

# **City of Scottsbluff, Nebraska**

**Monday, June 15, 2015**

**Regular Meeting**

## **Item Subdiv.4**

**Council to consider the Developer's Agreement for the Five Oaks Subdivision and authorize the Mayor to execute the Agreement.**

**Staff Contact: Annie Urdiales, Planning Administrator**

# Agenda Statement

Item No.

For meeting of: June 15, 2015

**AGENDA TITLE:** Developer's Agreement for Lots 1 and 2, Block 9, Five Oaks Subdivision, situated in the NW ¼ of Section 14, T22N, R55W of the 6<sup>th</sup> P.M., Scotts Bluff County, Nebraska.

**SUBMITTED BY DEPARTMENT/ORGANIZATION:** Development Services

**PRESENTATION BY:**

**SUMMARY EXPLANATION:** The applicant(s), C and T Holdings and Jason and Sami Webb, have requested approval of a final plat of Lots 1 and 2, Block 9, Five Oaks Subdivision. Municipal code requires that if there are any improvements shown on the final plat that have not yet been constructed, the property owners must submit a developer's agreement. This agreement states that the property owners will be responsible for constructing the improvements.

The only improvement shown on the plat that has not yet been constructed is a portion of 40<sup>th</sup> Street. This developer's agreement is different than those that have been done in the past in that instead of providing a timeline for when the street would go in, it is tied to when the properties develop. Before a building permit can be issued for properties that front onto the future 40<sup>th</sup> Street, the property owners must be able to show that an agreement with a contractor for the construction of 40<sup>th</sup> Street has been signed, and the street must be completed before a certificate of occupancy could be issued.

**BOARD/COMMISSION RECOMMENDATION:**

**STAFF RECOMMENDATION:** Staff recommends approval of the developer's agreement

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Resolution	Ordinance	<b>EXHIBITS</b> Contract X	Minutes	Plan/Map
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Other (specify)  \_\_\_\_\_

**NOTIFICATION LIST:** Yes X No  Further Instructions

**APPROVAL FOR SUBMITTAL:** \_\_\_\_\_  
City Manager

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## CONTRACT FOR PUBLIC IMPROVEMENTS

This Contract is made on June \_\_, 2015, between City of Scottsbluff, Nebraska, a Municipal Corporation (the "City"), Elite Health, LLC ("Elite") and C&T Holdings, LLC ("C&T"). Elite and C&T are collectively referred to as the Owners.

### Recitals:

- a. Elite and C&T currently own portions of the following parcel (the "Elite Parcel"):

Lots 1 & 2, Block 9, Five Oaks Subdivision to the City of Scottsbluff, Scotts Bluff County, Nebraska.

Upon approval of the final plat (the "Plat") for the Elite Parcel, C&T intends to convey its remaining interest in the Elite Parcel to Elite. The Plat is made a part of this Contract by reference.

- b. The Plat provides for 40<sup>th</sup> Street to be located along the south boundary of Lot 2, Block 9 of the Elite Parcel.

- c. C&T is the owner of the real estate which adjoins the south side of 40<sup>th</sup> Street as platted (the "C&T Tract")

- d. Certain improvements which are required by the Scottsbluff Municipal Code to be constructed by the Owners have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, the Owners desire to bind themselves and their successors in interest to construct the improvements in accordance with the Scottsbluff Municipal Code as provided for in this Contract.

### Agreements:

1. With respect to any development to Lot 2, Block 9 or the portion of the C&T Tract which adjoins 40<sup>th</sup> Street (the "Development Area"), the Owners shall cause that portion of 40<sup>th</sup> Street as shown on the Plat to be constructed (the "Improvements"). The Owners understand that a building permit will not be issued for construction in the Development Area until an agreement has been signed with a contractor for the construction of the Improvements. No occupancy permit shall be issued for any buildings constructed in the Development Area until the Improvements are completed.

2. The location, size and layout of the Improvements shall be as provided for in the Plat. The actual construction of the Improvements shall be according to (i) plans and specifications approved by the City, which approval will not be unreasonably withheld, and (ii) all ordinances and codes adopted by the City, as in effect at the time that the Improvements are constructed. The Improvements shall become the property of the City immediately upon acceptance of the Improvements by the City Council. If constructed by the Owners (and not by the City), the Improvements shall be warranted for a period of one year from the date of the acceptance of the Improvements.

3. The Owners agree that the Improvements shall be paid for as follows:

- a. In the event that both parties (or their successors, where applicable) desire to construct within the Development Area at the same time, then the parties shall jointly participate in providing for the Improvements in the manner as provided for in this Contract.



b. In the event that only one party desires to construct within the Development Area, then the first party (or successor) that desires to develop within the Development Area (the "Constructing Party") shall be responsible for providing for all of the Improvements as provided for in this Contract. Once the costs of the Improvements, as completed, are finally determined, the Constructing Party shall notify the other party of the total cost of the Improvements which shall then be divided between the parties as provided for in subparagraph c. below.

c. The total cost of the Improvements shall be allocated between the parties as follows:

(1) That portion of 40<sup>th</sup> Street which adjoins the Elite Parcel shall be payable 50% by each party.

(2) That portion of 40<sup>th</sup> Street which adjoins only the C&T Tract shall be payable by C&T.

In the event that there is a dispute between the parties as to the allocation of the total cost of the Improvements, then the engineer responsible for the Improvements shall determine the allocation, which determination shall be binding upon the parties.

d. If subparagraph b. is applicable, then the amount owed to the Constructing Party by the other party shall be paid to the Constructing Party at such time as the other party completes any improvements within the Development Area; provided, however, in no event shall the date of such payment extend beyond 5 years from the date that the Constructing Party shall notify the other party of the total cost of the Improvements. Interest shall accrue on the amount due to the Constructing Party at the rate of 5% per annum. The other party shall deliver a promissory note to the Constructing Party which evidences the amount due to the Constructing Party, however, the failure of the parties to enter into a promissory note shall not relieve the other party from its obligation to the Constructing Party.

e. As an alternative to the payment method provided for above, the Owners may jointly request that a special improvement district be created to construct the Improvements, subject to the City agreeing to create such a district.

4. Should the Owners fail to construct the Improvements, as agreed to in this Contract, the City may do so. The Owners shall reimburse the City for all costs expended by the City in constructing the Improvements. If so constructed by the City, the City may at its option, assess all or any part of the unreimbursed cost of the Improvements against the properties benefitted by the Improvements. When any installment of special assessments is unpaid for a period of six (6) months after the same is delinquent, the City may mail written notice to the Owners of that fact and demand that the Owners pay such installment. If the Owners fail to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce the Owners' liability as described in this paragraph. In any such action the City shall not be limited to the installments which are currently due but shall be entitled to collect the entire cost of the improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this Contract shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to the Owners at the following addresses;

Elite Health, LLC  
1602 West 42<sup>nd</sup> Street  
Scottsbluff, NE 69361

C&T Holdings, LLC  
1816 E 34<sup>th</sup> Street  
Scottsbluff, NE 69361



5. To secure the Owners' liability, the Owners agree to provide security consistent with the policies established by the City. Prior to commencing the construction of the Improvements, the Owners shall present an estimate of the cost of the Improvements to the City. The parties understand that this will be an estimate only and that the actual cost of the Improvements may differ from the estimate. The security furnished by the Owners will be in the amount of the actual cost of the Improvements. It is contemplated that the Owners will enter into a contract for the construction of the Improvements. The actual cost of the Improvements will be determined by the provisions of such contract. If the security furnished by the Owner is a bond or letter of credit, the bond or letter of credit shall provide that upon demand by the City, the City shall be paid all sums which the City is entitled to collect from the Owners under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy the Owners' liability to the City, the Owners will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the Improvements and not covered by the bond or letter of credit and not paid for by Owners.

6. The Owners, for themselves and on behalf of all future grantees and owners, covenant and agree to participate in and not object to the creation of any special improvement districts that may be subsequently created, as provided for in this Contract, to construct and improve the Improvements. It is the intent of the Owners that this paragraph bind all future grantees, heirs and owners and that this covenant and contract runs with the land as it touches and concerns the Development Area. The Owners further agree that all future transfers or conveyances of lots within the Development Area shall be subject to and conditioned upon a provision in the deed or conveying document that the grantee or new owner will participate in and not object to the creation of any special improvement districts that may be subsequently created to construct the Improvements. This paragraph and the covenants in it will not be deemed a waiver of the Owners', grantee's or lot owner's right to contest the extent to which it is benefitted by such special improvement district, or to contest the amount of any assessments levied against the Owners', grantee's or lot owner's property.

7. This contract shall run with the land and shall bind, in addition to the parties, the successors and assigns of the respective parties.

8. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this Contract has been executed. The Owners shall reimburse the City for the costs of filing this Memorandum of Contract.

[Signatures on Following Page]

City of Scottsbluff, Nebraska

By \_\_\_\_\_  
Mayor

Attest:

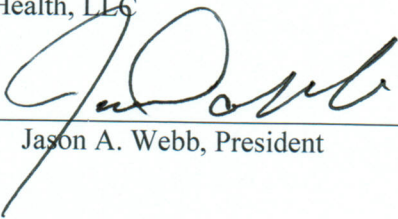
\_\_\_\_\_  
City Clerk

C&T Holdings, LLC

By: \_\_\_\_\_  
William C. Trumbull, Member

By: \_\_\_\_\_  
Francis D. Clarkson, Member

Elite Health, LLC

By:   
Jason A. Webb, President