Park Addition, Lot 1 Block 1 and Lot 1 Block 2 and dedicated 1st Street NW 50’ Right-of-Way;
- b) By Ordinance No. 5357, the City amended the City’s Zoning Ordinance to rezone the Property to P (Public) District, subject to Planning Commission conditions, as listed in section 5 below;
- c) The City Council authorized the Mayor to sign this Development Agreement with the Developer; and

WHEREAS, the City is requiring the Developer to complete the following improvements as conditioned within the approval of the Overlook Park Addition plat; and

NOW, THEREFORE, the Parties hereto agree and stipulate as follows:

1. Public Street and Utility Infrastructure Improvements

- a. Developer shall install, at their sole cost, the sanitary sewer, storm sewer, and water main utilities to serve the development within the Overlook Park Addition, Lot 1, Block 2.
 - i. The Developer shall connect to the existing 12” PVC water main in 19th Ave NW and extend it along 1st St NW and connect to the existing 6” PVC water main in 1st St NE. Public water main within the right-of-way must meet City Standard Specifications.
 - ii. The Developer shall install sanitary sewer main and manholes along 1st St NW and connect to the existing sanitary sewer main in 1st St NE. Public water main within the right-of-way must meet City Standard Specifications.
 - iii. Developer shall pay all fees due to the City for connection to City utilities prior to the issuance of a plumbing permit for the connection into the City sanitary sewer system.
- b. Developer shall install, at their sole cost or in conjunction with adjacent property owners as a part of a paving district, the public street sections and street lighting to serve the development within the Overlook Park Addition, Lot 1, Block 2. Specifically:
 - i. 1st Street NW from 19th Avenue NW to and including the intersection of 1st Street NE must be improved to City urban residential street standards. Construction shall be completed prior to the issuing of Certificates of Occupancy for the Magic City Discovery Center.
- c. The Developer shall ensure all required public street and utility infrastructure improvements are designed and included in the plans titled “1st Street NW Reconstruction” which must be approved by the City and kept on file with the Engineering Department.
- d. All public street and utility infrastructure must be installed and tested per the City Standard Specifications and Details by the Developer.
- e. All public street and utility infrastructure must be inspected full time during active construction by an engineering firm, licensed to do work in North Dakota, and under the direction of a professional engineer, licensed to do work in North Dakota.

- i. If at any time during construction the work is not being inspected by an engineering firm, the City may order the work to stop immediately until the work can be inspected. The City shall not be held responsible in any way for the work stoppage due to Developer's failure to retain an engineering firm to conduct inspections.
- f. The Developer shall warranty all public street and utility infrastructure work constructed as part of the Overlook Park Addition to be free of material and workmanship defects for a period of two years after written notice of substantial completion by the City.
 - i. At any time during the two-year warranty period, the Developer shall correct any deficiencies found by the City. The Developer shall be responsible for the sole cost of correcting any deficiencies identified by the City including but not limited to contractor costs, attorney's fees, and engineering costs.
- g. The Developer shall submit record drawings certified by the engineer of record to the City for all public street and utility infrastructure installed as part of the Overlook Park Addition conforming to the City's Record Plan Policy on file with the Engineering Department. Record drawings shall be submitted hard copy, dwg, and GIS format.
- h. Security valued at 120% of all public street and utility infrastructure costs, as determined by a contractor's bid for the work or the design engineer's opinion of probable cost shall be required and provided by the Developer to the City; the required security shall be in the form of an unconditional letter of credit or performance bond, and shall be submitted in a form acceptable to the City Attorney.
 - i. 10% of the approved security shall be held by the City during the two-year warranty period. After all warranty corrections are approved by the City, the remaining security shall be released to the Developer.

2. Storm Water Management

- a. Storm Water Management Plans shall be required and must be approved by the City Engineer.
- b. The development improvements must conform to all floodplain management requirements.
- c. Developer will be required to operate and maintain the storm water infrastructure that is located outside the right-of-way and in dedicated easements. This includes any pipes, channels, ponds, and outlet structures.

- i. An operation and maintenance plan must be submitted to the City for approval before Certificates of Occupancy for any building may be issued.
 - ii. Developer consents and agrees that if they do not maintain the storm water infrastructure according to the operations and maintenance plan, the City is authorized to enter the property where the infrastructure is located and perform any maintenance required. The City's cost to perform the maintenance will be billed to the Developer. The City also reserves the right to special assess the cost of maintenance against the benefitting properties.
 - iii. All critical storm water infrastructure, as determined by the City Engineer, including but not limited to channels and ponds, outside the right of way, must have an easement (storm water and access) recorded over the improvements. The easement width and location shall be approved by the City Engineer.
3. Erosion Control
 - a. Erosion Control practices shall meet the requirements of the State of North Dakota and be approved by the City Engineer.
4. Maintenance of Public Right of Way and Easements
 - a. Unless specific ownership is defined on the plat, all easements and public right of way dedicated with this plat shall be for public use and access.
5. Planning Requirements
 - a. A stormwater management plan is required for development.
 - b. Erosion Control practices will need to meet State of North Dakota requirements and approved by the City Engineer.
 - c. Developer's Agreement will be in place prior to the plat being recorded.
 - d. Water and sanitary sewer will need to be extended to serve the proposed development.
 - i. All work shall be completed in its entirety, to all applicable standards, as specified in the Developer's Agreement.
 - ii. This work shall be solely at the cost of the Owner.
 - e. Connection fees are required when connections are made to City utilities.
 - f. Access locations to be approved by the City Engineer as a part of a future site plan.
 - g. Lighting and sidewalks will be required.
 - h. No building permits will be issued until the NDDOT right-of-way plat is recorded transferring part of the Broadway right-of-way to the Park District.

This Agreement shall be governed by and interpreted according to North Dakota law. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in Ward

County, North Dakota.

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 Developer, its successors and assigns in accordance with its terms.

Neither this Agreement nor any item hereof may be changed, waived, discharged, or terminated orally, but only by instrument in writing, signed by both Parties hereto.

If a Court finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.

This agreement shall be recorded in the Ward County Recorder's Office, and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any property association.

IN WITNESS WHEREOF, the parties hereto, after due authorization by its respective governing bodies/partners, hereby sign this agreement on the day and year first above written.

CITY OF MINOT, ND

By: _____
Shaun Sipma, Mayor

Attest: _____
Kelly Matalka, City Clerk

MINOT PARK DISTRICT

By: _____
Chuck Emery, President
Minot Park Board

