

THE VILLAGE AT PROMINENCE POINT DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, hereinafter (“Agreement”), is made and entered into this ____ day of _____, 2017, by and among Meritage Companies, LLC, an Alaskan limited liability company (Alaska Entity #10014218) and Mountain Vista Trails, LLC, a Utah limited liability company (Utah Entity #10420822-0160), (hereinafter collectively “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 18.26 acres of real property (“Parcel A”) located in North Ogden City, Weber County, Utah, which it intends to develop as a Mixed Use Development. A legal description of the property is attached hereto as Exhibit “A”.

B. SITE INFORMATION

Tax Lots: 110140048, 110140069, 110140070, 110140071,
110140072, 110140016, 110140062, 110140066,
110140065, 110140064, 110170063

Current Zoning: Commercial (C-2), County A1-A2 Agricultural
General Plan: Southtown Mixed Use (SMU), County Mixed Use
and Residential

Location: The subject property is located within the North
Ogden City limits and in an unincorporated island

of Weber County entirely surrounded by North Ogden City corporate limits. The proposed project is located on the west side of Washington Blvd, north of 1700 North.

The property is more specifically located within North Ogden City's general plan and identified as MU or mixed use. The existing zoning for the site is C-2 but the proposal is based upon a rezone to include MPC Masterplan Community Zone

- C. The subject property is zoned Master Plan Community by North Ogden City and A1-A2 Agricultural by Weber County and is designated as mixed use (MU) zone on the North Ogden City General Plan Map and mixed use and residential in the Weber County General Plan.
- D. The subject property is bounded on the west by the R-4 future independent living, assisted living and memory care facility. The other adjacent lots are agricultural in nature.
- E. Developer also has acquired rights to purchase adjoining property currently owned by the Hales Trust which will be developed as part of Parcel A.
- F. The Parties jointly agree that the City will benefit from all aspects of this proposed development.
- G. The Parties desire to enter into terms relevant to Developer's proposed development as set forth herein.

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 the subject property as described in the

legal description in Exhibit “A” to Master Planned Community (MPC) zone.

3. **Intended Use.** The Developer agrees that only the proposed Mixed Use Development will be allowed or authorized under the terms of this Agreement or on Parcel A as approved by the City under the MPC zone.
4. **Development Terms.** The following constitutes terms for development of the Parcels.
 - a. Concept Approval. The North Ogden City Council has approved the Developer’s proposed concept and has entered into this agreement to facilitate the Developer to develop the subject Property as proposed.
 - b. Compliance with Subdivision Standards. Developer agrees to comply with all of the conditions of approval, the ordinances, rules, regulations, requirements, and standards of the City with respect to the preparation, submission, and recording of the subdivision application. All preliminary and final plats, the construction and completion of said development, particularly to the installation and completion of all required subdivision improvements and the provision of the financial guarantee guaranteeing completion of such improvements (the “Subdivision Guarantee”), will be consistent with current City Ordinances.
 - c. Phasing and Project Division. The Parcels may be developed in any order or phasing as best seen fit by the Developer. However, all terms related to the completion of landscaping and commercial space remain in force as describe in other locations of this document. For purposes of this development agreement the project shall be divided into the following

five development areas as shown on Exhibit B:

- i. Commercial Area, which is the area directly adjacent to Washington Blvd.
- ii. Apartment Area, which is the area directly west of the Commercial Area and includes all 24 individual apartment buildings.
- iii. Townhome Area, which is the area directly west and north of the Apartment Area and includes all 101 townhome units.
- iv. Age Restricted Cottages, which is the northwestern most corner of the project and includes 26 patio home units.
- v. Independent Living Facility, which are two buildings containing four stories and eighty units.

5. **Vesting.**

- a. The Developer shall have the vested right to develop Parcel A in accordance with the applicable land use ordinances of North Ogden City as established on the date of this Agreement as well as per the terms of this Agreement. Except as set forth in 5.b., the City's future laws are not applicable to the Project.
- b. Exceptions:
 - i. The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 5(a) are subject to only the following exceptions:
 - ii. Developer Agreement. City's Future Laws that Developer agrees

- in writing to the application thereof to the Project;
- iii. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
 - iv. Building Codes. City's Future Laws and safety standards that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet countervailing public safety concerns related to public health, safety or welfare.
 - v. Roads. Reasonable requirements for roadway grades, widths, access points, maintenance, and standards.
 - vi. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
 - vii. Fees. Changes to the amounts of fees for the processing of Development Applications, or impact fees that are generally applicable to all development within the City (or a portion of the

City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law. Developer is vested in the fees in place at the time a complete application is submitted.

Specifically, Developer will only pay impact fees legally in place on the date a complete building permit application is submitted to the City.

- viii. Compelling, Countervailing Interest. Laws, rules, or regulations that the City's land use authority finds on the record are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code.

6. **Existing On-Site Conditions.**

- a. There are two distinct areas of the proposed project. They are as follows:
 - i. The 18.26 acre parcel "Southern Property" is largely undeveloped but is currently under construction with the proposed subdivision improvements with the construction of 1700 North. Smaller dilapidated structures along Washington Blvd. have been removed and the property is within the corporate limits of North Ogden City.
 - ii. The 14.8 + or - acres of largely undeveloped ground "Northern Property" is currently in the process of being annexed into the North Ogden City Limits.

- b. The subject property slopes generally downhill from the northeast to the southwest at an average slope of about 1%. The vegetation present on the property includes native shrubs and grasses.

7. **Conformance with North Ogden General Plan.**

a. Residential Density.

- i. This proposal consists partly of multi-family housing, which is listed as a permitted use in the MPC zone. It is also consistent with the desire to provide increased density along Washington Blvd. and a mix of housing types. The multi-family housing complex will contain amenities for residences, including a clubhouse, pool, large greenspace, and associated smaller pocket parks. Developer has planned for a pathway along the north edge of the site to connect down to the regional drainage basin that will function as a larger park for the development.
- ii. The setbacks are approved as shown on the Preliminary Master Plan for the individual buildings/groups of buildings which may be different than is currently anticipated in the MPC zone. Preliminary Master Plan dated 10-3-17 attached as Exhibit L
- iii. The subject property is within the North Ogden Southtown area and is allowed as a MPC zone based upon satisfying the 5 acre minimum parcel development. The density in the amended MPC zone will result in 404 apartment units in 24 multifamily buildings; 107 Town Home units; 28 single family age restricted

Patio Home lots; and 68 units of Independent Living Facility resident units as shown on Exhibit B, F, and L..

- iv. The density allowed shall not override the setbacks between buildings and property lines as approved on the Preliminary Master Plan dated 10-3-17 and attached as Exhibit L. Any unidentified setbacks and distances shall be rounded up to the closest ½ foot as measured on a 24x36 plan sheet.

8. **Conformance with MPC Requirements**

- a. The Development has been shown to be in compliance with the terms and conditions expressed in the MPC Zone under 11-7K-2. Any modifications to the MPC zone or any other development standards are clearly identified in this Agreement pursuant to 11-7K-5. Any standards which are not specifically waived by this Agreement, or subsequent agreements, will be complied with by Developer and City. The modification of the standards is acceptable under the MPC zone to accommodate favorable design and other concessions of the Parties.
- b. The City Council has considered the items outlined in 11-7K-2 to assess the suitability of Parcel A to be zoned under the MPC zone and finds that the majority are in favor of this Project and Agreement moving forward.

9. **Building Height.**

- a. The subject property is within the MPC zone, an area that contains special height allowances based upon setbacks and separations. In the Apartment Area the Developer will build mostly three-story structures;

however, some four-story end units have been included to provide variety in exterior elevation design. The building height of the three-story apartments is approximately 42' to the ridgeline. Four-story units have approximately 51' of overall height to the peak ridgeline. There will be a maximum number of 5 (five) 51' buildings.

- b. The maximum building height in the Townhome Area is thirty one (31) feet with a corresponding twenty (20) foot setback from project boundary lines.
- c. The maximum building height in the Age Restricted Cottages is twenty four (24) feet.
- d. The maximum building height in the Independent Living Area is forty (40) feet.
- e. The maximum building height in the Commercial Area is thirty five (35) feet.

10. **Architectural Design Standards.**

- a. Commercial Area.
 - i. All site plans, landscape plans, and building elevations shall be approved by the City Council as identified in section 23.
- b. Apartment Area.
 - i. All buildings shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Recesses (e.g., deck, patios, courtyards, entrances, or similar

features) shall have a minimum depth of six feet. All building elevations adjacent to a public street right-of-way are provided with doors, porches, balconies, sidewalks, approaches, and/or windows to give the appearance of the building fronting on the public street. Unit entries are from breezeways typical on all units. All buildings have units that front facing units. There are no backyards or rear yards for ground floor units. Units that front along 1700 North have front yards and may not have ground floor decks and/or enclosed ground floor patios.

- ii. The building design incorporates offsets, decks and windows. Larger building masses will be divided into varying heights and sizes by breaking up building sections, or by the use of such elements as variable planes, projections, bays, dormers, setbacks, roof canopies, and changes in the roofline. Each building elevation has been designed and approved as shown in Exhibit “E”. Building designs may be used in multiple locations throughout the Project; however, no two identical buildings shall be constructed next to each other unless clearly identified on Exhibit “B”.
- iii. Exterior materials, color, or textures on vertical surfaces shall be of cementitious siding and stone veneer, with the exceptions of windows and doors. Developer has provided material specifications identifying the grade of materials, a color palette

has been submitted as shown on Exhibit “G”, and a detail of the maintenance set aside with the lending institution to the City. The building scale shall be broken down with vertical board and batten compendious panel on the second and third floors. The ground floor shall have cementitious siding combined with stone piers to help establish more permanence and offset and screen garage door locations.

- a. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Landscaping shall be consistent with section 15.
- b. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
- c. All roofing material shall be 30 year minimum warranty with an architectural tab.
- iv. Private open space areas shall be provided. These spaces will be enclosed with metal railings and all apartment housing units will have balconies or decks. The windows shall be Millguard Montecito or similar grade. All vents, or cavities in vertical surfaces shall be similar in color to the buildings and in no case shall be white.

- v. A preliminary signage plan is attached as Exhibit “I”. Final signage shall be approved by the Planning Commission.
- c. Townhome Area.
 - i. Exterior materials, on vertical surfaces shall be of cementitious siding and stone veneer, with the exceptions of windows and doors.
 - a. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Landscaping shall be consistent with section 15.
 - b. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
 - c. All roofing material shall be 30 year minimum warranty with an architectural tab.
 - ii. The building elevations, colors, and site plans shall be approved by the City Planner and Mayor, provided that all setbacks as shown on Exhibit L and outlined in Subsection 7 are maintained and the number of parking stalls is not reduced.
- d. Age Restricted Cottages.
 - i. Exterior materials, on vertical surfaces shall be of cementitious siding and stone veneer, with the exceptions of windows and doors.

- a. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Landscaping shall be consistent with section 15.
 - b. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
 - c. All roofing material shall be 30 year minimum warranty with an architectural tab.
 - ii. The building elevations, colors, and site plans shall be approved by the City Planner and Mayor, provided that all setbacks as shown on Exhibit L and outlined in Subsection 7 are maintained and the number of parking stalls is not reduced.
 - e. Independent Living Area.
 - i. All site plans, landscape plans, and building elevations shall be approved by the City Council and shall utilize similar materials, colors, plants, and themes as identified in the Apartment Area.
11. **Density.** The maximum number of dwelling units shall be up to 607 units as indicated in section 7 above. Buildings shall be laid out as identified on Exhibit L and as clarified under subsection 7 above. All Area Site Plans for phasing purposes shall comply with the standards and requirements of this Development Agreement and any subsequent amendments.

12. **Design.** Developer shall provide a variety and mixture of unit types and densities in a coordinated neighborhood layout. Developer shall install street, sidewalks, and building locations as outlined in the attached site plan to create streetscapes that are safe and accessible for all modes of transportation and to allow for convenient pedestrian and bicycle circulation to all trail connections. **Trash receptacles are located next to parking are covered, and shall have walls of 9'-0" feet in height, and shall be screened on at least three sides with an evergreen hedge material. Receptacles have been located for easy access by trash pick-up vehicles.**

Comment [JC1]: We need to identify the trash locations, because we don't want to use parking spaces for trash containers.

13. **Streets.** All streets are being improved in association with North Ogden City requirements. No public streets will be required internally in the development; however, 1700 North and Washington Boulevard provide public access to the development and private streets shall service the internal development needs. No private streets may be closed to access by the general public, or fire and emergency vehicles. The design shows a private road with 26 feet of pavement width and the dimension as shown on Exhibits "B" & "H". The final plat shall include language prohibiting the landowner from restricting the use of the private streets or sidewalks. Pedestrian right-of-ways that connect all building entrances within the development to one another shall be created. Developer shall connect to all parking areas, storage areas, recreational and common areas, and adjacent development to the building's entrances and exits throughout the development site, and connect to all future phases of development. Developer shall include adjacent public trails, public parks and open space areas. Developer shall provide

pedestrian facilities within developments that are safe, accessible, reasonably direct, and convenient connections between primary building entrances and all adjacent streets that do not involve a significant amount of out-of-direction travel for users. Developer shall create bicycling and pedestrian routes that are free from hazards and safely designed by ensuring no hidden corners, sight-obscuring fences, dense vegetation or other unsafe conditions. All pedestrian access routes will comply with all applicable accessibility requirements. Where walkways are parallel and abut a driveway or street (public or private), they shall be raised six inches and curbed, or separated from the driveway/street by a five-foot minimum, landscaped strip.

14. **Access.** The proposal shall include a total 3 main road access points and one future secondary access point. All of the main access points are proposed on private local streets whose entry point begins at both 1700 North and Washington Boulevard which are both public roads. The secondary access point may be provided via connection to 300 East, such that no structure shall be placed within twenty (20) feet of the proposed future connection point and a public easement for roadway purposes shall be recorded during the subdivision phase of the Townhome Area. Private roads, parking, and access points shall be constructed according to necessary engineering standards as shown and approved in Exhibit M. The proposed access points are on internal private streets with public access and thus will not adversely impact the transportation system. Also, as designed, the access points are well spaced to accommodate the proposed development and (orientated across from one another) improve site circulation.

A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or an approved fire equipment access drive as measured around the building. A Fire Plan to be attached as Exhibit "H" shall be approved by the Technical Review Committee and Fire Marshal. Driveways, required parking areas, aisles, and turn-around shall be paved with asphalt, concrete, or comparable surfacing.

15. **Landscaping.**

- a. Plant selection and native vegetation shall be planted where practical. A combination of live deciduous and evergreen trees, shrubs, and ground covers shall be used for all planted areas, the selection of which shall be based on local climate, exposure, water availability, and drainage conditions. Ground-level areas for passive pedestrian use, such as sidewalks and plazas cover approximately 207,924 GSF or roughly 13 percent of the site area. Developer shall provide approximately 297,982 GSF of drivable surfaces or roughly 37.5% of the site area. Developer shall provide at least 20% of the site in landscaping as shown on the attached approved Preliminary Landscaping Plan as Exhibit "C". A final Landscape Plan shall be approved by the Planning Commission which includes the number of plants, size, species, and other technical information for each phase and/or development area of the Project.
- b. All yards, parking lots, and required street tree planters landscaping shall provide erosion control, visual interest, buffering, privacy, open space and

pathway identification, shading and wind buffering based on the following standards. Based on the proposed use of the site, Developer shall provide visual screening and privacy within side and rear yards, while leaving front yards and building entrances mostly visible for security purposes.

- c. Developer shall include pedestrian pathways and open space areas with landscape materials and provide focal points within the development, such as signature trees (i.e., large or unique trees), hedges, and flowering plants. Developer shall use landscaping to generally screen outdoor storage and mechanical equipment areas, and to enhance graded areas such as berms, swales, and detention/retention ponds. The proposal will include a mix of native and nonnative vegetation, all of which can tolerate the harsh condition of the high desert environment. An irrigation system will be provided to accommodate the type and species of all planted areas, including ground covers.
- d. Preliminary tree species include:

1. Trees with Low Mature Tree Height (25 feet or less), for use in areas under power lines or in small planting areas:	
Amur Maple/Acer ginnala	Hawthorn/Crataegus ‘variety’
Canada Red Cherry/Prunus virginiana ‘Shubert’	Japanese Lilac Tree/Syringa reticulata
Eastern Redbud/Cercis canadensis	Serviceberry/Amelanchier
Flowering Crabapple/Malus ‘variety’	
2. Trees with Medium Mature Tree Height (30 to 45 feet):	
American Hornbeam/Carpinus caroliniana	Hedge Maple/Acer campestre
Callery Pear/Pyrus calleryana	Mountain Ash/Sorbus acuparia ‘variety’

3. Tall Mature Tree Height (50 feet or larger):	
Green Ash/ <i>Fraxinus pennsylvanica</i>	Pin Oak/ <i>Quercus palustris</i>
Honey Locust/ <i>Gleditsia tricanthos</i> 'variety'	Red Maple/ <i>Acer rubrum</i> 'variety'
Littleleaf Linden/ <i>Tilia cordata</i>	Red Oak/ <i>Quercus rubra</i>
Norway Maple/ <i>Acer platanoides</i> 'variety'	Pin Oak/ <i>Quercus palustris</i>
Green Ash/ <i>Fraxinus pennsylvanica</i>	

A refined species list shall be approved as part of the final Landscape Plan approved by the Planning Commission.

- e. Growth Characteristics: Trees shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance to provide a broad canopy tree variety unless limited by overhead clearance. Developer shall use narrow or "columnar" trees where awnings, other building features, or narrow sidewalks limit growth, or where greater visibility is desired between buildings and the street. Developer shall avoid using trees that are highly susceptible to insect damage, and using trees that produce excessive seeds or fruit. Developer will use deciduous trees for summer shade and winter sun and will select trees for their seasonal color, as desired.
- f. Street trees shall be selected and planted according to current City ordinances and shall be planted within existing and proposed planting strips or in City-approved sidewalk tree wells on streets without planting strips. Small stature trees shall be planted no closer to the curb or sidewalk than three feet; medium trees – three feet; and large trees – four feet.

- g. All irrigation shall be designed to eliminate overspray on structures, fences, or other vertical materials. Drip irrigation shall be used in any areas which are directly adjacent to vertical materials to avoid discoloration.
- h. All final landscape plans shall be approved by the group or persons authorized to approve the building elevations in Subsection 10.

16. **Vehicle Parking, Loading, and Bicycle Parking.**

- a. Parking spaces in the project may include spaces in garages, carports, parking lots, private side streets, and/or driveways so long as vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes).
- b. Vehicle parking is allowed only on approved streets, within garages, carports, and other structures; or on driveways or parking lots that have been developed.
- c. Although the proposal includes a clubhouse, a pool, and a park; these uses are accessory and only intended for residents of the complex, thus additional traffic and associated parking will not be generated from them.
- d. The project shall provide 1204 residential parking spaces and 148 commercial parking spaces on site as shown on the Site Plan on Exhibit B & F. The foregoing parking spaces include 19 commercial spaces along Washington Blvd. ADA Accessible Parking Spaces. Accessible parking shall be provided for disabled persons, in conformance with the Federal Americans with Disabilities Act (ADA). Accessible parking is included in

the total minimum number of required parking spaces. Accessible parking facilities shall comply with the design requirements of the current building code as adopted by the State of Utah.

17. **Bicycle Parking.**

- a. Each required bicycle parking space shall be on asphaltic concrete, Portland cement, or similar hard surface material and each space shall be at least two feet wide by six feet long.
- b. The location of the rack and subsequent parking shall not interfere with pedestrian passage, leaving a clear area of at least 36 inches between bicycles and other existing and potential obstructions. Customer spaces may or may not be sheltered. When provided, sheltered parking (within a building or under an eave, overhang, or similar structure) shall be provided at a rate of one space per 10 employees, with a minimum of one space per use.
- c. Bicycle parking will be conveniently located to both the street right-of-way and at least one building entrance. Bicycle parking shall be visible to cyclists from street sidewalks or building entrances, so that it provides sufficient security from theft and damage. There will be at least 43 bike parking stalls, 35 near apartments and an estimated 8 near retail. Every residential building will be within 100 feet of bicycle parking. The number of commercial bike parking will be reviewed as part of the commercial site plans and be consistent with 11-7K-5 (J).

18. **Transportation Improvement Standards.**

- a. Washington Blvd. will be improved in accordance with the Utah Transportation Authority (UTA) and approved UDOT access points.
- b. All new and/or existing streets and alleys shall be paved according to North Ogden City Standards and Specifications. Sewers and Water mains are required. Sanitary sewers and water mains shall be installed to serve each new development and to connect developments to existing mains in accordance with the City's construction specifications as described in the pre-application meeting. The City shall be granted easements for any publicly owned utilities which run through the development.

19. **Storm Drainage Improvements.**

- a. Drainage facilities shall be designed and constructed to accommodate increased runoff so that discharge rates existing before the proposed development shall not be increased, and accelerated channel erosion will not occur as a result of the proposed land disturbance or development activity.
- b. Effect on Downstream Drainage. Where it is anticipated by the City Engineer that the additional runoff resulting from the development will channel to the new park existing drainage facilities, appropriate new facilities shall be installed by Developer to maintain existing discharge rates from this project.
- c. The detention basin on the parcel identified in Exhibit "K" shall be improved by Developer as a public park for the benefit of all residents, in addition to any park impact fees to be paid. Developer acknowledges that

this park and the improvements are satisfying the City's concerns related to the quality of the project and open space requirements and not to offset the burden of new residents moving into the City. A final site plan shall be reviewed and approved by the Planning Commission.

20. **Site Lighting.** All outdoor lighting fixtures subject to this section shall be designed as a full cut-off fixture or have a shielding method to direct light emissions down onto the site and not shine direct illumination or glare onto adjacent properties. A Lighting Plan shall be approved by the Planning Commission prior to construction.
21. **Preliminary Grading and Drainage Plan.** A preliminary grading and drainage plan will be prepared by a registered professional engineer. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. This plan shall be reviewed by and be subject to approval of the City Engineer.
22. **Building Permits.** The City will process building permits in accordance with established policy. The City shall not unreasonably delay issuance of building permits.
 - a. Building Permits. Building permits will only be issued after completion of any necessary subdivisions and final plat recording as approved by the Planning Commission in a regularly scheduled meeting.
 - b. A Technical Review Committee is required for all phases/Development Areas of the Project. All utility designs shall be approved by the City

Engineer prior to issuance of a building permit.

23. **Commercial Development.** The Developer is not required to complete any commercial development prior to the completion of the residential portion of this Project. However, within one (1) year after the completion of all phases of the residential portion of the Project, Developer shall landscape and maintain all vacant portions of the commercial property in accordance with City standards regardless of whether or not the area will eventually become a commercial space or parking lot. The City envisions that the Commercial Development will be the southerly entrance to North Ogden with a prominent “gateway building” at the northeast corner of 1700 N and Washington Blvd. Conceptual commercial building elevations are provided in Exhibit “J”, though the ultimate design will be determined by Developer at the time suitable tenants are located. The Mayor shall determine if the proposed commercial elevations are significantly modified enough to require an amendment to this Agreement.
- a. **Uses to be allowed in the commercial area:** Developer agrees to the list of uses which are considered “Permitted Uses” in the North Ogden C-2 zone and which are entirely contained within the building in which the use occurs. No outdoor storage or other uses are allowed except for outdoor seating associated with a café, restaurant, or other similar eating establishment.
 - b. **Uses not allowed in the commercial area.** The uses not allowed in the commercial area of this development despite being listed as a “permitted use” in the C-2 zone:

Adult themed stores
Agricultural use
Auto Sales or Repair
Bail Bond Companies
Bars or Taverns except as associated with a restaurant.
Bed and Breakfast
Boarding Houses
Boat/Recreational Vehicle Sales and Service
Bowling Alley
Christmas Tree Sales
Drive-in Refreshment Stands
Drive-thru businesses where the drive-thru lane is located
between the building and the public street
Educational Institutions similar to K-12 public schools
Hotel/Motel
Heavy Equipment Sales/Repair
Medical Supply/Sales
Monument/Mortuary Services
Pawn shop
Temporary Businesses
Thrift stores
Used Restaurant Supply store

Any other use that is not specifically permitted under the current
C-2 zoning designation.

24. **Construction.** Developer shall provide the contact name and number of the on-site foreman for the project to respond to issues and concerns immediately. During construction of the Project the entire site shall be surrounded by dust barriers to protect neighboring property owners. Additionally, Developer agrees to fully comply with landscape maintenance standards and mow or remove any weeds or plants which grow taller than twelve (12) inches, which are not designed and/or planted to do so, within fourteen (14) days of being notified in writing by the code enforcement officer. Any failure to meet these requirements will expose Developer to abatement remedies available under City and State codes.

25. **Technical Review.** Developer shall be required to address any technical requirements related to engineering and building standards which are typically addressed during the technical review process in the City. The Parties have not yet made the required determinations for design of facilities including, but not limited to, water, sewer, electrical, storm drain, fire suppression, etc.
26. **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 in writing by both parties to conform to 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. Should any confusion about the standard relating to building materials, and landscaping occur the provisions shall be read to comply as closely as possible to the standards established for the Apartment Area of the development.
27. **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.
- 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.

28. **General Terms and Conditions.**

- a. Term. This Agreement shall be in effect until December 31, 2025.
- b. 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.
- c. 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 to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- d. Attorney's 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.

- e. 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.

29. **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, 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 Meritage Companies, LLC

c/o Jack Barrett
1400 E. Patty Dr.
Wasilla, AK 99654

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 _____, 2015.

MERITAGE COMPANIES, LLC

By: _____
Its: _____

DATED this _____ day of _____, 2015.

NORTH OGDEN CITY

By: _____
Its: _____

Attest: S. Annette Spendlove

TABLE OF CONTENTS FOR EXHIBITS

A: Legal Description – Included.

B: Preliminary Site Plan – Included.

C: Preliminary Landscape Plan – Included with specific plans to be approved by planning commission as presented prior to building permit approval.

D: Floor Plans – Included for Apartment Area and not required for other development areas as outlined above.

E: Building Elevations – Included for Apartment Area. Individual development area approvals are provided as outlined above.

F: Site Data – Included.

G: Color Palette and Building material board

H: Fire Plan To be approved by Fire Marshal during technical review of the development.

I: Signage – to be approved by Planning Commission at a later public meeting.

J: Commercial Elevations – to be approved by City Council at a later public meeting.

K: Detention Basin Park – to be approved by Parks Department at a later date.

L: Preliminary Master Plan – Included.

M: Private Street Cross section – Included.