



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 25 day of September, 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.

- i. Any existing street infrastructure installed in the vacated portion of 5th Avenue shall become privately owned and maintained by the Developer.
 - c. At Developer's sole cost, the required public street and utility infrastructure improvements shall be designed by a registered professional engineer in North Dakota and submitted to the City Engineering Department for review. Approval of the plans by the City Engineering Department is required before any construction can begin.
 - d. At Developer's sole cost, all public street and utility infrastructure must be installed and tested per the City Standard Specifications and Details by the Developer.
 - e. At Developer's sole cost, 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.
 - f. The Developer shall warranty all public street and utility infrastructure work constructed as part of Bel Air Commons to be free of material and workmanship defects for a period of two years after final written acceptance 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 Bel Air Commons conforming to the City's Record Plan Policy on file with the Engineering Department. Record drawings shall be submitted in 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.
2. Storm Water Management System
- a. Onsite storm water management for Bel Air Commons shall be served by the City owned detention pond located on Bel Air 15th Addition ponding area, north of Bel Air Commons.
 - b. Developer shall submit an updated storm water management plan to the City for review. Adequacy of the detention pond to serve Bel Air Commons shall be determined in the storm water management plan. Any required upgrades or expansions to the pond shall be installed at the sole cost of the Developer.
3. Erosion Control Practices
- a. Developer shall meet all erosion control practice requirements of the State of North Dakota.

- 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

enforceable to the extent allowed by law.

- 10. 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.

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*
~~Chuck Barney, Mayor~~
 Shaun Sipma,

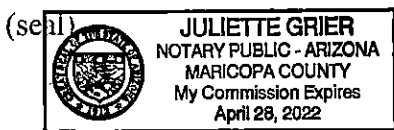
Attest: *Kelly Matalka*
 Kelly Matalka, City Clerk

MERIT DEVELOPMENT, LLC

By: *Phillip Reed Handley*
 Phillip Reed Handley – Member
 Merit Development, LLC

STATE OF ARIZONA)
) ss
 COUNTY OF MARICOPA)

On this 3 day of August, 2018, before me personally appeared Phillip Handley, known to me to be the person who is described in, and who executed the within and foregoing instrument and who acknowledged to me that he executed the same.



Juliette Grier
 Notary Public, Maricopa County,
Arizona
 My Commission Expires: 4.28.22

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.

Recorder's Office, Ward, ND 02/15/2019 01:34:08 PM
I certify that this instrument was filed for record this date.
Betty Braun, County Recorder

by Betty Braun

3025737

