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**TO:** Mayor Chuck Barney  
Members of the City Council

**FROM:** David Wicke, Assistant City Engineer

**DATE:** 4/5/2018

**SUBJECT: WEST ACRES BUSINESS CENTER ADDITION (PLAT) AGREEMENT  
PROJECT (4354)**

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**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 is known as the West Acres Business Center Lots 1, 2, and 3 located within the City of Minot corporate limits, for the purposes of commercial development with uses consistent with the property's C-2 zoning within Ward County.

The Developer wishes to re-plat Lots A, B and C of Outlot 30, Section 27, Township 155, Range 83 East. The subject property is located on the at the southwest corner of Elk Drive which is the frontage road running along the southwest side of US Highways 2/52/83 Bypass and West Burdick Expressway/Sundown Drive. This item was approved by the Planning Commission and City Council in September/October of 2017. The Development Agreement must be approved and signed before the re-plat will be recorded.

B. Proposed Project

Staff and the Developer, Bruce Bentz, LLLP, wish to execute and 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.

The developer will be required to reconstruct Elk Drive to an urban section from Sundown Drive east to the existing end of the urban section. The developer may install the roadway himself, work with other landowners adjacent to the roadway to install the urban section, or petition the city council for creation of a special assessment district.

- 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. West Acres Business Center Plat Development Agreement

## **WEST ACRES BUSINESS CENTER PLAT AGREEMENT**

### **Required Improvements within publicly dedicated rights-of-way and easements serving the West Acres Business Center 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 Bruce Bentz, LLLP (“Developer”), whose mailing address is 1900 N. Bismarck Expressway Avenue, Bismarck, ND 58501.

WHEREAS, the Developer owns the property known as the West Acres Business Center Lots 1, 2, and 3 located within the City of Minot corporate limits (“West Acres Business Center”), for the purposes of commercial development with uses consistent with the property’s C-2 zoning;

WHEREAS, the City is requiring the Developer to complete specific improvements and other conditions before granting further permits for the development of the West Acres Business Center;

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 West Acres Business Center;

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

WHEREAS, the City is requiring the following improvements as conditioned within approval of the West Acres Business Center Plat:

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 the West Acres Business Center:

1. Public Street and Utility Infrastructure Improvements
  - a. Developer shall install, at its sole cost, the sanitary sewer, storm sewer, and water utilities including all services to all lots to serve the development within the West Acres Business Center.
  - b. The Developer shall install the public, urban street section and street lighting to serve the unpaved portion of Elk Drive between Sundown Drive and the east edge of existing street pavement on Elk Drive located at 2615 Elk Drive.
    - i. As an alternative, the developer may petition the City for the creation of a Special Assessment District. The district shall be created and upfront 35% pre-payment per City of Minot Special Assessment Policy paid before any permits for the development are issued.

- ii. As an additional alternative, a private agreement between the Developer and adjacent property owners to the public street improvements can be formed to share the costs of the public street improvements. If this alternative is used, the public improvements shall be installed before any permits for the development are issued.
- c. The required public street improvements for the unpaved portion of Elk Drive are to be designed by a registered professional engineer licensed in North Dakota and reviewed and approved by the City.
- d. At Developer's sole cost, all public street and utility infrastructure shall be installed and tested per the City Standard Specifications and Details.
- 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 the West Acres Business Center to be free of material and workmanship defects for a period of two years after final written acceptance by the City, unless the improvements are done by a special assessment district.
  - 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. Unless the improvements are done pursuant to the special assessment alternative outlined in section 1(b)(i), 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 West Acres Business Center 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. If improvements are done by special assessment district, the Developer shall be responsible for the 35% pre-payment necessary to create the special assessment district according to the City's Special Assessment Policy.

## 2. Storm Water Management System Maintenance

- a. Refer to Storm Water Management Facility Maintenance Agreement as Exhibit 'C' which is attached incorporated by reference into this Agreement
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's Agreement between Developer and the City of Minot shall be approved, executed, and recorded prior to recording of the plat.
  - b. Developer shall submit Storm Water Management Plans for review and approval by the City Engineer.
  - c. Developer shall ensure drainage to NDDOT right-of-way is approved by NDDOT.
  - d. Developer shall submit a Traffic Impact Study and the Traffic Impact Study shall be reviewed by the City and NDDOT engineers. Recommended improvements shall be installed by the Developer at Developer's sole cost.
  - e. Elk Drive from Sundown Drive east to existing pavement on Elk Drive shall be improved to urban road standards through a Developer petitioned special assessment district, agreement with adjacent property owners, or the Developer of West Acres Business Center. The improvements described in the preceding sentence shall be completed before any building permits are issued.
5. Public Land Dedication
  - a. Developer shall meet the requirements of the Minot Park District by either a public land dedication or in-lieu fee as determined by the Minot Park District.
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 if 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



(seal)

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\_\_\_\_\_

Notary Public, \_\_\_\_\_ County,

North Dakota.

My Commission Expires: \_\_\_\_\_





## **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 that have passed the appropriate tests.
  2. Utilities to include gas and electric have been installed to the property.
  3. Curb and gutter and one lift of asphalt have been installed in roadway or easement adjacent to property.

**EXHIBIT 'C'**

## STORM WATER MANAGEMENT FACILITY MAINTENANCE AGREEMENT

### WEST ACRES BUSINESS CENTER

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by **Bruce Bentz, LLLP**, hereinafter called the “Developer”, whether one or more, and the City of Minot, hereinafter called the “City”. WITNESSETH, that WHEREAS, the Developer is the owners of certain real property described below and as recorded by deed in the land records of Ward County, North Dakota, hereinafter called the “Property” as listed below:

#### **Lots 1, 2, and 3 West Acres Business Center to the City of Minot (Bruce Bentz, LLLP)**

WHEREAS, Developer is proceeding to build on and develop all or a portion of the properties as shown on **Exhibit A**, and subsequent amendments (e.g., Storm Water Management Plan) and WHEREAS, the Site Plan **Exhibit C-1**/known as **West Acres Business Center** hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for management and conveyance of storm water within the confines of the property and discharge related piping or structures which are located off property; and WHEREAS the City and the Developer, its successors and assigns, including condominium association or property association, agree that the health, safety and welfare of the residents of Minot, North Dakota, require that on-site storm water management facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management facilities and all pipes and structures located outside of the public right of way as shown on the Plan be constructed and adequately maintained by the Developer, its successors and assigns, including any condominium association or property owner association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows;

1. The on-site and off-site storm water management facilities shall be constructed by the Developer, its successors and assigns, in accordance with City of Minot Storm Water Management Ordinance, Standard Specifications and Details
2. Except as provided herein, the Developer, its successors and assigns, including any condominium association or property association, shall adequately maintain the storm water management and conveyance facilities located outside of the public right of way. This includes all pipes, channels or other conveyances built to convey storm water to and from the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design function. A Long-Term Maintenance Plan containing an inspection schedule and maintenance checklist for all storm water management facilities shall provide information about the storm water management system components so that property owners will

know the locations and maintenance needs of the components and structural best management practices and shall be used to check the facilities for inspection as outlined in the Plan's Storm Water Pollution Prevention Plan (SWPPP).

3. The Developer, its heirs, successors and assigns, shall inspect the storm water management facility and submit an inspection report annually to the City of Minot Director of Public Works. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, pipes, access roads, etc. Deficiencies shall be noted in the inspection report.
4. The Developer, its heirs, successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management facilities whenever the City deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City shall provide the Developer, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. In the event the Developer, its heirs, successors and assigns, fails to maintain the storm water management facilities in good working condition acceptable to the City, the City, with due notice, may enter upon the property and take whatever steps necessary to correct deficiencies as identified in the inspection report and to charge the cost of such repairs to the Developer, its successors and assigns. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the land of the Developer outside of the easement for the storm water management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. The Developer, its heirs, successors and assigns, will perform the work necessary to keep the facilities in good working order as appropriate. A maintenance schedule for the storm water management facilities (including sediment removal) is outlined in the Long-Term Maintenance Plan and the schedule will be followed.
7. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, material, and the like, the Developer, its heirs, successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual cost incurred by the City hereunder. If not paid within the prescribed time period, the City shall secure a lien against the real property in the amount of such costs and may be placed on the ad valorem tax bill.
8. The Developer shall provide easements along and around storm water management and conveyance facilities and access to storm sewers constructed or existing within the subject properties. Easements shall also be provided around the storm water detention pond. These easements shall include ingress and egress on the Developer's property, or where designated, to access the existing storm sewer systems and manholes located within the property.

9. 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 condominium association or property association.
10. Developer shall create a condominium association or property association that shall be responsible for all future construction and maintenance of the storm water management and conveyance facilities. The condominium or property association shall be created and recorded before any certificates of occupancy shall be granted by the City.

**EXHIBIT 'C-1'**

**WEST ACRES BUSINESS CENTER SITE PLAN**

**WEST ACRES BUSINESS CENTER**





