

DEVELOPMENT AGREEMENT

MINOR INVESTMENTS FAMILY LLLP

THIS AGREEMENT, made as of _____, 2024, by and between the City of Brookings, a municipal corporation of the State of South Dakota and the County of Brookings, (referred to as the “City” herein), and Minor Investments Family LLLP, a South Dakota Limited Liability Limited Partnership, with its principal office located at Brookings, South Dakota 57006, (referred to herein as the “Developer”).

Whereas, the Developer certifies that it is the owner of a tract of land legally described as set forth in Exhibit “A” and incorporated by reference; and

Whereas, the Developer certifies that it has the legal authority to enter into this agreement; and

Whereas, the Developer has caused the plat of said property to be prepared in accordance with City’s subdivision regulations; and

Whereas, the City subdivision regulations require that all infrastructure improvements essential to the proper development of any subdivision, or portion thereof, be completed by the Developer; and

Whereas, the City subdivision regulations require, as a prerequisite to the approval of a plat, written assurances from the Developer fixing responsibility for the required public improvements; and

Whereas, this agreement is given for the benefit of the City as well as successors in interest of lots in the subdivision, as shown on the plat; and

Whereas, the City of Brookings created Tax Increment (“TIF”) District Number Fifteen (15), and the legal description and map of TIF District Number 15 is attached, marked Exhibit “B” and made a part hereof; and

Whereas, Tax Increment Revenue will be used to assist in providing for certain of TIF District Number 15’s project costs; and

Whereas, the City hereby establishes certain requirements applicable to the Trails Head Development in exchange for use of tax increment funds for eligible project costs for project improvements/infrastructure abutting and serving the affordable housing within TIF District Number 15.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties, for themselves, their successors and assigns, hereby agree as follows:

Section 1 - Developer's Obligations and Improvements Required

A. General

a. Developer agrees to install, or cause to be installed, the following subdivision improvements: water service lines, sanitary sewer, storm sewer, drainage improvements, all other drainage facilities, sidewalks, Americans with Disabilities Act (ADA) ramps, and all other improvements necessary to develop the area in accordance with the Subdivision Regulations, Engineering Design Standards and Specifications, Zoning Ordinances, and all other applicable ordinances of the City. All public improvements shall be installed in accordance with the Construction Plans filed with and approved by the City, as applicable.

b. A cost estimate of required improvements is attached as Exhibit C.

B. Storm Sewer, Drainage and Facilities

a. Developer shall construct or cause to be constructed, to City standards, all storm sewers, catch basins, drop inlets, culverts, drainage-ways, detention ponds, spill-ways, and other related and required drainage improvements.

b. Developer shall comply with all City and State stormwater regulations.

C. Municipal Utilities

a. Developer will, prior to installation, coordinate with the local municipal utilities to ensure that the electric, natural gas, sanitary sewer and water supply utilities are installed according to policies and standards established by the local municipal utilities.

D. Grading and Erosion Control

a. Developer shall complete grading of all utility easements and drainage ways to within two-tenths (0.2) feet of the elevation as shown on the approved final grading plan.

b. No grading or other improvements shall take place until such time that a Stormwater Pollution Prevention Plan (SWPPP) is completed and approved by the City Engineer and a General Permit for Stormwater Discharges Associated with Construction Activities is obtained from the State DANR.

c. Developer shall implement the Erosion Control Plan approved by the City Engineer. Developer agrees to maintain the erosion control devices and employ additional measures as necessary if the installed measures fail to retain soil on the site, until such time as the site is fully stabilized.

d. All erosion control devices shall be removed by the Developer after the site is fully stabilized and approved by the City Engineer.

E. Sidewalks

a. Developer shall install all pedestrian ramps at street intersections with the curb and gutter improvements. Ramps shall comply with current Americans with Disabilities Act (ADA) standards, including installation of detectable warning panels.

b. All sidewalks shall be installed by Developer in accordance with City standards. Sidewalks along Main Avenue South will be permanently dedicated for public access.

Section 2 - Developer's Warranty Responsibilities

a. The Developer shall warranty the water, sanitary sewer, storm sewer, drainage infrastructure, curb and gutter, valley gutter or any other part of the construction specified in the preliminary plan for a period of one year from the date stated in the Certificate of Completion. Prior to the end of the one (1) year warranty period, the City Engineer and local municipal utilities will inspect the public improvements and report the findings to the City. The City will confirm or reject the Acceptance Certificate. If confirmed, the Developer's responsibility for the public improvements ends and the public improvements become the responsibility of the City. If any portion is rejected, the Developer will repair or replace the rejected portion and a one (1) year warranty period will begin again on the rejected portion, and the Developer shall again comply with the provisions as stated in this Agreement.

Section 3 - Tax Increment District Number 15

A. Project Costs

a. The Developer shall fund and construct such improvements as set forth in the Tax Increment District Number 15 Project Plan and Development Agreement, with TIF reimbursement based on actual project costs. Reimbursement of actual Project costs to the Developer shall not exceed the sum of Three Million Four Hundred Fifty Thousand Seven Hundred Sixty-Six Dollars (\$3,450,766). The City of Brookings will only reimburse Developer the actual costs per itemized construction contracts plus financing costs, and the total reimbursement to Developer with TIF proceeds as they are received shall not exceed an aggregate amount of Three Million Four Hundred Fifty Thousand Seven Hundred Sixty-Six Dollars (\$3,450,766).

b. The City may also bid and construct certain public improvements and certain rights-of-way for sidewalk and ADA improvements as are set forth in the Project Plan for Tax Increment District Number 15, with the cost of City-provided public improvements not to exceed Tax Increment District Number 15 Project Plan eligible project costs, net of any reimbursements to Developer under this Agreement. Accordingly, the total sum of eligible project costs, including reimbursements to Developer pursuant to this Agreement, shall not exceed the sum of Five Million Dollars (\$5,000,000).

B. Guarantee

a. The Developer agrees to fund all public improvements as specified in the final construction plans, subject to reimbursement with TIF proceeds. It is understood that if there are not sufficient Tax Increment Revenues to service the Developer's debt for the public improvements, that the City will not be responsible for any shortfall.

C. Tax Increment Revenue

a. The Developer shall receive one hundred (100%) percent of the tax increment revenue during the first three (3) years of Tax Increment District Number 15 as the completed project reaches stabilized occupancy rate. Starting in year four (4), the Developer and the City agree to share equally in the tax increment revenue as it is received, subject to the maximum

payment to Developer set forth herein and in Section 3A of this Agreement, with such revenue to be utilized to pay for eligible project costs as described in this Agreement, until such time as the eligible project costs have been paid in full or the District is decertified per state law. The use of tax increment revenue to reimburse Developer shall be based upon actual construction and financing costs, with a “not to exceed” amount of Three Million Four Hundred Fifty Thousand Seven Hundred Sixty-Six Dollars (\$3,450,766) for the Developer’s project costs.

D. Payment Agent

a. The City will act as the paying agent of the Tax Increment Revenue to the Developer.

E. Draw Down

a. The City and Developer agree Tax Increment Revenue will be reimbursed to Developer in accordance with this Agreement to the extent revenue is available in the Tax Increment Financing District Number 15 Fund once the following have been completed:

- i. Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the eligible project improvements described herein have been made consistent with the Tax Increment Financing District Number 15 Project Plan and this Agreement.
- ii. Developer shall have submitted invoices showing the services / project improvements have been made.

F. Financing Costs

a. The Developer shall be eligible to receive reimbursement from TIF Number 15 for actual financing costs incurred to construct the public improvements set forth in this Agreement, subject to available TIF Number 15 revenue. Developer agrees to provide a copy of the financing terms and amortization schedule as documentation of its financing costs. Developer further agrees that if the financing terms or conditions change, an updated copy of the financing terms and amortization schedule shall be provided to the City.

G. Discretionary Tax Formula

a. The Developer agrees to waive the discretionary tax formula on platted lots within the development in accordance with the Brookings County discretionary tax formula policies and procedures during the duration of Tax Increment Financing District Number 15. Developer shall submit in writing to Brookings County their request to waive the discretionary formula. Failure to do so may result in nullification of withdrawal of the benefits of this Development Agreement. If the Developer sells the land within Tax Increment District Number 15, the purchase agreement for that transaction will provide that the buyer will agree to also waive the discretionary formula.

Section 4 - General Provisions**A. Competitive Purchasing of Public Improvements by Developer**

a. Upon review and approval by the City and local municipal utilities of the Developer's final construction plans and specifications for the public improvements as set forth in the TIF Number 15 Project Plan, Developer agrees to obtain competitive quotes for the project improvements through Developer's project manager. The project manager shall be responsible for soliciting quotes from multiple contractors, and providing tabulations to the satisfaction of the City Engineer for review and approval prior to awarding contracts to the most competitive offerors. The project manager shall provide to the City Engineer copies of all advertising notices, plan holders lists, and any direct marketing efforts such as mailings, email, telephone solicitations as proof of obtaining competitive quotes for the public improvements.

b. All required public improvements shall be installed to the satisfaction of the City Engineer within two (2) years of the date this Agreement is fully executed. Notwithstanding any contrary provision in either statute or ordinance, including those relating to the passage of time, Developer acknowledges and agrees that all terms and conditions contained herein shall remain a continuing obligation until satisfaction or completion.

c. City may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this Agreement or the City's

Subdivision regulations in connection with this Agreement, the Developer, its heirs, assigns or successors agree the City may recover its reasonable expenses, including attorney's fees incurred with respect to such action.

B. Affordable Housing to be Constructed

a. The Developer shall construct owner-occupied affordable housing units priced within 80% of the prescribed South Dakota Housing Development Authority First-Time Homebuyer Program price range and/or rental-occupied units with rental rates at or below 80% of Area Median Income limitations in accordance with the TIF District Number 15 Project Plan, and shall provide variations in floor plans and styles based upon market conditions.

C. Mechanics Liens

a. The Developer agrees to immediately satisfy any and all mechanic's or materialman's liens that arise as a result of the improvements. This provision shall not prevent Minor Investments LLLP from subsequently seeking compensation from a contractor, subcontractor or others who may be responsible for such liens or for such payment.

Section 5 - Entire Agreement

a. This document, along with the Project Plan for Tax Increment Financing District Number 15, shall constitute the entire agreement of the parties. All prior discussions and negotiations are merged into the Project Plan for this District and this Developer's Agreement. In the event of a conflict between the Project Plan and this Agreement, this Agreement shall be controlling. Any changes or addendums hereto shall be agreed to in writing by both parties.

Section 6 - Successors

a. To the extent any rights or obligations under this Agreement remain in effect, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 7 - Independent Contractor

a. In performing this Agreement, the Developer, including its officers, agents, employees, and volunteers, is at all times acting and performing as in independent contractor,

in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the City.

Section 8 - Notices

a. All notices, demands and other communications shall be given in writing and shall be delivered by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as required in that notice:

City: City of Brookings

Developer: Minor Investments Family, LLLP

520 3rd Street

630 Western Ave

Brookings, SD 57006

Brookings, SD 57006

Attn: Community Development Director

Attn: Mary Jo Minor

Section 9 - Amendments

a. Any amendment to this Agreement shall be effective only when duly executed by Developer and City.

Section 10 - Severability

a. The provisions of this Agreement are severable, and, if any one or more provisions is determined to be judicially unenforceable, in whole or in part, the remaining provisions, and any partially enforceable provision, to the extent enforceable shall nevertheless be binding and enforceable.

Section 11 - Termination of Agreement

a. Should the Developer not adhere to the terms of this Developer's Agreement, or violate any other part of this Developer's Agreement, the City reserves the right to terminate payments of Tax Increment Revenue received for TIF District Number 15, regardless if there are any outstanding and unreimbursed project costs. The City may also exercise any other legal or equitable remedies to enforce this Agreement.

Section 12 – Litigation

a. Any dispute arising out of or related to this Agreement shall be litigated in the Third Judicial Circuit Court for the State of South Dakota, located in Brookings, South Dakota.

Section 13 - Attorney's Fees

a. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, or any other court action occurs arising out of this Agreement, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees, costs, and expenses from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

Section 14 - No Third Party Beneficiary Rights

a. This Agreement is entered into for the sole benefit of Developer and the City and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

Section 15 - Assignment of Agreement

a. Neither the City nor Developer may assign or transfer their respective rights or obligations under this Agreement without first obtaining the prior written consent of the other, which consent may be granted or withheld in the sole and absolute discretion of the applicable party.

Section 16 - Authorized Signature

a. The Developer represents and warrants to the City that: (a) The Developer is duly authorized and empowered to sign and perform its obligations under this Agreement; and (b) the individual signing this Agreement on behalf of the Developer is duly authorized to do so and their signature on this Agreement legally binds the Developer to the terms of this Agreement.

Section 17 – Counterparts

a. This Agreement may be signed electronically and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed as of the day and year provided on Page 1 of this Agreement.

CITY OF BROOKINGS

MINOR INVESTMENTS FAMILY LLLP

Opeke Niemeyer, Mayor

Its: Agent (Signature)

Its: Agent (Printed Name)

ATTEST

Bonnie Foster, City Clerk

Dated this ____ day of _____, 2024.

Outlots 7A, 7, & 8 Excluding Lot H1 and H2 in Lot 8

Exhibit B



Lot 2, Indian Hills Addition, Cree Village

Outlots 7A, 7, & 8 Excluding Lot H1 and H2 in Lot 8

Main Avenue South Rights-of-Way from 8th Street South to 12th Street South/Trail Ridge Road

Exhibit C

Sitework and Stormwater	\$819,000
Park and Features	\$368,260
Site Acquisition	\$500,000
Professional Services and Fees	\$907,000
Financing Costs	\$856,506
	\$3,450,766