

THE LAW OFFICES OF
ANDERSON CALL & WILKINSON, P.C.

A Professional Corporation
995 N. Washington Blvd.
Ogden, UT 84404
TELEPHONE (801) 675-6955
FAX: (801) 521-3484

TO: North Ogden City Mayor and City Council
FROM: Jonathan Call, City Attorney
DATE: May 7, 2014
RE: Barrett Property Rezone and Development Agreement

After reviewing the Development Agreement provided by Mr. Barrett and through discussions afterwards we have created a version of the Agreement which I believe will protect the interests of the city and allow the construction of an Assisted Living Center/Nursing Home facility on a portion of the property owned by Mr. Barrett.

The most important consideration in these documents is that I believe the City has adequately provided that the property may only be used as an Assisted Living Center/Nursing home and that any portion of the 8.08 acres which is not used for the facility will revert back to the C-2 zoning.

This Agreement provides that the developer must make an application to the Planning Commission for approvals of site plans, density calculations, and other pertinent items. This process will make sure the developer is required to follow all the city's ordinances as staff conducts a thorough review of the plans.

I believe this contract will make sure that if anything is constructed on the 8.08 acres at this time it will be an Assisted Living Center/Nursing Home.

AGREEMENT # _____

THE VILLAGE AT PROMINENCE POINT DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, hereinafter (“Agreement”), is made and entered into this 13th day of May 2014, by and among SBE2, LLC, an Alaskan limited liability company, (hereinafter “Developer”) as the owner and developer of certain real property located in North Ogden City, Weber County, Utah, at approximately 1750 North 200 East, and NORTH OGDEN CITY, (hereinafter “the City”), a Utah Municipal Corporation. Developer and the City shall hereinafter be collectively referred to as “Parties” and sometimes individually as a “Party”.

RECITALS:

- A. Developer is the owner of approximately 8.08 acres of real property (“Parcel A”) located in North Ogden City, Weber County, Utah, which it intends to develop as a Assisted Living Center/Nursing Home. A legal description of the property is attached hereto as Exhibit “A”.
- B. Developer also owns property neighboring Parcel A which will be improved with roads in accordance with the City ordinances to provide access to Parcel A.
- C. The Parties jointly agree that the City will benefit from all aspects of this proposed Assisted Living Center/Nursing Home.
- D. The Parties desire to enter into terms relevant to Developer’s final approval of the rezoning of Parcel A as required for the Assisted Living Center/Nursing Home.

NOW THEREFORE, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, Developer and The City hereby agree as follows:

1. Recitals. The above recitals are incorporated herein by reference and made a part hereof.
2. Rezone. The City agrees to rezone only Parcel A as described in the legal description in Exhibit A from C-2 to R-4.
3. Intended Use. The Developer agrees the only R-4 use which is allowed or authorized under the terms of this Agreement or on Parcel A is the construction of an Assisted Living Center/Nursing Home facility. Developer agrees and acknowledges that any application for development of Parcel A other than for an Assisted Living Center/Nursing Home will not be accepted, processed, approved, vested or otherwise obtain any rights under current City, State, and Federal laws.
4. Parcel A – 8.08 Acre – Assisted Living Center /Nursing Home – (Residential R-4 Zoning). The Assisted Living Center will consist of the following uses which will be allowed under this development agreement as a “Conditional Use” in the R-4 zone subject to Site Plan and Design Review by North Ogden City Staff and Planning Commission.
5. Future Development Parcels – It is understood by all parties that any property not utilized for the Assisted Living Center/Nursing Home remain zoned C-2, or in the case of the 8.08 acres any remaining portion of Parcel A shall revert back to C-2 zoning should the Assisted Living Center/Nursing home not be constructed or fully utilize the entirety of Parcel A. The neighboring parcels owned by Developer will remain zoned Commercial C-2 at this time. Nothing herein shall be construed to prevent Developer from seeking rezone on the other properties.
6. Development Terms. The following constitutes terms for development of Parcel A.
 - a. Concept Approval. The North Ogden City Council has entered into this

agreement to facilitate the Developer to submit an application to construct an Assisted Living Center/Nursing Home on Parcel A. The Developer will in the near future submit an application and proposed plat for the development based upon compliance with the North Ogden City ordinances. As consideration for the granting of the zone change from C-2 to R-4 for the development of an Assisted Living Center/Nursing Home, Developer has agreed and does now agree to the provisions hereof and all other ordinances of North Ogden City.

- b. Compliance with Subdivision Standards. Developer agrees to comply with all of the conditions of preliminary approval and the ordinances, rules, regulations, requirements and standards of the City with respect to the preparation, submission, and recording of subdivision applications, all preliminary and final plats, and the construction and completion of said Assisted Living Center/Nursing Home, and particularly to installation and completion of all required subdivision improvements and the provision of the financial guarantee guaranteeing completion of such improvements (the "Subdivision Guarantee") consistent with current City Ordinances.
- c. 1700 North. City shall work with Developer to create a reimbursement agreement for costs associated with road improvements for 1700 North.

7. Vesting.

- a. The Developer shall have the vested right to develop and construct the Assisted Living Center/Nursing Home in accordance with the R-4 zoning and other ordinances of North Ogden City as established on the date of this Agreement, provided that the Developer:

- i. Makes application for the Assisted Living Center/Nursing Home on or before March 31, 2015.
 - b. Developer acknowledges that this Agreement does not vest any rights relating to any property owned by the Developer now or at any point in the future. This Agreement relates only to the 8.08 (Parcel A) acres upon which Developer proposes to construct an Assisted Living Center/Nursing Home. The City acknowledges that this Agreement does not prevent Developer from seeking rezone on other properties.
 - c. If the Planning Commission does not approve Developer's proposed concept plan, Developer is not obligated to construct the Assisted Living Center/Nursing Home.
 - d. Any portion of the 8.08 acres (Parcel A) which is not included in the Assisted Living Center/Nursing Home final development shall automatically revert back to the original C-2 zoning, and shall retain no vesting under this Agreement.
8. Building Permits. The City will process building permits in accordance with established policy. The City shall not unreasonably delay issuance of building permits.
9. Other Conditions. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be modified by writing of both parties to conform the law. Should the parties be unable to agree upon a modification of the condition, covenant, or provision the contract becomes voidable by either party.
10. Successors and Assigns.

- a. Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project.
- b. Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement, and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City and the prior written consent of the City may also be evidenced by letter from the Mayor of the City to Developer or its successors or assigns. This restriction on assignment is not intended to prohibit or impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of buildings or improvements on the parcels, with Developer retaining all rights and responsibilities under this Agreement. The City recognizes that Parcel A will be developed by North Ogden I, LLC, Manager Ron Ziebart.

11. General Terms and Conditions.

- a. No Joint Venture, Partnership or Third Party Rights. This Development Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties.
- b. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of

competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

- c. Attorneys Fees. If this Development Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney's fees and all costs of enforcement of the non-breeching party.
- d. Counterparts. This Agreement and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original, but all of which shall constitute one and the same instrument.

12. General Terms and Conditions.

- a. Construction of Agreement. This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest.
- b. State/Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be amended in writing by both

parties. Should the parties be unable to agree upon a modification of the condition, covenant, or provision the contract becomes voidable by either party.

- c. Relationship of Parties and No Third-Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor, unless otherwise stated, create any rights or benefits to third parties.
- d. Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project, this Agreement shall be deemed to refer to other laws of North Ogden City and the State of Utah.
- e. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.
- f. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.
- g. Arbitration. All disputes under this Agreement shall be resolved through binding Arbitration. If the City and Developer are unable to resolve an issue through discussions, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own

individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Developer shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's position was not only incorrect but was also maintained unreasonably and not in good faith then the arbitrator may order the City to pay the arbitrator's fees.

- h. Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the City:

North Ogden City
S. Annette Spendlove, City Recorder
505 E. 2600 N.
North Ogden, Utah 84414

If to SBE2, LLC

Jack Barrett
205 E. Dimond, #515
Anchorage, Alaska 99515

WITH A COPY TO:

M. Darin Hammond
Smith Knowles, P.C.

2225 Washington Blvd., Suite 200
Ogden, UT 84401

Any party may change their address by giving written notice to the other party in accordance with the provisions of this section.

DATED this _____ day of _____, 2014

SBE2, LLC

By: _____

Its: _____

DATED this 13th day of May 2014

BY NORTH OGDEN CITY

Brent R. Taylor, Mayor

Attest:

S. Annette Spendlove, MMC
City Recorder

EXHIBIT A

**"PARCEL A" LEGAL DESCRIPTION
APPROXIMATELY 200 E. 1825 N.
NORTH OGDEN CITY, WEBER COUNTY, UTAH**

PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING S89°47'35"W 2387.91 FEET AND S00°12'25"E 309.38 FEET FROM THE NORTHEAST CORNER OF SECTION 5; THENCE SOUTH 290.79 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 73.30 FEET, A RADIUS OF 70.00 FEET, A CHORD BEARING OF S30°00'00"W, AND A CHORD LENGTH OF 70.00 FEET; THENCE SOUTH 151.02 FEET; THENCE S89°03'50"E 2.75 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 325.39 FEET, A RADIUS OF 733.00 FEET, A CHORD BEARING OF S76°20'48"E, AND A CHORD LENGTH OF 322.73 FEET; THENCE S63°37'45"E 183.19 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 110.68 FEET, A RADIUS OF 317.00 FEET, A CHORD BEARING OF S73°37'53"E, AND A CHORD LENGTH OF 110.12 FEET; THENCE N00°56'10"E 127.98 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 80.02 FEET, A RADIUS OF 480.00 FEET, A CHORD BEARING OF N05°42'42"E, AND A CHORD LENGTH OF 79.92 FEET; THENCE N10°29'14"E 252.64 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 76.88 FEET, A RADIUS OF 420.00 FEET, A CHORD BEARING OF N05°14'37"E, AND A CHORD LENGTH OF 76.77 FEET; THENCE NORTH 158.70 FEET; THENCE WEST 614.18 FEET TO THE POINT OF BEGINNING.

CONTAINING 352,104 SQUARE FEET OR 8.083 ACRES

ORDINANCE 2014-

AN ORDINANCE OF NORTH OGDEN CITY AMENDING THE NORTH OGDEN CITY ZONING MAP BY CHANGING 8.083 ACRES OF PROPERTY OWNED BY SBE2, LLC AT APPROXIMATELY 1825 NORTH AND 200 EAST FROM COMMERCIAL ZONE C-2 TO MULTI-FAMILY RESIDENTIAL R-4.

WHEREAS: North Ogden City has adopted a General Plan; and

WHEREAS: the North Ogden City General Plan map has designated the aforementioned property as Single Family Residential, low density classification; and

WHEREAS: when this property was annexed into North Ogden City it was zoned Commercial C-2; and

WHEREAS: the North Ogden City Planning Commission has recommended that this property be zoned Multi-Family Residential R-4 for an assisted living facility / nursing home to be built on this property along with the approval of a development agreement; and

WHEREAS: the North Ogden City Council has also found this application is appropriate to rezone the property from C-2 to R-4 with the stipulation, as outlined in a development agreement that only an assisted living facility / nursing facility is allowed on the property.

WHEREAS: the owner has requested that only a portion of his property be rezoned at this time to R-4.

SECTION 1. The following described property is hereby changed from Commercial C-2 to Multi-Family Residential R-4 upon the approval of the development agreement by the City Council.

THE VILLAGE AT PROMINENCE POINT

"PARCEL A" LEGAL DESCRIPTION

NORTH OGDEN CITY, WEBER COUNTY, UTAH

PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT, SAID POINT BEING S89°47'35"W 2387.91 FEET AND S00°12'25"E 309.38 FEET FROM THE NORTHEAST CORNER OF SECTION 5; THENCE SOUTH 290.79 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 73.30 FEET, A RADIUS OF 70.00 FEET, A CHORD BEARING OF S30°00'00"W, AND A CHORD LENGTH OF 70.00 FEET; THENCE SOUTH 151.02 FEET; THENCE S89°03'50"E 2.75 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 325.39 FEET, A RADIUS OF 733.00 FEET, A CHORD BEARING OF S76°20'48"E, AND A CHORD LENGTH OF 322.73 FEET; THENCE S63°37'45"E 183.19 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 110.68 FEET, A RADIUS OF 317.00 FEET, A CHORD BEARING OF S73°37'53"E, AND A CHORD LENGTH OF 110.12 FEET; THENCE N00°56'10"E 127.98 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 80.02 FEET, A RADIUS OF 480.00 FEET, A CHORD BEARING OF N05°42'42"E, AND A CHORD LENGTH OF 79.92 FEET; THENCE N10°29'14"E 252.64 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 76.88 FEET, A RADIUS OF 420.00 FEET, A CHORD BEARING OF N05°14'37"E, AND A CHORD LENGTH OF 76.77 FEET; THENCE NORTH 158.70 FEET; THENCE WEST 614.18 FEET TO THE POINT OF BEGINNING.

CONTAINING 352,104 SQUARE FEET OR 8.083 ACRES

SECTION 2. This ordinance shall take effect upon adoption.

PASSED and ADOPTED this 13th day of May 2014.

North Ogden City:

Brent R. Taylor
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Bailey:	___	___
Council Member Satterthwaite:	___	___
Council Member Stoker:	___	___
Council Member Urry:	___	___
(In event of a tie vote of the Council):		
Mayor Taylor	___	___

ATTEST:

S. Annette Spendlove, MMC
City Recorder