



"W2118739"

**AGREEMENT FOR DEVELOPMENT OF LAND  
"MIDTOWN COMMUNITY HEALTH CENTER" AT 2224 TO 2250 ADAMS AVENUE,  
OGDEN CITY, UTAH**

This Agreement for development of land, hereinafter referred to as "the AGREEMENT," entered into this 5<sup>th</sup> day of July, 2005, between Ogden City, a Utah municipal corporation, hereinafter referred to as "the CITY," and Midtown Community Health Center, a Utah non-profit corporation hereinafter referred to as "MIDTOWN."

**RECITALS**

**WHEREAS**, in furtherance of the objectives of the Ogden City General Plan, the CITY has considered an application for a zone change on certain real property located at approximately 2224 to 2250 Adams Avenue, in Ogden City, which property is hereinafter referred to as the "SUBJECT AREA," from its present zoning of R-3EC (Multiple Family Residential Zone – east central) to CBD (CO) (Central Business District Zone, Conditional Overlay Zone), in accordance with the provisions and requirements of Chapter 19-39 of the CITY's zoning ordinance;

**WHEREAS**, MIDTOWN, along with the present owner of a majority of the SUBJECT AREA, has presented to the CITY a general proposal for development in the SUBJECT AREA, which provides for development in a manner consistent with the Ogden City General Plan;

**WHEREAS**, MIDTOWN is in the process of obtaining the right to acquire the real property located in the SUBJECT AREA;

**WHEREAS**, MIDTOWN desires approval by the City Council of the CBD (CO) zoning for the SUBJECT AREA;

**WHEREAS**, the CITY is willing to grant the approval of such rezoning subject to MIDTOWN agreeing to certain requirements and restrictions of use and development within the SUBJECT AREA, which requirements and restrictions are intended to:

1. Eliminate potential uses otherwise allowed under the CBD zone, the development of which would not be consistent with the General Plan, and
2. Provide protection to surrounding property and associated property values;

**WHEREAS**, the CITY believes that the development in the SUBJECT AREA pursuant to the terms of this AGREEMENT is in the vital and best interests of the City and the health, safety, morals, and welfare of it's residents;

E# 2118739 PG1 OF14  
DOUG CROFTS, WEBER COUNTY RECORDER  
29-JUL-05 835 AM FEE \$.00 DEP BB  
REC FOR: OGDEN.CITY

Ogden City

2005 - 298

Dept. Code: \_\_\_\_\_  
Retention: \_\_\_\_\_

**WHEREAS**, MIDTOWN agrees and desires to proceed with the development and use of the SUBJECT AREA subject to the terms and conditions of this AGREEMENT.

**NOW, THEREFORE**, each of the parties hereto, for and in consideration of the premises and agreement of the other party hereto, does hereby covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms have the meaning and content set forth in this ARTICLE I, wherever used in this AGREEMENT:

- 1.01 "CITY". The "CITY" shall mean Ogden City, a Utah municipal corporation. The principle office of the CITY is located at 2549 Washington Boulevard, Ogden City, Utah 84401.
- 1.02 "CONCEPT PLAN". The "CONCEPT PLAN" is the plan depicting certain conditions and restrictions of development by the Ogden City Planning Commission and Ogden City Council, pursuant to the terms of this AGREEMENT, attached hereto as Attachment "B" and made a part of this AGREEMENT by this reference. The CONCEPT PLAN, beyond depicting the conditions and restrictions of development, is not intended to depict the actual location of buildings, vehicular accessways, parking lots, landscaping, or other improvements, the location of which may need to be altered in order to meet the needs of MIDTOWN and to comply with applicable zoning regulations.
- 1.03 "MIDTOWN". "MIDTOWN" shall mean Midtown Community Health Center, a Utah non-profit corporation.
- 1.04 "PROPOSED DEVELOPMENT". The "PROPOSED DEVELOPMENT" includes the development of the SUBJECT AREA and the construction of a medical clinic.
- 1.05 "SUBJECT AREA". The "SUBJECT AREA" shall mean the parcel or parcels of real property situated in the SUBJECT AREA, more particularly shown on the map and described in the SUBJECT AREA legal description, attached hereto as Attachment "A". The SUBJECT AREA may be expanded in the future to include the EXPANSION PARCEL if such property is subsequently acquired by MIDTOWN and made a part of the SUBJECT AREA by supplemental agreement of the parties. In no event shall the CBD(CO) zoning apply to the EXPANSION PARCEL unless and until MIDTOWN'S ownership of the property is

demonstrated pursuant to paragraph 2.01.C of this AGREEMENT and such supplemental agreement is executed by the parties and recorded in the records of Weber County.

- 1.06 "EXPANSION PARCEL." The "EXPANSION PARCEL" shall mean the parcel or parcels of real property described in Attachment "C".

## **ARTICLE II CONDITIONS PRECEDENT**

- 2.01 This AGREEMENT shall not take effect until:
- A. The Ogden City Council has approved the AGREEMENT as a condition of such rezoning of the SUBJECT AREA to CBD (CO) and the Mayor has executed this AGREEMENT on behalf of the CITY;
  - B. MIDTOWN acquires in fee simple ownership all of the real property constituting the SUBJECT AREA for the purpose of binding the owners, their successors and assigns to the terms of this AGREEMENT.
  - C. MIDTOWN demonstrates to the satisfaction of the City Attorney that it is the owner of the SUBJECT AREA, for the purposes stated in paragraph B above, by delivering to the CITY a copy of the deed of conveyance and a copy of the title policy or other documentation verifying that MIDTOWN is the sole owner of the property, or, if held in escrow pending approval by the City Attorney, the deed to convey or conveying the SUBJECT AREA to MIDTOWN and a copy of the title commitment and escrow instructions therefor.

## **ARTICLE III MIDTOWN'S COVENANTS REGARDING FUTURE DEVELOPMENT AND USE**

- 3.01 MIDTOWN, and its successors and assigns, hereby waive the right to use or occupy the land comprised of the SUBJECT AREA or to use, occupy or erect thereon any building or structure designed, erected, altered, used or occupied for any use not reasonably related to the following uses:

- A. Medical clinic, including, but not limited to, the following related or accessory uses:
  - 1. Physician practices,
  - 2. Mid-level medical providers such as nurse practitioner, physician assistants and midwives,
  - 3. Administrative and support services,
  - 4. Pharmacy and related retail, as a portion of a larger building,
  - 5. Laboratory Services
  - 6. Dental, optical, and hearing services,
  - 7. Radiology,
  - 8. Counseling services, and
  - 9. Prevention, wellness, health education facilities;
- B. Professional or business offices;
- C. Housing; and
- D. Other accessory uses necessary and incidental to the above uses.

3.03 MIDTOWN hereby waives the right to use, occupy or erect upon the SUBJECT AREA any STRUCTURE designed, erected, altered, used or occupied which does not comply with the following site development standards:

- A. Unless a more restrictive requirement is imposed for development in the CBD zone, the following standards shall apply in the Planning Commission's review and approval of the site plan:
  - 1. All parking is to be located either to the side or rear of the building; provided that parking along the side of the building shall be set back a minimum of forty feet (40') from the existing property line abutting Adams Avenue, as depicted in the CONCEPT PLAN. No parking will be allowed between the building as finally located and Adams Avenue.
  - 2. The main building shall have a minimum frontyard and sideyard setback of twenty feet (20'), as depicted in the CONCEPT PLAN.
  - 3. Roof lines of buildings are to be pitched and the maximum height of the main building shall not exceed thirty feet (30') in height measured from the peak of the roof to ground level along the west side of the building.
  - 4. The exterior wall treatment on the building should be primarily of brick.

5. The west elevation of the building shall have the following characteristics:
  - a. At least twenty percent (20%) of the ground-level façade shall be in glazing.
  - b. The exterior facade shall not be flat in appearance. Design elements which would be appropriate are those that add visual relief and are compatible with the surrounding residential architecture. Such features may include, but are not limited to: (1) projecting cornices; or (2) indentations or projections in the building footprint having a variation of at least two feet.
  - c. Shrubbery shall be planted along the foundation of the building.
6. The main entrance to the building shall not be at the back of the building, but shall either face Adams or be to the side where parking is located and at a location visible from Adams.
7. Freestanding signage shall be limited to monument signs not exceeding five feet (5') in height and shall not be backlit.

#### **ARTICLE IV CITY'S UNDERTAKINGS**

If this Agreement is approved by the Ogden City Council as provided in Section 201, the zoning on the SUBJECT AREA from its present zoning of R-3EC to the CBD (CO) zoning over the entire SUBJECT AREA shall be approved by ordinance of the Ogden City Council subject only to the terms and conditions of this Agreement. Upon execution of this Agreement by the Mayor and MIDTOWN, such rezoning shall immediately take effect.

#### **ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF THE CITY**

- 5.01 CITY Approval Required. The development plans, and any changes thereto, must be approved by the CITY pursuant to the requirements of the City zoning ordinance and all other applicable provisions of the Ogden City Municipal Code. In addition to any standards, requirements, or regulations imposed by City ordinance, the development plans shall also be reviewed by the CITY to determine compliance with the terms of this AGREEMENT and the CONCEPT PLAN approved herein. This approval is in addition

to any required CITY approval which is directed to zoning, engineering or structural matters or compliance with building codes and regulations or applicable City, State or Federal law relating to land use or construction standards. The CITY's determination, respecting compliance with the terms of this AGREEMENT and the CONCEPT PLAN approved herein, shall be final; provided that MIDTOWN reserves all rights as to the appeal of any administrative determinations of the CITY.

- 5.02 Issuance of Permits. MIDTOWN shall have the sole responsibility for obtaining and/or seeing that all necessary permits are obtained and shall make application for such permits directly to the Ogden City Community Development Department and other appropriate departments and agencies. MIDTOWN shall timely submit and, prior to the date scheduled for construction, obtain building permit(s), and engineering permits as required, and thereafter diligently prosecute such work as is authorized in such permits. Failure to timely file and to diligently pursue the issuance of all permits shall be a breach of this AGREEMENT and grounds for termination of this AGREEMENT at the option of the CITY and the exercise of the remedies contained herein.
- 5.03 CITY Obligations Conditional. The obligations of the CITY, as set forth in this AGREEMENT, are subject to the condition that MIDTOWN shall not be in default of it's obligations hereunder at any time; provided that obligations of CITY will continue upon MIDTOWN's cure of any such default in accordance with paragraph 6.01.
- 5.04 Completion Date. MIDTOWN agrees for itself, and it's successors and assigns, to promptly begin and diligently prosecute to completion, the PROPOSED DEVELOPMENT of the SUBJECT AREA, through the obtaining of all necessary building and engineering permits, and after the issuance of such permits the subsequent construction of the improvements thereon, and that such permits shall be obtained and such construction shall in any event commence within one (1) year of the date of this Agreement and, once commenced, be diligently pursued and shall be completed no later than two (2) years from the date of this Agreement.
- 5.05 Access to the SUBJECT AREA. The CITY, for the purpose of inspection, and whenever and to the extent necessary, to carry out the purposes of this and other sections or provisions of the AGREEMENT shall be permitted access to the SUBJECT AREA, 05-14- long as the same shall not unreasonably interfere with the use and development of the SUBJECT AREA consistent with the terms and conditions of this Agreement.

## ARTICLE VI REMEDIES

- 6.01 Remedies Upon Default or Breach. In the event of any default in or breach of this AGREEMENT, or any of its terms or conditions, either party hereto or any permitted successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within said thirty (30) day period, the party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such breach and shall continue diligently thereafter to cure or remedy such breach or default in a timely manner. In case such action is not taken, or diligently pursued, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to:
- A. Cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; or
  - B. Terminate this AGREEMENT. In the event that MIDTOWN is the defaulting party, upon termination, the CITY may institute proceedings to change the zoning to the zoning designations that existed prior to the changing of the zoning to CBD (CO).
- 6.02 Additional Remedies of CITY. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that (unless due to the provisions of Section 6.04, below) if MIDTOWN fails to commence construction within three (3) years of the date of this Agreement, the CITY shall have the right, but not the obligation, at the sole discretion of the CITY to terminate this Agreement and the CITY may institute proceedings to change the zoning to the zoning designation that existed prior to the changing of the zoning to CBD (CO).
- 6.03 Waiver of Objection and Hold Harmless. If CITY institutes proceedings to change the zoning to the original zoning designation in accordance with the provisions of this Agreement, MIDTOWN, its successors and assigns, hereby waives any objection to the zone change and hereby releases, indemnifies and holds the CITY harmless from any actions that may be brought by MIDTOWN, its successors and assigns, in respect of any such zoning change.
- 6.04 Enforced Delay Beyond Parties Control. For the purposes of any other provisions of this AGREEMENT, neither the CITY nor MIDTOWN, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the preparation of the SUBJECT AREA for development, the seeking or obtaining of permits, or beginning and completion of construction of improvements, or progress in

respect thereto, in the event the enforced delay in the performance of such obligations are due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or unforeseeable delays of contractor or subcontractors due to such causes.

- 6.05 Extension by the CITY. The CITY, in writing, may extend the time for MIDTOWN's performance of any term, covenant, or condition of this AGREEMENT or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the parties provided, however, that any such extension or permissive curing of any particular default shall not operate to eliminate any of MIDTOWN's obligations and does not constitute a waiver of the CITY's right with respect to any other term, covenant or condition of this AGREEMENT or any other default in, or breach of, this AGREEMENT.

## ARTICLE VII GENERAL PROVISIONS

- 7.1 Assignability. MIDTOWN shall not assign this AGREEMENT or any rights or interests herein without the prior written consent of the CITY, except that, upon notice to the CITY, MIDTOWN shall have the right to assign and transfer this AGREEMENT and its rights and obligations hereunder to an entity controlled by or under common control with MIDTOWN, so long as any such entity shall consent in writing to be bound by the terms of this AGREEMENT. Any assignee approved by the CITY shall consent in writing to be bound by the terms of this AGREEMENT as a condition of the assignment. MIDTOWN shall not transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this AGREEMENT separate from MIDTOWN's interest in the SUBJECT AREA.
- 7.2 Successors and Assigns of MIDTOWN. This AGREEMENT shall be binding upon MIDTOWN and its successors and assigns and where the term "MIDTOWN" is used in this AGREEMENT, it shall mean and include the successors and assigns of MIDTOWN except that the CITY shall have no obligation under this AGREEMENT to any unapproved, or otherwise unauthorized, successor or assign of MIDTOWN.
- 7.3 Reserved Legislative Powers. Nothing in this AGREEMENT shall limit the future exercise of the police power by the CITY in enacting zoning, subdivision development and related land use plans, policies, ordinances and regulations after the date of this AGREEMENT.



- 7.4 Minimum Zoning Standards and Vested Rights. It is not the intention of this Agreement to waive any existing minimum zoning standards, or to restrict the ability of the CITY Council to enact additional standards in the future. The only vested right obtained by MIDTOWN in the approval of this Agreement as part of the rezoning, is the right under the terms and conditions of this Agreement, to apply for site plan approval and building permits.
- 7.5 No Joint Venture or Partnership. This AGREEMENT does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto.
- 7.6 Third Party Beneficiaries. Any claims of third party benefits under this AGREEMENT are expressly denied.
- 7.7 Agreement to Run With the Land. This AGREEMENT shall be recorded against the property referred herein as the SUBJECT AREA. The AGREEMENT contained herein shall be deemed to run with the land and shall be binding on all successors in the ownership of SUBJECT AREA.
- 7.8 Integration. This AGREEMENT contains the entire agreement 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 by the parties hereto.
- 7.9 Authority. The parties represent that each has the requisite authority to enter into this AGREEMENT and that the same has been duly authorized by all necessary or appropriate corporate or regulatory action.

IN WITNESS WHEREOF, the CITY has caused this AGREEMENT to be duly executed on its behalf and MIDTOWN has caused the same to be duly executed on its behalf, on and as of the day and year first written above.

CITY:

OGDEN CITY CORPORATION, a  
Municipal Corporation

By:   
Matthew R. Godfrey, Mayor

ATTEST:

Gloria J. Berrett  
Gloria J. Berrett, City Recorder

APPROVED AS TO FORM:

Harry K. Williams  
City Attorney



MIDTOWN:

MIDTOWN COMMUNITY HEALTH CENTER, a Utah non-profit corporation

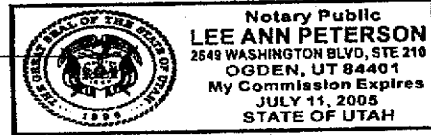
By: Michael J. Burton  
Name/Title: Michael J. Burton  
Board Chair MCHC

ACKNOWLEDGMENTS

STATE OF UTAH )  
 ) :SS  
COUNTY OF WEBER )

On this 5<sup>th</sup> day of July, 2005, personally appeared before me, Matthew R. Godfrey and Gloria J. Berrett, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that they are respectively the Mayor and City Recorder of Ogden City, a municipal corporation, and that the foregoing document was signed by them in behalf of said Ogden City, and that said Ogden City executed the same.

Lee Ann Peterson  
Notary Public



STATE OF UTAH )  
 ) :SS  
COUNTY OF WEBER )

On this 8<sup>th</sup> day of June, 2005, personally appeared before me Michael J. Burton who being by me duly sworn did say that he/she is the Board Chair of Midtown Community Health Center, a Utah non-profit corporation, and that the foregoing instrument was signed on behalf of said corporation, and he/she acknowledged to me that said corporation executed the same.

Sonja Levesque  
Notary Public



**ATTACHMENT A  
("SUBJECT AREA")**

**PART OF LOTS 3, 4, AND 5, BLOCK 41, PLAT A, OGDEN CITY SURVEY,  
WEBER COUNTY, UTAH, DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF  
ADAMS AVENUE, SAID POINT BEING SOUTH ALONG SAID EAST LINE  
0.50 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 4; THENCE  
NORTH ALONG SAID EAST LINE 221.24 FEET; THENCE N89°59'49"E  
165.00 FEET; THENCE NORTH 44.15 FEET TO THE NORTH LINE OF SAID  
LOT 5; THENCE N89°59'42"E ALONG SAID NORTH LINE 66.00 FEET;  
THENCE SOUTH 132.47 FEET TO THE SOUTH LINE OF SAID LOT 5;  
THENCE S89°59'56"E ALONG SAID SOUTH LINE 101.40 FEET TO THE  
EAST LINE OF SAID LOT 4; THENCE SOUTH ALONG SAID EAST LINE  
132.48 FEET TO THE SOUTH LINE OF SAID LOT 4; THENCE N89°59'35"W  
ALONG SAID SOUTH LINE 215.40 FEET; THENCE SOUTH 0.50 FEET;  
THENCE N89°59'35"W 117.00 FEET TO THE POINT OF BEGINNING.**

**CONTAINS 1.55 ACRES**

**ATTACHMENT B**  
**("CONCEPT PLAN")**



**ATTACHMENT C**  
**("EXPANSION PARCEL")**

PART OF LOT 5, BLOCK 41, PLAT A, OGDEN CITY SURVEY; BEGINNING AT A POINT 231 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 5; THENCE RUNNING EAST 99 FEET, THENCE SOUTH 132 FEET; THENCE WEST 99 FEET THENCE NORTH 88 FEET; THENCE WEST 66 FEET, THENCE NORTH 44 FEET; THENCE EAST 66 FEET TO THE POINT OF BEGINNING.

*DE*  
*01-035-0023, 0027, 0036* *PL*