

June 8, 2016

MEMORANDUM

To: Commissioners Askvig, Grossman, Guy, Marquardt, and Mayor Seminary
From: Randy Bina, Executive Director *RB*
Re: **AGENDA ITEM – Park Improvement District 16-002**
Request for Resolution Creating District and Ordering Preparation of Preliminary Engineering Reports
Request for Resolution Approving Preliminary Reports and Directing the Preparation of Plans and Specifications
Request for Resolution Approving Plans and Specifications
Request for Resolution Declaring Petition for Improvements has been Received
Request for Authorization to Advertise and Receive Bids

Please consider the following at the Board of City Commissioners meeting to be held on Tuesday, June 14, 2016 at 5:15 p.m. in the Tom Baker Room.

A Park Development Agreement (attached) was entered into between the Developer and the Park District on April 16, 2015. Park Improvement District No. 16-002 Unit 1 (see attached map) consists of the construction of neighborhood park amenities including playground equipment, a picnic shelter, and parking lot. The Developer, owning 100% of the benefitting area in Heritage Park and Heritage Ridge, petitioned for these park improvements.

The estimated total special assessment for a median lot in Heritage Ridge and Heritage Park is estimated to be between \$1,500 and \$1,875 which results in an estimated annual principal installment between \$100 and \$125 for a 15 year term. The proposed Park Improvement District 16-002 includes benefitting property that is not currently annexed. The costs associated with benefited property outside city limits will be assessed to the Park District to be held in abeyance to be assessed to the actual benefited parcels when they are annexed.

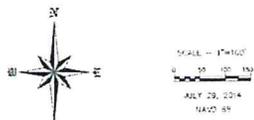
Attachments: Map of Improvement District
Park Development Agreement
Estimate of Neighborhood Park Costs
Project Budget
Diagram of Proposed Park

CC: Jason Tomanek, Assistant City Administrator
Sheila Hillman, City of Bismarck Director of Finance
Kathy Feist, Park District Finance Director
Julie Jeske, Board of Park Commissioners President

A nationally accredited park and recreation agency.

HERITAGE RIDGE ADDITION

THE SOUTHWEST 1/4
OF SECTION 8, T. 139 N., R. 80 W.
BISMARCK, NORTH DAKOTA



OWNER: LADAN, LLC
CONVEYED WITH SD
RECORD 10

OWNER: LADAN, LLC
CONVEYED WITH SD
RECORD 10

OWNER: LADAN, LLC
CONVEYED WITH SD
RECORD 10

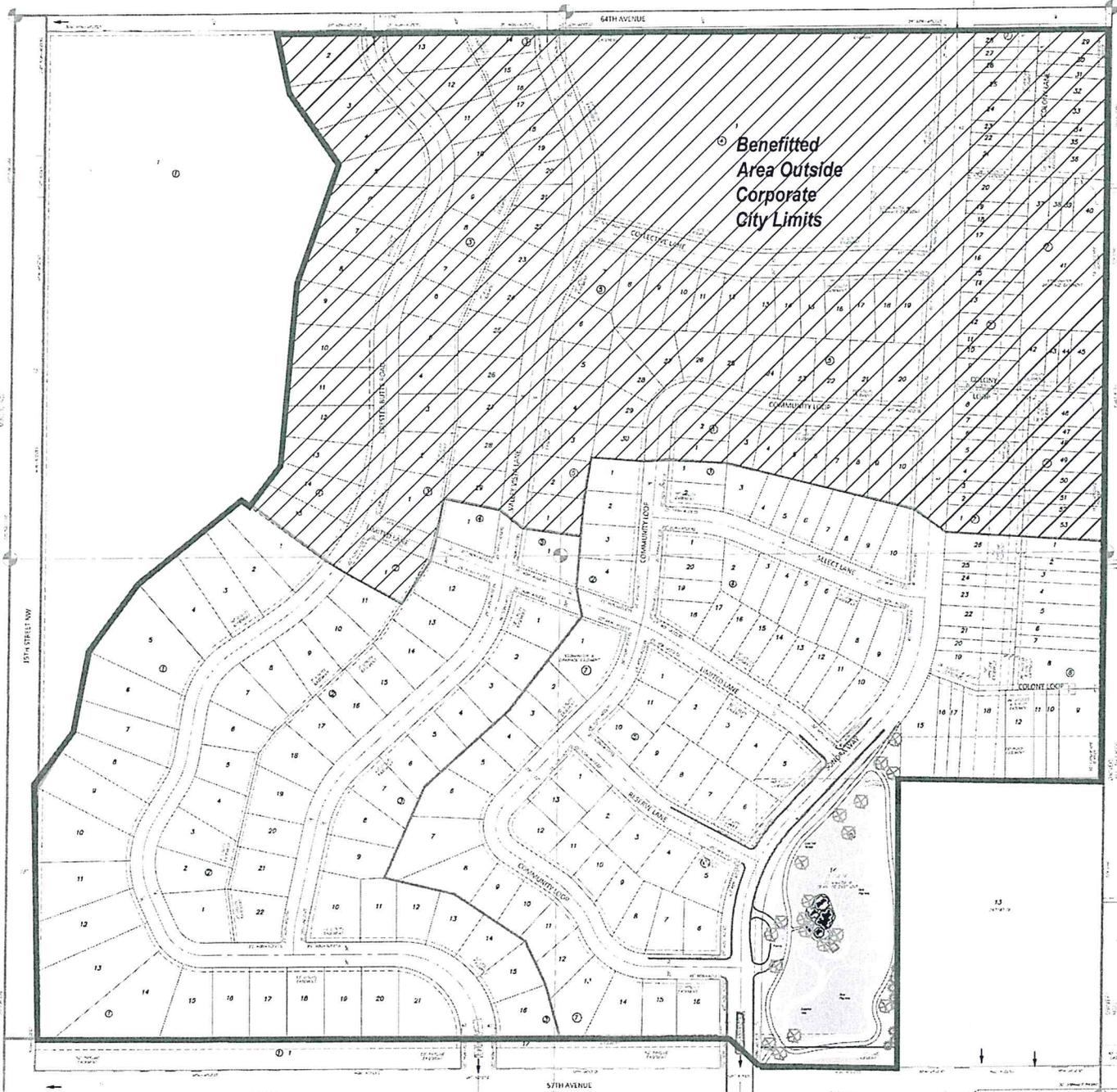
OWNER: WILLIAM BRADY, JR.
RECORDED WITH SD
RECORD 10

OWNER: NORMAN & JACOB GREEN
RECORDED WITH SD
RECORD 10

OWNER: MARK & TERESA LITTLE
RECORDED WITH SD
RECORD 10

OWNER: WELLS & HOLLY BENTLEY
RECORDED WITH SD
RECORD 10

OWNER: LADAN, LLC
CONVEYED WITH SD
RECORD 10



STATE PLANT COORDINATES: NAD83 BISMARCK, ND 58102
DATE: ALL DIMENSIONS SHOWN ARE TO CENTER UNLESS NOTED OTHERWISE
OWNER: SWENSON, HAGEN & COMPANY P.C.
DATE: 7/29/2014

PARK DEVELOPMENT AGREEMENT
Neighborhood Park in Heritage Park Addition and Heritage Ridge Addition

This Park Development Agreement (the "Agreement") is made and entered into this 16th day of April, 2015, by and between Heritage Development, Inc., whose address is PO Box 7188, Bismarck, North Dakota 58507, ("Developer") and the **PARK DISTRICT OF THE CITY OF BISMARCK**, a park district under the laws of the State of North Dakota, 400 East Front Avenue, Bismarck, North Dakota 58504 ("Park District").

Preliminary Statement

The purpose of the neighborhood parks and open space policy is to maintain and enhance the high quality visual aesthetic of the community and to ensure that adequate usable neighborhood parks, open space and recreational facilities are provided for the existing and future residents of the City of Bismarck. Because new development within the City, or intended to be in the City, increases population and the demand for public services, it shall be the policy of the City of Bismarck that the owner and/or developer of major urban residential subdivision plats provide for neighborhood parks, playgrounds, open space and natural areas, and trails. The provision of such facilities in newly developed areas maintains the high quality of the life enjoyed by the citizens of the community by permitting the City to identify, obtain, continue, maintain and enhance its recreation and open space system.

Developer is the owner of an 151 acre, more or less, tract of real property located in, or planned to be annexed to, the City of Bismarck, Burleigh County, North Dakota (the "Developer Property"), specifically described below and delineated on the plat/survey as attached Exhibit A:

Heritage Park Addition and Heritage Ridge Addition to the City of Bismarck

Developer is in the process of planning a residential development on the Developer Property in which the Developer desires to include a neighborhood park of approximately 5 acres on the Developer Property, the location being generally shown on Exhibit A. Developer's focus is to create a community with its own character and to provide residential development and recreational amenities for the support of the community and to promote ease of access in and around the community. The Developer intends to develop the area beginning when annexation is approved.

Park District desires to establish an additional neighborhood park in Bismarck and will design the 5 acre tract (the "Park Area"), affect the construction of the park amenities and manage the Park Area, all pursuant to the terms and conditions of this Agreement and the rules and regulations established by the Board of Park Commissioners from time to time.

The Park Area will play a vital role in this development by not only providing recreational amenities for this community and the surrounding area but also to provide the necessary connections throughout the development to other areas in Bismarck. To the extent appropriate and possible, all trails will ultimately connect to current and future Park District parks.

Agreement

NOW, THEREFORE, in consideration of the above preliminary statements, the terms and conditions of this Agreement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Scope of Agreement. This Agreement shall not constitute a partnership or a joint venture by and between the Developer and the Park District. Neither party has a right or obligation to bind the

other party to any course of action or commitment as it relates to the development of the Developer Property, including the Park Area that is described herein. Each of the parties is an independent contractor and, although they will coordinate their efforts to develop the Park Area, possibly to include elements of design, access and amenities, neither party is assuming any obligation of the other party.

2. Conveyances. On the date of closing, as herein described, Developer shall cause to be transferred and conveyed to the Park District the approximately 5 +/- acres that constitutes the Park Area, as is in the general location as shown on the site plan attached as Exhibit A and further delineated on Exhibit A-1. The terms of the conveyance are described in the attached Exhibit C, Real Estate Contribution Agreement. The parties acknowledge that the approved plat shall dedicate the Park Area to public use. The Developer and Park District agree that the Park Area shall be used for no purposes other than those outlined in this Agreement and that the Park District may not transfer or convey any portion of the Park Area without the express written consent of the Developer.

Developer will provide the Park District with an abstract of title to the Park Area no later than ten (10) days prior to closing. In lieu of an abstract of title, the Developer at its option may provide to the Park District an owner's policy of title insurance in an amount equal to the sales price of the Park Area as stated in the Real Estate Contribution Agreement.

3. Developer and Park District Obligations. Developer and Park District acknowledge that they will be responsible for the following amenities to be located on the Developer Property and the Park Area:

- a. Specific Neighborhood Park Amenities are described on Exhibit B and will be installed by the Park District and financed through a City of Bismarck special assessment improvement district with the costs for the Specific Park Amenities assessed against the benefitted Lot Owners/Developer Property as described in Exhibit A-2.
- b. The Developer shall provide the necessary easements for utilities for the Park Area.
- c. The Developer, at its sole cost and expense, shall provide the following with regard to the Park Area:
 - i. Prepare a complete boundary survey of the Park Area showing all rights-of-way, easements and any other physical burdens that may encumber the Park Area. The Developer shall cause the Park Area to be staked so that it can be later identified by the Park District.
 - ii. The Developer will provide the Park District with copies of such tests, investigations and reports which may have been completed by the Developer including, but not limited to, any soil boring tests and results of environmental testing. Should such test disclose that the Park Area cannot support the intended park development or if there are environmentally hazardous conditions on the Developer Property and/or Park Area, the Park District will not be required to close and accept the portion of the Developer Property to be included in the Park Area.
 - iii. To the best of its ability, the Developer shall provide the Park District with safe access to the Park Area and such areas leading to the Park Area.

4. Park Area Design. The Park District shall develop a design for the Park Area that provides park activities, such as walking trails, shelters and playgrounds. Attached on Exhibit A-1 is the parties' initial concept of the park design. As the Park District designs and plans the Park Amenities for the Park Area, it will provide the Developer with periodic reports.

5. Maintenance. In entering into this Agreement, the Park District contemplates it will maintain the Park Area within its normal park maintenance program and consistent with other parks within the Bismarck area. The Park District will be generally responsible for future maintenance of the Park Area, the trails leading to the Park Area and the equipment and the other Park Amenities in the Park Area. If the Developer and the Park District agree to coordinate access to other trails or parks or provide other amenities, any such other amenities agreed to by and between the Park District and the Developer may require a joint maintenance agreement.

6. Construction. The construction of the Park Amenities described in Section 3 and as shown on Exhibit B are intended to be completed by one calendar year after annexation is approved.

7. Park Name. The Park Area shall be named and referred to as Heritage Park.

8. Future Provisions. It is understood that this Agreement will satisfy the Developer's obligation under Chapter 14-09 of the City of Bismarck Code of Ordinances for any future additions to the areas highlighted in the attached Exhibit A-2 Map of the Benefitted Property.

9. General Provisions.

- a. This Agreement, together with the other surveys, plans and specifications that have been reviewed by the parties or will later be provided pursuant to this Agreement and the attachments hereto, contain the entire agreement among the parties respecting the matters herein set forth and supersede all prior discussions with respect to such matters. Notwithstanding the above, the parties acknowledge that this is a work in progress and development of the final design for the Park Area will be part of this Agreement.
- b. This Agreement shall be binding upon and inure to the benefit of all the parties and their respective successors and assigns.
- c. This Agreement shall be construed and enforced in accordance with the laws of the State of North Dakota.
- d. This Agreement may be modified only by a written document signed by all parties. A purported oral modification shall not be effective.
- e. The Developer shall hold the Park District harmless for any claim or injury to a person or property arising out of, or in the course of, its construction, design, and plan of the Park Area. In like manner, the Park District, once it acquires the Park Area and assumes maintenance responsibility, will hold the Developer harmless for claims arising out of its negligence in maintaining the Park Area.

DEVELOPER:

HERITAGE DEVELOPMENT, INC.

By: *Bob Williams*
Its: President

By: _____
Its: _____

PARK DISTRICT:

THE PARK DISTRICT OF THE
CITY OF BISMARCK

By: *Julie Jeske*
Julie Jeske, Board President

By: *Randy Bina*
Randy Bina, Clerk

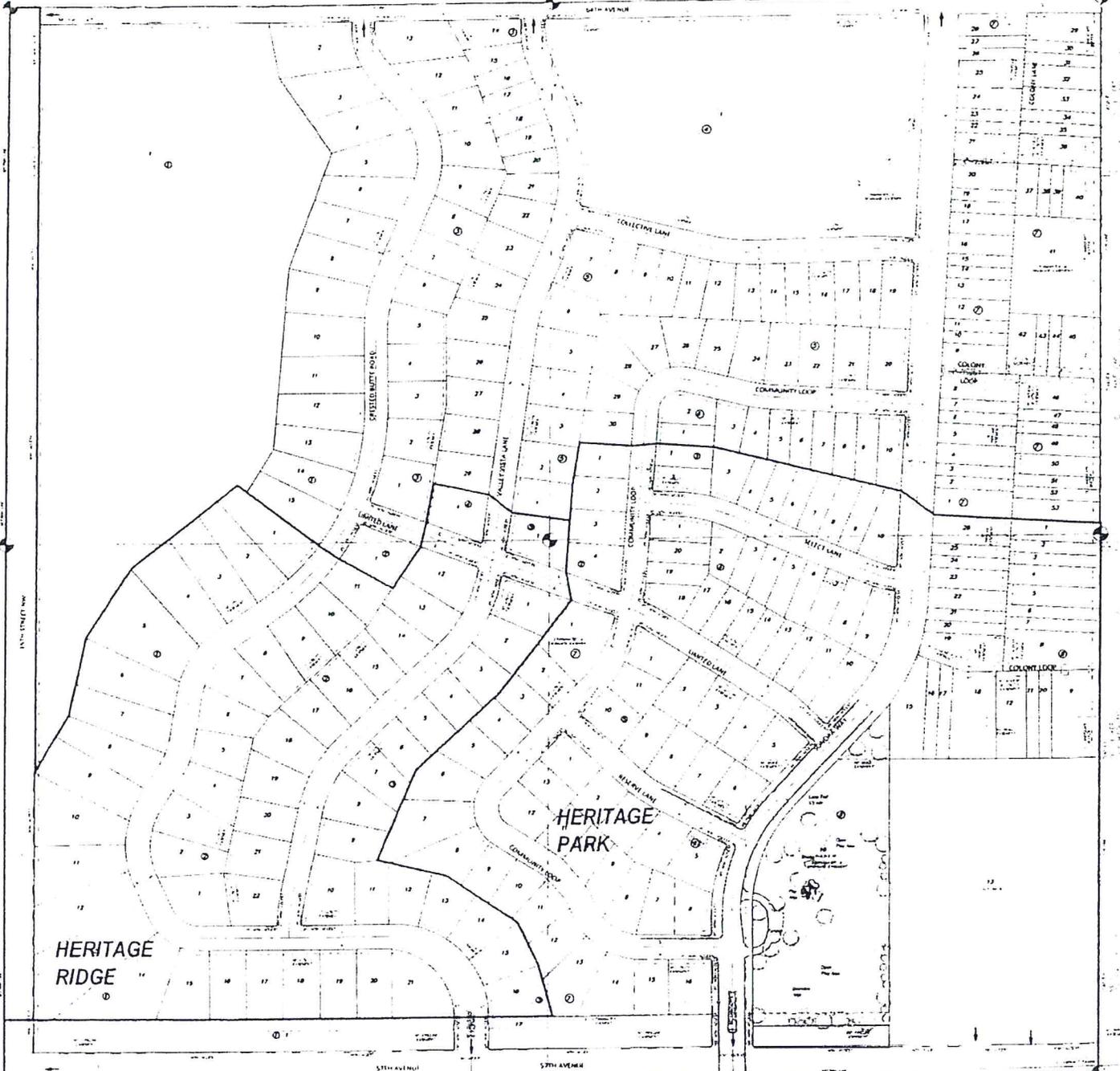


EXHIBIT A - Plat/Survey of Developer Property

HERITAGE RIDGE ADDITION

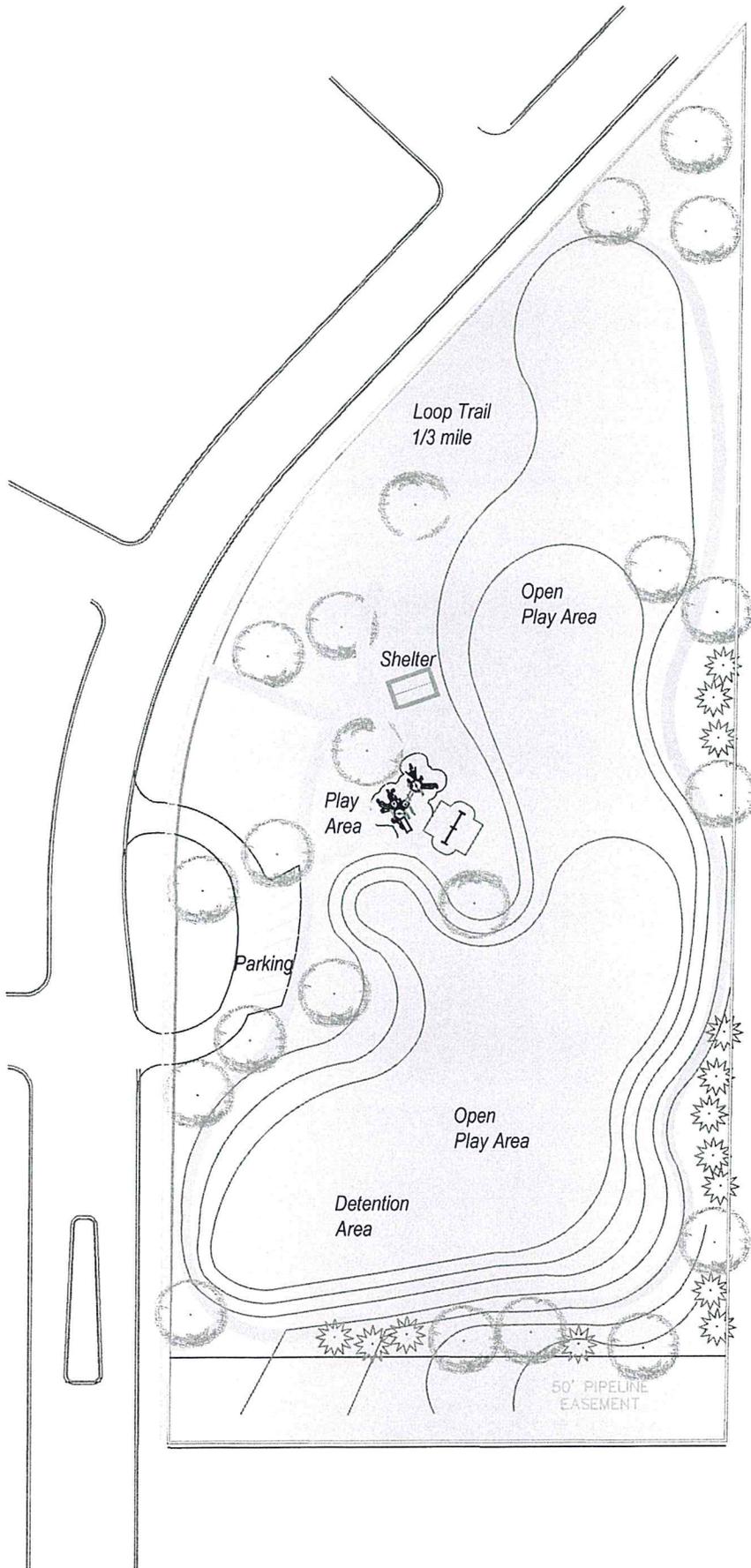
THE SOUTHWEST 1/4
OF SECTION 8, T. 139 N., R. 80 W.

BISMARCK, NORTH DAKOTA



DAVID G. HANSEN
REGISTERED SURVEYOR
NO. 12345
STATE OF NORTH DAKOTA

EXHIBIT A-1 Diagram of the Park Area



Heritage Ridge Subdivision Preliminary Neighborhood Park Plan



EXHIBIT A-2 Map of Benefitted Property

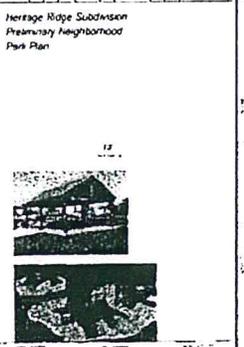
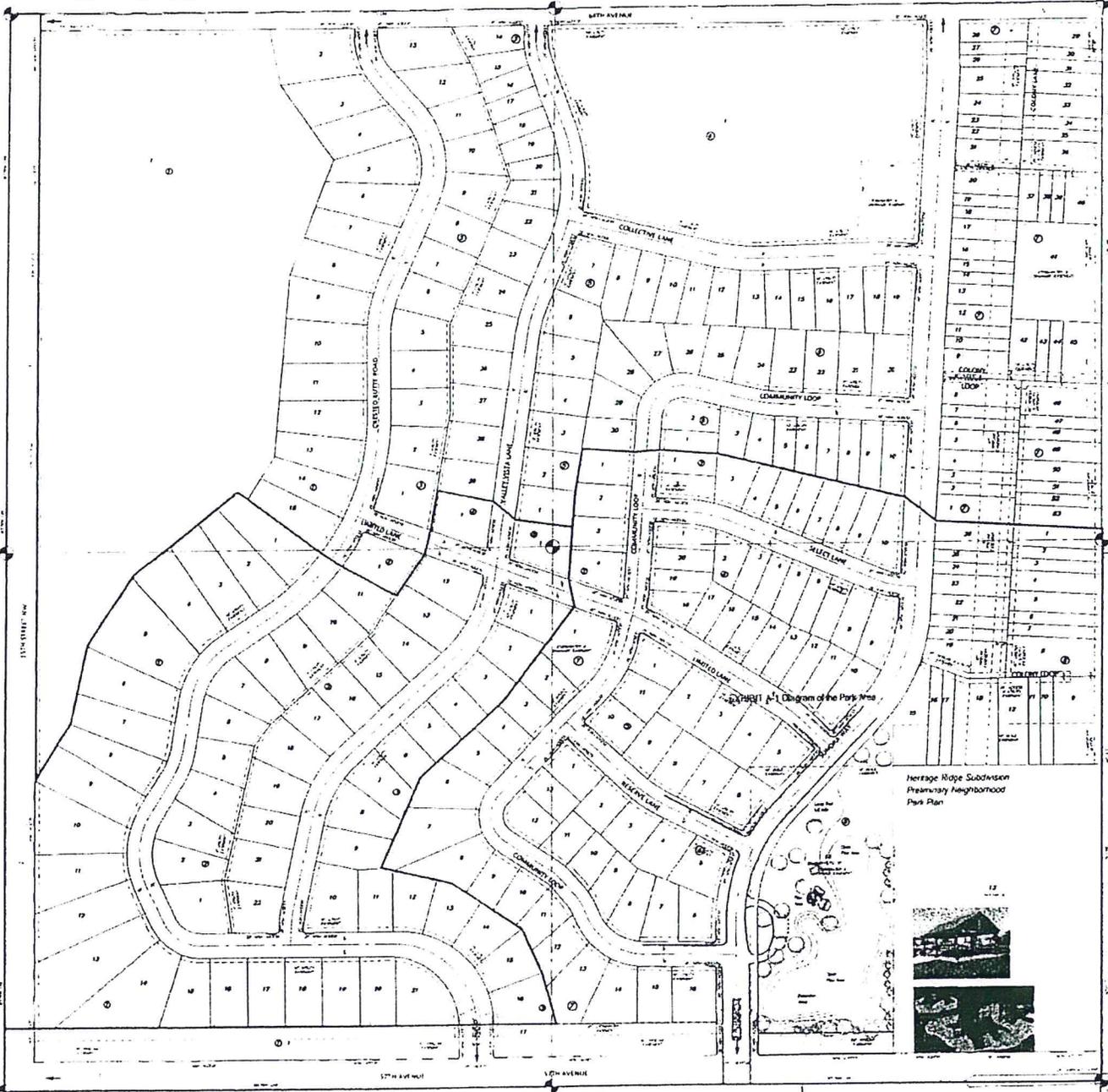
HERITAGE RIDGE ADDITION

THE SOUTHWEST 1/4
OF SECTION 8, T. 139 N., R. 80 W.

BISMARCK, NORTH DAKOTA



SCALE: 1" = 100'
DATE: JULY 29, 2014
DRAWN BY: [Name]



DATE: [Date]
DRAWN BY: [Name]

NEIGHBORHOOD PARK
PROPOSED BENEFITTING AREA

benefitting area based on 1/2 mile
walking distance from edge of park

EXHIBIT B - Park Amenities and Cost Estimate of Individual Park Amenities

Heritage Ridge Park- Preliminary Plan				1/8/2015
Estimate of Neighborhood Park Costs				
	QTY	UNIT	PRICE	TOTAL PRICE
EARTHWORK				
General Grading and Levelling	1	LS	20000.00	\$20,000.00
			Grading Total	\$20,000.00
PLAY EQUIPMENT				
Play Equipment & Installation	1	LS	80000.00	\$80,000.00
Wood Fiber	1	LS	10000.00	\$10,000.00
			Play Equipment Total	\$90,000.00
PICNIC SHELTER				
Wood Shelter with Metal Roof	1	LS	30000.00	\$30,000.00
Electric to Shelter	1	LS	10000.00	\$10,000.00
			Shelter Total	\$40,000.00
PAVEMENT				
Parking Lot	5671	SF	8.00	\$45,368.00
Shelter Pad	350	SF	6.00	\$2,100.00
Trail Loop	18700	SF	5.00	\$93,500.00
Play Access Path	2130	SF	6.00	\$12,780.00
Play Curb	213	LF	22.00	\$4,686.00
			Paving Total	\$113,066.00
FURNISHINGS				
Benches	2	EA	800.00	\$1,600.00
Picnic Tables	7	EA	800.00	\$5,600.00
Grill	1	EA	200.00	\$200.00
			Furnishings Total	\$7,400.00
PLANTINGS				
Evergreen Trees	14	EA	350.00	4,900.00
Deciduous Trees	21	EA	250.00	5,250.00
Ornamental Grasses/Perennials	45	EA	15.00	675.00
Lawn Seed/Prep	214065	SF	0.15	32,109.75
			Plantings Total	42,934.75
			TOTAL	313,400.75

Estimated park costs	\$ 313,401
Estimated consultant fees	\$ 34,474
Assessment fees	\$ 31,340
10% Contingencies	\$ 34,787
Total estimated cost	<u>\$ 414,002</u>

REAL ESTATE CONTRIBUTION AGREEMENT

THIS REAL ESTATE CONTRIBUTION AGREEMENT is entered into as of the 16th day of April, 2015, by and between Heritage Development, Inc., whose address is PO Box 7188, Bismarck, North Dakota 58507 (as "Contributor") and Park District of the City of Bismarck, a park district under the laws of the State of North Dakota, 400 East Front Avenue, Bismarck, North Dakota 58504 (as "Recipient").

In consideration of the mutual terms, covenants, conditions and agreements herein contained, it is hereby agreed by and between the parties as follows:

1. **Sale of Real Property.** Contributor agrees to contribute, convey, assign, transfer and deliver to Recipient, and Recipient agrees to accept, acquire and take from Contributor, all of Contributor's right, title and interest, in and to that certain real property located at Lot 14, Block 8 in Heritage Park Addition, in the City of Bismarck, in the County of Burleigh, State of North Dakota.

2. **Contribution Transaction.** Contributor shall transfer the Property to the Recipient for no monetary payment and such transfer is intended to be a charitable gift to Recipient to be used for the public purpose of a park. Recipient represents and warrants that it is a political subdivision of the State of North Dakota, and the Property shall be used for a public purpose.

3. **Closing.** The Closing Date shall be determined after a Park Improvement Special Assessment District for this Property is created by the City of Bismarck. Contributor shall deliver at the time of closing a Warranty Deed conveying title to the Recipient free and clear of all liens and encumbrances and subject to easements, zoning and restrictions of record. Real estate taxes and special assessments shall be prorated to the time of Closing with the Recipient responsible for all taxes accrued after the Date of Closing. The Contributor is responsible for all taxes accrued before the date of closing. Contributor will provide the Recipient with an abstract of title to the real property no later than ten (10) days prior to closing. In lieu of an abstract of title, the Contributor at its option may provide to the Recipient an owner's policy of title insurance in an amount equal to the sales price

4. **Possession of the Property.** Recipient shall be given possession of the property on the date of closing.

5. **Risk of Loss.** The risk of loss by destruction or damage to the property by fire or otherwise prior to the closing of the sale is that of the Contributor.

6. **Survival.** All of the terms, covenants, conditions, representations, warranties and agreements of this Real Estate Contribution Agreement shall survive and continue in force and effect and shall be enforceable after the Date of Closing and delivery of the Warranty Deed.

7. **Effective Real Estate Contribution Agreement.** This Real Estate Contribution Agreement shall become effective and shall be binding upon the parties only after it has been executed by all of the parties.

8. **Entire Agreement; Modification.** This Real Estate Contribution Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Real Estate Contribution Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties.

9. **Binding Effect.** All covenants, agreements, warranties and provisions of this Real Estate Contribution Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. When used herein, the singular shall include the plural, the plural shall include the singular, and the use of one gender shall include all other genders, as and when the context so requires.

10. **Controlling Law.** This Real Estate Contribution Agreement has been made and entered into under the laws of the state of North Dakota, and said laws shall control its interpretation.

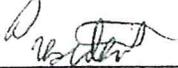
11. **Time of Essence.** Time is of the essence as to all dates and time periods set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Real Estate Contribution Agreement to be executed as of the date first above written.

CONTRIBUTOR:

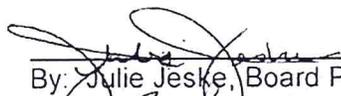
Heritage Development, Inc.

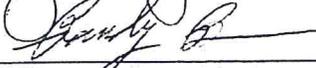
By: 
Chad Moldenhauer

Its: 

RECIPIENT:

Bismarck Parks and Recreation District

By: 
Julie Jeske, Board President

By: 
Randy Bina, Clerk

PETITION FOR PARK IMPROVEMENTS
For lots zoned R5, R10, RM, or RT Residential

DATE: 6/8/2016

To the Honorable Board of City Commissioners
Bismarck, North Dakota

Commissioners:

The undersigned owners of the property liable to be assessed for the park improvement respectfully petition your Honorable Board to have park improvements completed on (legal description of lots where park is to be developed):

Lot 14, Block 8 Heritage Park Addition

It is agreed that 100% of the costs of said park improvements shall be assessed to the benefited property according to Bismarck Parks and Recreation District's Basis of Special Assessment Policy.

PROPERTY DESCRIPTION

Lot 1, Block 1
Lots 1-3, Block 2
Lots 1-4, Block 3
Lots 1-20, Block 4
Lots 1-11, Block 5
Lots 1-13, Block 6
Lots 1-17, Block 7
Lots 1-12, 14-26, Block 8
All in Heritage Park Addition

Lots 1-21, Block 1
Lots 1-22, Block 2
Lots 1-16, Block 3
Lot 1, Block 4
Lot 1, Block 5
All in Heritage Ridge Addition

SIGNATURE and ADDRESS
(Property Owner/s)

Heritage Development, Inc.
PO Box 7188
Bismarck, ND 58507

By: 
Chad Moldenhauer
Its: President

For City Engineer Use Only


Approved by Gabe Schell, P.E.
City Engineer, Bismarck, ND

6/9/16
Date

Estimate of Neighborhood Park Costs

	QTY	UNIT	PRICE	TOTAL PRICE
NEIGHBORHOOD PARK FEATURES				
PLAY EQUIPMENT				
Play Equipment & Installation	1	LS	100000.00	\$100,000.00
Wood Fiber	1	LS	7500.00	\$7,500.00
Play Equipment Total				\$107,500.00
PICNIC SHELTER				
Wood Shelter with Metal Roof	1	LS	30000.00	\$30,000.00
Electric to Shelter	1	LS	10000.00	\$10,000.00
Shelter Total				\$40,000.00
PAVEMENT				
Subgrade Preparation 12"	560	SY	2.00	\$1,120.00
Subgrade Preparation 18"	560	SY	2.25	\$1,260.00
5" Concrete	5000	SF	8.00	\$40,000.00
Standard Curb & Gutter	400	LF	17.00	\$6,800.00
8" Concrete Driveway	1150	SF	8.00	\$9,200.00
Grading	1	LS	15000.00	\$15,000.00
Shelter Pad	350	SF	6.00	\$2,100.00
Trail Loop	18700	SF	5.00	\$93,500.00
Play Access Path	2130	SF	6.00	\$12,780.00
Play Curb	295	LF	22.00	\$6,490.00
Paving Total				\$188,250.00
UTILITIES				
Utility Services	1	LS	25000.00	\$25,000.00
Utility Total				\$25,000.00
IRRIGATION				
Irrigation	1	LS	20000.00	\$20,000.00
Irrigation Total				\$20,000.00
FURNISHINGS				
Benches	2	EA	800.00	\$1,600.00
Picnic Tables	6	EA	800.00	\$4,800.00
Grill	1	EA	200.00	\$200.00
Furnishings Total				\$6,600.00
PLANTINGS				
Evergreen Trees	8	EA	350.00	2,800.00
Deciduous Trees	19	EA	250.00	4,750.00
Ornamental Grasses/Perennials	45	EA	15.00	675.00
Lawn Seed/Prep	214065	SF	0.15	32,109.75
Mulching	214065	SF	0.05	10,703.25
Plantings Total				51,038.00
<hr/>				
Engineering		LS		20,500.00
TOTAL				458,888.00

**NEIGHBORHOOD PARK - HERITAGE PARK AND HERITAGE RIDGE SUBDIVISIONS
PROJECT BUDGET**

COSTS:		
Construction Cost	\$ 438,388	\$ 547,985
Contingencies	\$ 43,839	\$ 54,799
Land Purchase	\$ -	\$ -
Engineering Fees	\$ 20,500	\$ 20,500
Assessment Fees	\$ 50,273	\$ 62,329
TOTAL ESTIMATED PROJECT COST	<u>\$ 552,999</u>	<u>\$ 685,613</u>
Estimated Special Assessment for a median lot in Heritage Ridge & Heritage Park:	<u>\$ 1,425</u>	<u>\$ 1,800</u>
Estimated Annual Principal Installment - 15 year term	<u>\$ 95</u>	<u>\$ 120</u>

Diagram of Proposed Park

