



TO: Mayor Chuck Barney
Members of the City Council

FROM: David Wicke, Assistant City Engineer

DATE: 4/23/2018

**SUBJECT: BEL AIR COMMONS ADDITION DEVELOPMENT (PLAT) AGREEMENT
PROJECT (4352)**

I. RECOMMENDED ACTION

1. Recommend approval of the Development (Plat) Agreement by the Council.
2. Authorize the Mayor to sign the Development (Plat) Agreement.

II. DEPARTMENT CONTACT PERSONS

Lance Meyer, City Engineer	(701) 857-4100
David Wicke, Assistant City Engineer	(701) 857-4100

III. DESCRIPTION

A. Background

This area was previously platted as, Bel Air Twinhomes Second Addition, Lot 1, a portion of Vacated 5th Avenue NW and remaining unplatted portion of the SW1/4SW1/4 Section 15, Township 155 North, Range 83 West, Ward County, North Dakota, located within the City of Minot corporate limits, for the purposes of the construction of a commercial lot and open space within Ward County.

The Developer wishes for the annexation of a 3.60 acre unplatted portion of the SW Quarter of the SW Quarter of Section 15, Township 155, Range 83 into the corporate limits. Also requested is approval of a two-lot subdivision, rezoning, and a corresponding amendment to the Comprehensive Development Plan. The subject property is located on the north side of 4th Avenue NW along the east side the west U.S. Hwy. 83 bypass. Two lots are proposed, one at the south end of the property along 4th Avenue NW that will be marketed for office development. The other lot, containing some 3.60 acres, will extend northward along the bypass serving as an open space connection to the Petersen Greenway open space dedicated recently to the Minot Park District by the developers of Northridge Villas. This lot is the land that needs to be annexed (see Annexation exhibit). This item was approved by the Planning Commission and City Council in February/March of 2018. The Development agreement must be approved and signed before the plat will be recorded.

B. Proposed Project

Staff and the Developer, Merit Development, LLC, wish to execute an agreement relating to the obligations for development and conditions outlined by City Staff and approved by the Planning Commission and City Council.

The language is consistent with other agreements the City has executed in the past with other Developers. A security valued at 120% of all public street and utility infrastructure costs as determined by the design engineer's opinion of probable construction costs or by a contractor's bid 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.

C. Consultant Selection

NA

IV. IMPACT:

A. Strategic Impact:

NA

B. Service/Delivery Impact:

NA

C. Fiscal Impact:

NA

V. ALTERNATIVES

NA

VI. TIME CONSTRAINTS

Council's approval of the recommendation is required before the re-plat can be recorded.

VII. LIST OF ATTACHMENTS

- A. Bel Air Commons Plat Development Agreement

BEL AIR COMMONS PLAT AGREEMENT

Required Improvements within publicly dedicated rights-of-way and easements serving Bel Air Commons to the City Minot / Ward County, ND

This Agreement is made this _____ day of _____, 2018 between the City of Minot, a municipal corporation (“City”), whose mailing address is P.O. Box 5006, Minot, ND 58702 and Merit Development, LLC (“Developer”), whose mailing address is 8250 E Rancho Vista Drive Scottsdale, AZ 85251.

WHEREAS, the Developer owns the property known as Bel Air Commons, more specifically described as: Being Lot 1, Bel Air Twinhomes Second Addition and a Portion of Vacated 5th Avenue NW to the City of Minot, North Dakota and Remaining Unplatted Portion of the SW1/4SW1/4 Section 15, Township 155 North, Range 83 West, Ward County, North Dakota, located within the City of Minot corporate limits (“Bel Air Commons”), for the purposes of the construction of a commercial lot and open space within Ward County;

WHEREAS, the City is requiring the Developer to complete specific improvements and other conditions before granting further permits for the Development of Bel Air Commons;

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

WHEREAS, in addition to any specific improvements and conditions provided in this Agreement, Exhibits A and B, are hereby incorporated herein by reference;

WHEREAS, the City is requiring the following improvements as conditioned within approval of the Bel Air Commons:

NOW, THEREFORE, it is hereby agreed and stipulated that the Developer shall complete the following before the City grants any further permits for the Development of Bel Air Commons:

1. Public Street and Utility Infrastructure Improvements
 - a. Developer shall install, at its sole cost, the watermain, sanitary sewer, and storm sewer utilities including all services to all Lots to serve the development within the Bel Air Commons.
 - i. Any existing water and sewer utilities installed in the vacated portion of 5th Avenue NW shall become privately owned and maintained by the Developer.
 - b. Developer shall install, at its sole cost, any public street improvements to serve the development within Bel Air Commons.

- b. Developer shall obtain written approval from the City Engineer on all erosion control practices.

4. Planning Requirements

- a. The Developer shall dedicate an easement before any building permits are issued by the City. The easement shall be a 20' wide access easement 27th St NW west and then north to provide access to proposed Lot 1. The easement shall be designed to follow the configuration of the driveway serving the future development.
- b. No driveway access installation shall be permitted without prior written approval from the City Engineering Department.
- c. Developer shall provide a 10' wide utility easement along 4th Avenue NW for the entire width of frontage.
- d. Developer shall submit an updated storm water management plan for review and approval by the City Engineer.
- e. Erosion control practices shall meet State of North Dakota requirements and be approved by the City Engineer.
- f. The Developer's Agreement shall be in place prior to the plat being recorded.
- g. Developer shall install sidewalks on 27th St NW.
- h. Developer shall pay all applicable public utility fees/connection fees.
- i. Developer shall enter into a separate agreement with the Minot Park District for dedication of the greenway and open space.

5. Public Land Dedication

- a. Per the Minot Park District determination, Developer shall dedicate Lot 1, Bel Air Commons to the Minot Park District. The dedication of land to the Minot Park District shall be by a separate agreement. Land dedication must take place before any building permits are issued.

6. 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.
7. 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.
8. Neither this Agreement nor any item hereof may be changed, waived, discharged, or terminated orally, but only by instrument in writing by all parties hereto.
9. If any part of this Agreement shall be judged invalid, the remainder 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

EXHIBIT 'A'

Bel Air Commons Plat

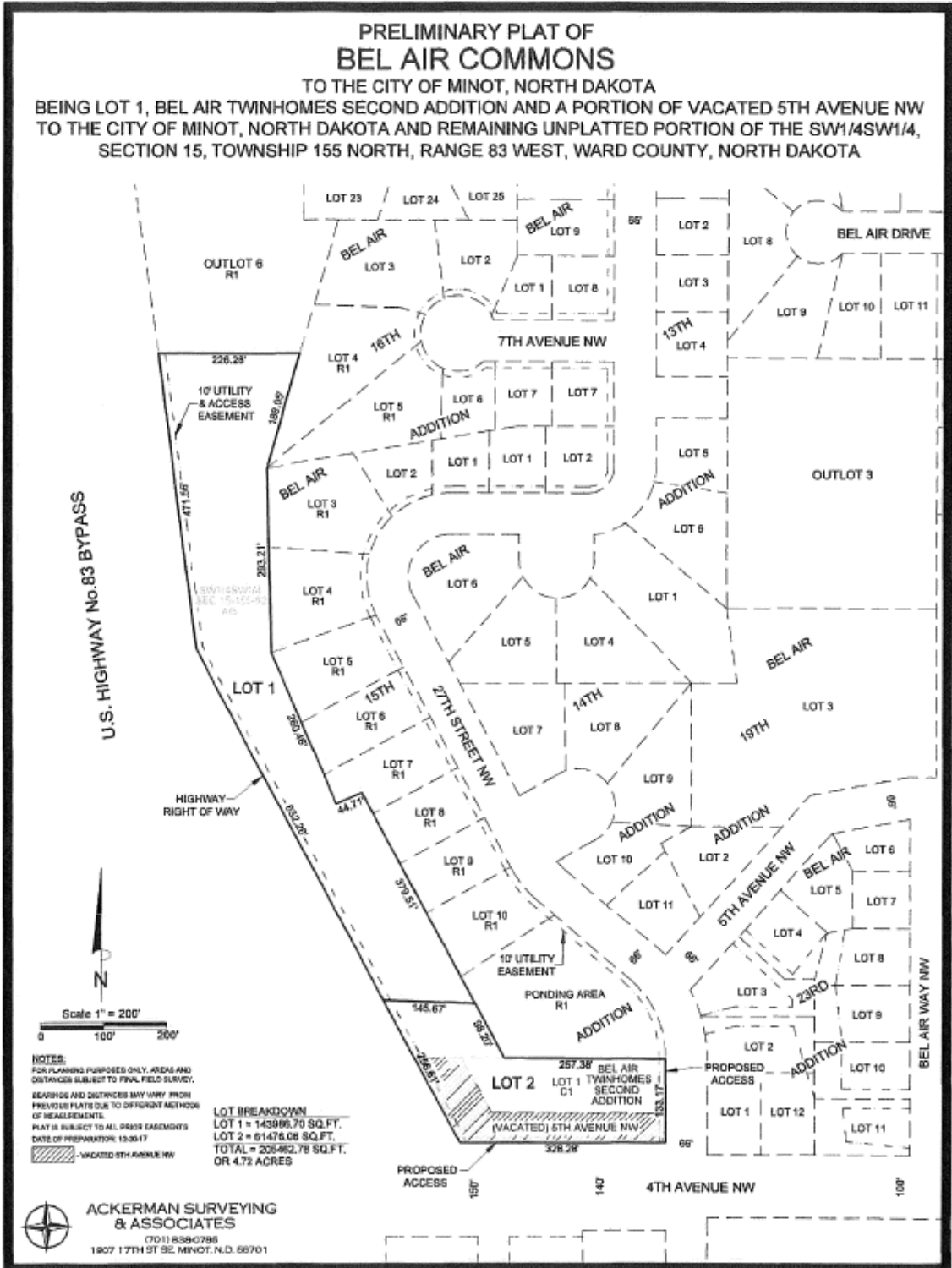


EXHIBIT 'B'

CITY OF MINOT DEVELOPMENT POLICY

In the interest of public safety and orderly development within the City of Minot a policy has been established that establishes what sequence of events needs to take place in order for building permits and occupancy permits to be issued for all residential, commercial, and industrial development within the City of Minot jurisdiction.

- A. Building permits for individual sites will be issued upon:
1. Approval of a storm water management plan for the site or subdivision.
 2. Approval of site plan or subdivision plans.
 3. Installation and testing of necessary water and sewer main to serve the adjacent properties.
 4. Adjacent streets or access easements to serve the properties have the appropriate gravel sections put in place.
 5. Provide City with verification that proper state storm water permits have been obtained for the project.

Upon completion of the above items building permits will be issued as deemed appropriate by the Engineering department. It will be the developer's responsibility to maintain the gravel streets or access easements throughout the project in a manner sufficient to allow access for emergency vehicles and inspection personnel. If at any time, it is determined that the roadways have fallen into an unacceptable condition no further permits will be issued until the necessary corrections have been made.

- B. Occupancy permits for individual sites will be issued upon:
1. Water and sewer mains serving properties have passed the appropriate tests.
 2. Utilities to include gas and electric have been installed to the property.
 2. Curb and gutter and one lift of asphalt have been installed in roadway or easement adjacent to property.