

RESOLUTION NO. 17-R-16

A RESOLUTION BY THE COUNCIL OF THE CITY OF ALVIN, TEXAS, SUPPORTING A DEVELOPER AGREEMENT TOWARD THE CONSTRUCTION OF THE ST. JAMES SENIORS RESIDENTIAL DEVELOPMENT WITH A COMMERCIAL COMPONENT; AND SETTING FORTH RELATED MATTERS THERETO.

WHEREAS, pursuant to Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, it is the established policy of the City to adopt such reasonable programs and measures from time-to-time, as are permitted by law, to promote local economic development, to attract industry, create and retain primary jobs, expand the growth of the City, to stimulate business and commercial activity in the City, and thereby enhance the economic stability and growth of the City; and

WHEREAS, Don Barras Development, LLC (the “Company”), 1300 Plantation, Alvin, Texas 77511, intends to construct a senior residential development and a commercial development (the “Improvements”), in the extra territorial jurisdiction (ETJ) of the City of Alvin and be annexed into the City of Alvin, located along the proposed FM 528 Extension between Business 35 and State Highway 6, Alvin, Brazoria County, Texas (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company expects the senior residential development will provide twelve (12) buildings, housing 120 single-story units with parking, and will be age-restricted for one resident to be at least 55 years of age, and no residents shall be under 50 years of age, as described in Exhibit “B;” and

WHEREAS, on November 14, 2016, the Company and City staff held a pre-development meeting to discuss the senior residential development, where the proposal to the City required certain administrative actions to permit the construction of the senior residential development; and

WHEREAS, the Company agrees, that it will submit a letter requesting annexation contemporaneously with the execution of this Agreement, and such annexation will be acted upon by the City upon completion of the senior residential development; and

WHEREAS, the City agrees that to induce the Company to construct the Improvements on the Property, it will take all lawful and appropriate administrative actions (collectively the “Actions”) to permit and authorize the construction and operation of the Property as set forth in Exhibit “C,” attached hereto and made a part hereof; and

WHEREAS, the Company has agreed, in exchange and as consideration for the Actions, to satisfy and comply with certain terms and conditions of this Agreement; and

WHEREAS, this Agreement is found by the City Council of the City to be suitable for the stimulation and development of business operations at the Property, the increase of taxable

property in the City, the development and improvement to existing property, and a better quality of place/life for the community, the creation of construction jobs and the economic benefit for the City in general, and for the property values of property immediately adjacent to the Property; and

WHEREAS, the City Council has considered the matter and deems it in the public interest to authorize this action.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Section 3. Effective Date. This resolution shall take effect upon its adoption.

PASSED AND APPROVED on this the ____ day of _____, 2017

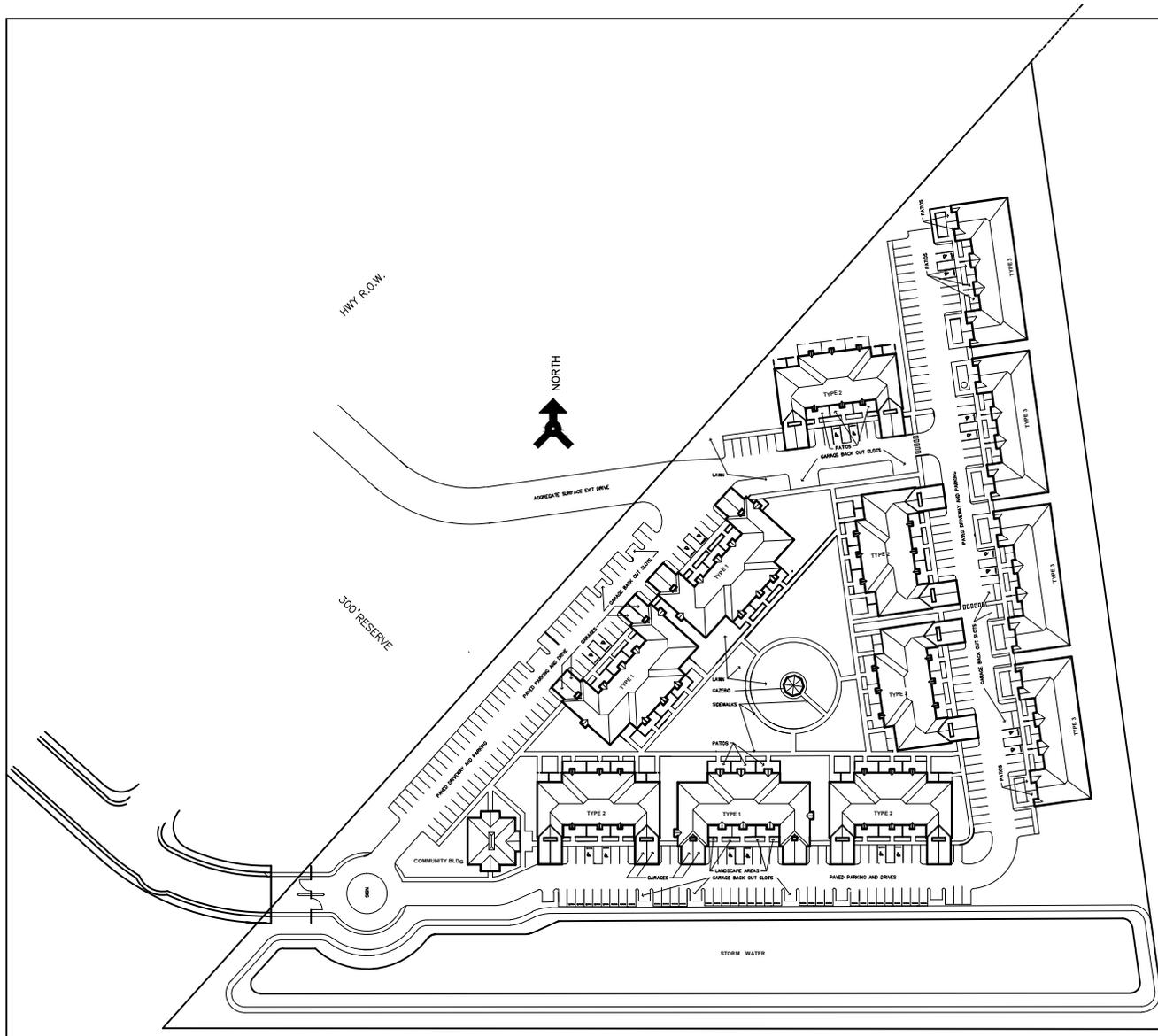
ATTEST:

CITY OF ALVIN, TEXAS

By: _____
Dixie Roberts, City Clerk

By: _____
Paul A. Horn, Mayor

Exhibit "D"



Date 5/12/17
 Proj. No. 1815
 Drawn by REB
 Checked by REB

BARRAS ARCHITECTS
 10000 W. UNIVERSITY BLVD. SUITE 7000
 DALLAS, TEXAS 75243
 (214) 387-3400 FAX (214) 387-3475



120 SINGLE STORY APARTMENTS
ALVIN SENIOR HOUSING
 ALVIN, TEXAS

revision:

 sheet no.
A1.2
 of 0

ARCHITECTURAL SITE PLAN - LAND PLAN

SCALE: 1" = 50'

AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT (the “Agreement”) is made and entered into by and between the City of Alvin, a Texas home rule municipality organized under the Constitution and laws of the State of Texas, located in Brazoria County, Texas (the “City”), and Don Barras Development, LLC (the “Company”), 1300 Plantation, Alvin, Texas 77511.

WITNESSETH:

WHEREAS, pursuant to Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, it is the established policy of the City to adopt such reasonable programs and measures from time-to-time, as are permitted by law, to promote local economic development, to attract industry, create and retain primary jobs, expand the growth of the City, to stimulate business and commercial activity in the City, and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company intends to construct a senior residential development and a commercial development (the “Improvements”), in the extra territorial jurisdiction (ETJ) of the City of Alvin and be annexed into the City of Alvin, located along the proposed FM 528 Extension between Business 35 and State Highway 6, Alvin, Brazoria County, Texas (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company expects the senior residential development will provide twelve (12) buildings, housing 120 single-story units with parking, and will be age-restricted for one resident to be at least 55 years of age, and no residents shall be under 50 years of age, as described in Exhibit “B;” and

WHEREAS, on November 14, 2016, the Company and City staff had a pre-development meeting to discuss the senior residential development as described in the site plan, Exhibit “D,” where the proposal to the City required certain administrative actions to permit the construction of the senior residential development; and

WHEREAS, the Company agrees, that it will submit a letter requesting annexation contemporaneously with the execution of this Agreement, and such annexation will be acted upon by the City upon completion of the senior residential development; and

WHEREAS, the City agrees that to induce the Company to construct the Improvements on the Property, it will take all lawful and appropriate administrative actions (collectively the

“Actions”) to permit and authorize the construction and operation of the Property as set forth in Exhibit “C ,” attached hereto and made a part hereof; and

WHEREAS, the Company has agreed, in exchange and as consideration for the Actions, to satisfy and comply with certain terms and conditions of this Agreement; and

WHEREAS, this Agreement is found by the City Council of the City to be suitable for the stimulation and development of business operations at the Property, the increase of taxable property in the City, the development and improvement to existing property, and a better quality of place/life for the community, the creation of construction jobs and the economic benefit for the City in general, and for the property values of property immediately adjacent to the Property;

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the City and the Company agree as follows:

1. This Agreement shall be effective as of the date of its execution as set forth below (the “Effective Date”) and terminate upon full completion of the residential and commercial buildout of the development, unless extended by mutual agreement of the City Council and the Company.

2. The Company agrees that its obligations under this paragraph to render the Property and the Improvements for taxation to the Brazoria County Appraisal District (BCAD) shall survive any termination of this Agreement, including a termination for default by the Company.

3. The Company agrees that it will acquire the Property and begin construction of the Improvements as set forth in Exhibit “B” no later than one hundred fifty (150) days after execution of this Agreement.

4. The Company agrees to acquire the Property and to deliver to the City Manager within ninety (90) days of the Effective Date of this Agreement, a certified copy of the recorded deed to the Property (the “Deed”). Thereafter, the Company agrees that the construction of the Improvements and the acquisition any required permits and licenses shall be started not more than one hundred fifty (150) days from the date the Deed is recorded in the deed records of Brazoria County, Texas (the “Record Date”).

5. The construction of the Improvements on the Property shall be completed in Two Phases:

- a) Phase 1 shall consist of the senior residential development tract, and all items associated with it, as described in Exhibit “B” to this Agreement, will be completed not later than eighteen (18) months from the Record Date.
- b) Phase 2 shall consist of the commercial tract, as described in Exhibit “B” to this Agreement, a marketing plan will be presented within six (6) months of Phase 1 completion, and the site will be developed as the market warrants.

6. The Extensions of the deadlines outlined in 5(a) and (b) above, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the City Council of the City. A failure by the Company to construct the improvements within these time deadlines, without an extension of a deadline by the City Council, shall constitute an event of default for which the City may terminate this Agreement.

7. If Company has not satisfied the requirements and conditions within the time frames described herein, including, acquiring the Property, receiving the permits and licenses, and construction of Phase 1 and Phase 2 as described above, the City may terminate this Agreement, and the City may, at its discretion, restrict continuing and/or future improvements to the development, subject to Company supplying any necessary items to ensure the completion of the development as laid out in this Agreement.

8. The Company agrees that within ten (10) days of the completion of the renovation and construction of the Improvements in each Phase, it will provide the City with a copy of any and all appraisals it has provided to any financial institution providing loans or financing to the Company for the acquisition of the Property or construction of the Improvements for each Phase, as to (1) the value of the real property, and (2) the value of the completed Improvements and fixtures made by or behalf of the Company.

9. The Company acknowledged in its application to the City for a “public subsidy,” as defined by Article 2264.001(3) of the Texas Government Code, and further agrees that it does not and will not knowingly employ an undocumented worker in any aspect of the construction of the Improvements. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

10. In consideration of the Company’s representations, promises, and covenants, the City agrees to undertake the Actions to induce and cause the Company to purchase the Property and undertake the construction of the Improvements. The City agrees to take the Actions on behalf of the Company within thirty (30) days of receipt of a letter from the Company requesting such Actions, which letter shall also include a verification from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed, and approved.

11. It is understood and agreed by the parties that in the event of a default by the Company to render its ad valorem taxes to the BCAD in a timely manner, as required by paragraph 2 herein, the Company shall reimburse the City the full amount of the ad valorem taxes it would have paid had the company rendered its property to the BCAD as required by this Agreement, with interest at the rate equal to the 90-day Treasury Bill, plus one-half percent per annum, within thirty (30) days after the City notifies the Company of the default.

12. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the City may declare such conviction to be a material event of default of this Agreement and terminate this Agreement within thirty (30) days after the City notifies the Company of such default.

shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

20. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party, which shall not be reasonably withheld or delayed. Notwithstanding anything to the contrary, Company may assign all or part of its rights or obligations without the prior consent of the City to a third-party lender advancing funds for the acquisition, construction, or operation of the Business.

21. In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

22. Any delay or failure in the performance by either party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of Company, that prevent Company from performing its obligations in this Agreement, and other like events that are beyond the reasonable anticipation and control of the party affected thereby, despite such party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a party's failure to perform its obligations under this Agreement.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the Mayor on this _____ day of _____ 2017 (the "Effective Date") and the Company.

ATTEST:

City of Alvin, Texas

By: _____
Dixie Roberts
City Secretary

By: _____
Paul A. Horn, Mayor

Signed this the _____ day of _____, 2017

ATTEST:

Don Barras Development, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Signed this the _____ day of _____, 2017

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

This instrument was acknowledged before me on the _____ day of _____
2017, by _____ of the City of Alvin, Texas, for and on behalf of
said City.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

This instrument was acknowledged before me on the _____ day of _____
2017, by Don Barras, for and on behalf of said Company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit "A"

Description of Property

BEING 23.7888 ACRES OF LAND OUT OF A CALL 26.84 ACRE TRACT RECORDED IN BRAZORIA COUNTY CLERK'S FILE NO. (97)024069 BEING SAID LOTS 1, 2, AND 25 (LESS AND EXCEPT 1/2 ACRE OUT OF LOT 25 PREVIOUSLY CONVEYED TO THE CITY OF ALVIN, TEXAS) OUT OF THE SOUTH ONE-HALF OF SECTION 21 HOOPER AND WADE SURVEY, ABSTRACT NO. 421, BRAZORIA COUNTY, TEXAS

Exhibit “B”

Proposal of Don Barras Development, LLC

Don Barras Development, LLC propose the following:

- To develop 120 senior residential apartments in a 12.25-acre site within the total 26.84 acres tract in the City of Alvin extra territorial jurisdiction (ETJ).
- The development will be age restricted to one resident must be 55 years old and no one under 50 years old will reside in the development.
- There will be 12 buildings with 10 units per building.
- The buildings will be single story with 2 parking spots per unit.
- The Company will construct all infrastructure to connect to City utilities (water and sewer).
- The Company will construct the portion of the FM 528 extension to city standards from Heights Road to the driveway for the apartments.
- The Company will present a marketing plan for the commercial tract, as described in Exhibit “B” to this Agreement, within 6 months of the completion of the 120 senior residential apartments, and the site will be developed as the market warrants.
- The developer will submit a letter requesting voluntary annexation.
- All construction will be permitted through the City of Alvin.
- All other portions of the ordinance will be followed by the Company/owner.
- The agreement will be active until the senior residential apartments, the commercial development, and all construction associated with it is complete.

Exhibit “C”

The City Administrative Actions

- The City will annex the property upon completion of the senior residential apartments and all associated construction.
- The City will allow the senior residential apartments to be constructed on the 12.25-acre site in the City of Alvin extra territorial jurisdiction (ETJ).
- The City will allow for the secondary roadway, from the improved FM 528 Extension that goes to the main entrance to the apartments to the secondary entrance to the apartments, to be limestone and only used for emergency services, until the commercial development triggers street construction per the city ordinances and building codes.
- All other portions of the city ordinances will be followed by the developer.