



TO: Mayor Chuck Barney
Members of the City Council

FROM: Jacqueline Melcher, Assistant City Engineer *gm*

DATE: 1/18/2018

SUBJECT: **BLUFFS 8TH ADDITION DEVELOPMENT (PLAT) AGREEMENT
PROJECT (4298)**

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
Jacqueline Melcher, Assistant City Engineer	(701) 857-4100

III. DESCRIPTION

A. Background

This area was previously platted as Bluffs 2nd Addition Block 2, Lots 17 & 18 in June of 2013 and zoned R2 – “Two-Family Residential District”. The Developer wishes to re-plat Lots 17 & 18 into twenty-three smaller single family lots with the zoning designation staying the same. This item was approved by the Planning Commission and City Council in October of 2017. The Development agreement must be approved and signed before the plat will be recorded.

B. Proposed Project

Staff and the Developer, Professional Choice Properties, LLC, 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.

- 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. Bluffs 8th Addition Plat Development Agreement

BLUFFS 8TH ADDITION PLAT AGREEMENT

Required Improvements within publicly dedicated rights-of-way and easements serving the Bluffs 8th Addition 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 Professional Choice Properties, LLC A North Dakota Limited Liability Company (Developer), whose mailing address is 2915 10th St SW Minot, ND 58701.

WHEREAS, the Developer owns the property known as the Bluffs 8th Addition, more specifically described as: Bluffs 8th Addition, Block 1, Lots 1-16, and Block 2, Lots 1-7, located within the City of Minot corporate limits, for the purposes of the construction of residential lots within the City;

WHEREAS, the City is requiring the Developer to complete specific improvements and other conditions before granting further permits for the Development of the Bluffs 8th Addition;

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 Bluffs 8th Addition;

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 Bluffs 8th Addition 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 Bluffs 8th Addition:

1. Public Street and Utility Infrastructure Improvements
 - a. Developer shall install, at his sole cost, the sanitary sewer, storm sewer, and water main utilities including all services to all Lots to serve the development within the Bluffs 8th Addition.
 - b. Developer shall install, at his sole cost, the public urban street section and street lighting to serve the development within the Bluffs 8th Addition.
 - c. The required public street and utility infrastructure improvements are designed and included in the plans titled "Professional Choice Properties LLC Bluffs 8th Addition" which have been approved by the City and are on file with the Engineering Department.
 - d. All public street and utility infrastructure must be installed and tested per the City Standard Specifications and Details by the Developer.

- e. 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 Bluffs 8th Addition 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 the Bluffs 8th Addition conforming to the City's Record Plan Policy on file with the Engineering Department. Record drawings shall be submitted 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. Offsite storm water management for the Bluffs 8th Addition is included in the Bluffs Addition overall storm water management plan.
 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. A developer's agreement with the City of Minot shall be approved, executed, and recorded prior to recording of the plat.
 - b. A storm water technical memorandum is required to determine adequacy of storm network to accept the development's storm water flows.
 - c. Sidewalks are required along public right of ways.
 - d. Connection fees are required for public sanitary sewer.
 - e. Additional 10 feet of public right of way is required on 37th Avenue SE, east of the east leg of proposed right of way to accommodate sanitary sewer in the boulevard.
 5. 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.

6. 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.
7. 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.
8. 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.
9. This agreement shall be recorded in the Ward County Register of Deed'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 property association.

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: _____
Chuck Barney, Mayor

Attest: _____
Kelly Matalka, City Clerk

PROFESSIONAL CHOICE PROPERTIES, LLC

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.
 - 3. Curb and gutter and one lift of asphalt have been installed in roadway or easement adjacent to property.