

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF MINOT  
AND SOUTHWEST CROSSING PARTNERS, LLC, FOR THE  
SOUTHWEST CROSSING CCRC SUBDIVISION 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 Southwest Crossing Partners, LLC, a limited liability company 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 Southwest Crossing CCRC Subdivision, owned by Developer, and located within the City of Minot, whose legal description is Southwest Crossing CCRC Subdivision (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 – Plat of Southwest Crossing CCRC Subdivision
- b) Exhibit B - City of Minot Development Policy; and

WHEREAS, the City Council authorized the following action:

- a) By subdivision plat, Lots 3, 6A-12C Block 1; Lots 1A and 1B, Block 11; and Lots 1A-10 Block 10, Southwest Crossing Addition was replatted as Southwest Crossing CCRC Subdivision.
- b) By Ordinance No. 3624, the City amended the City’s Comprehensive Plan land use designation for the Property from Low Density Residential and Medium Density Residential to High Density Residential.
- b) By Ordinance No. 5410, the City amended the City’s Zoning Ordinance to rezone the property from R3 (Multi-Family Residential), R3C (Townhouse Residential) & RH (Residential High Density) to RH (Residential High Density), subject to various conditions;
- c) By Ordinance No. 3623, the City approved a request for a Planned Unit Development (PUD) to develop the CCRC retirement community, subject to various conditions;
- d) 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 Southwest Crossing CCRC Subdivision 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 Southwest Crossing CCRC Subdivision.
  - i. Developer shall pay all fees due to the City for connection to City utilities prior to the issuance of a plumbing permit.
- b. Developer shall install, at their sole cost, the public street sections, signs, pavement markings, and street lighting to serve the development within the Southwest Crossing CCRC Subdivision. Specifically:
  - i. The extension of Crossing Street SW from Bison Court SW to the eastern property line; and
  - ii. The construction of Bison Court SW cul-de-sac
- c. The Developer shall ensure all required public street and utility infrastructure improvements are designed and included in the plans titled "Southwest Crossing CCRC Subdivision" which must be approved by the City and kept on file with the Engineering Department. These will be separate from any site plans associated with development in the subdivision.
- 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 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 Southwest Crossing CCRC Subdivision 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 Southwest Crossing CCRC Subdivision 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. A Storm Water Management Plan is required and must be approved by the City Engineer.
- b. The Storm Water Management Plan must meet the requirements of the original SW Crossing Development storm water management plan. Any deviations must be approved by the City Engineer.
- c. Developer is solely responsible for any necessary permits from other entities, including but not limited to the ND State Water Commission and the US Army Corps of Engineers.
- d. The development improvements must conform to all floodplain management requirements. A floodplain development permit is required.
- e. 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, approved, and recorded 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 storm water infrastructure, 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. Traffic Operations Study

- a. Developer shall complete traffic operations study per the City's and NDDOT applicable guidelines;
- b. Developer's traffic operations study shall include traffic generation and distribution for lane capacity analysis, turn lane, and signal analysis;
- c. The improvements recommended in the traffic operations study, required by the City, shall be installed prior to the issuing of any Certificates of Occupancy.

### 5. Driveway Access

- a. These approvals will be a part of the City of Minot site plan review process.

### 6. 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.

### 7. Minot Park District Requirements

#### a. Shared Use Paths

- i. All shared use paths shall be 8-foot concrete paths constructed to City of Minot standards.
- ii. All shared use paths shall include a 16-foot-wide easement for access and public use.
  - Easements shall be recorded prior to the issuance of any Certificate of Occupancy.
- iii. Paths located within the floodplain shall be concrete.
- iv. Paths shall have connections to 54<sup>th</sup> Street SW and 37<sup>th</sup> Avenue SW

- v. The fire access “path” shall have a concrete section designed to handle the weight of emergency vehicles.
  - b. Maintenance
    - i. Paths that are adjacent to roadways and through the green space area shall be maintained by Minot Park District.
    - ii. Paths through parking areas shall be maintained by the Developer.
- 8. Planning Requirements
  - a. Bison Court Cul-de-sac needs to be reconstructed to meet city specifications by the developer.
  - b. Walking path(s) in the right of way must meet city specifications and be constructed of concrete. Maximum width of eight (8) feet unless additional right-of-way is dedicated on the plat to accommodate a larger path.
  - c. Any improvements in the floodplain must meet city floodplain ordinance requirements. A floodplain development permit is required for any work within the floodplain. A floodway certification may be needed based on new FEMA maps.
  - d. A developer agreement is required before the plat can be signed and recorded.
  - e. A storm water management plan is required and must meet the requirements of the original SW Crossing Development storm water management plan.
  - f. A traffic impact study is required, and any resulting improvements must be installed by the developer.
  - g. The sixteen (16) foot wide easement for the walking path that connects to 37<sup>th</sup> Avenue SW is not within the boundaries of this subdivision and therefore must be dedicated under separate instrument.
  - h. The general appearance and construction materials for the maintenance shop building and trash dumpster enclosures shall be based on the colors and construction materials of the residential garages.

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

