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RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 19 P.

WHEN RECORDED RETURN TO:

Millcreek
Attn: Jeff Silvestrini
3330 South 1300 East
Millcreek, UT 84106
21-01-228-015

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is made and entered into as of this 14 day of April, 2021 ("**Effective Date**"), by and between **Millcreek OG, LLC**, a Utah limited liability company (the "**Developer**"), and **Millcreek**, a Utah municipality (the "**City**").

RECITALS:

A. Developer is the owner of certain real property located at or near 4186 South Main Street, Millcreek City, Salt Lake County, Utah, as more particularly described in exhibit "A" (the "**Property**").

B. The Developer proposes to construct a mixed-use, transit oriented development ("**Project**") as illustrated on the site plan (the "**Site Plan**") attached hereto as exhibit "B."

C. The Property has been zoned Mixed Development (MD).

D. Developer hereby represents to the City that it is voluntarily entering into this Agreement.

E. The City and Developer desire to enter into this Agreement to further memorialize the development rights, terms, requirements and conditions for the development of the Project, as more fully described herein.

F. The City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, Utah Code Ann. §10-9a-101, *et seq.*, and its ordinances, resolutions, and regulations, and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the City hereby agree to as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries to which this Agreement applies is attached and specifically described in exhibit "A." No additional property may be added to or removed from this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City.

2. **Specific Design Conditions; Development Rights.** The Project shall be developed and constructed substantially as set forth in the Site Plan and the specific timing and sequencing and criteria (the "**Development/Design Criteria**") set forth in exhibit "C."

- (a) **Density.** The Project shall include up to one hundred fifty (150) residential units (the "**Residential Units**"). Developer shall have the right to move the 16' and 20' Residential Units within the Project based on market demand, provided, that the final Site Plan, as revised in accordance with this provision, and the road layout remain substantially similar to exhibit "C."
- (b) **Commercial Component.** As part of the commercial component of the Project, Developer intends to include an approximately 2,200 square foot neighborhood market/coffee shop along the Main Street frontage (the "**Commercial Space**"). Developer shall construct the Commercial Space within eighteen (18) months of the City's issuance of the first building permit for Residential Units in the Project. Because similar retail uses are contemplated on neighboring property on Main Street, Developer reserves the right to convert such Commercial Space to retail, creative office or another commercial use under the following conditions after completion of the shell of the Commercial Space: (1) such space has been marketed unsuccessfully for six (6) months after completion of the shell and no tenant has been identified; and (2) Developer provides the City a detailed monthly report outlining Developer's commercially-reasonable efforts to market the Commercial Space as a neighborhood market/coffee shop without success prior to executing a lease that contemplates another commercial use. Such monthly report shall contain a description of all showings and/or activity with qualified lessees. Developer also shall provide the City with a copy of Developer's listing agreement for the Commercial Space.
- (c) **Lighting.** All lighting fixtures shall be directed downward with mechanisms to prevent dark sky illumination as approved by the City.
- (d) **Amenities.** Developer shall have the right to construct a swimming pool and/or clubhouse, if Developer so elects.
- (e) **For Sale-For Rent Requirement.** As a requirement of the "Opportunity Zone" funds used for the subject development, developer shall make best efforts to sell 50% of the total units, no later than eleven (11) years from the date that the first building permit is issued to begin vertical construction. Developer shall have the right to utilize the remaining fifty percent (50%) of the Residential Units (i.e., those units that are not For Sale Residential Units) as rental units (the "**For Lease Residential Units**"), or can sell such Residential Units as For Sale Residential Units, at Developer's sole discretion. The Declaration governing the Project shall contain the guidelines set

forth in this Agreement regarding the For Sale Residential Units and the For Lease Residential Units.

3. **Vested Rights.** Upon the last to occur of the following: (a) Developer's receipt of final approval from the City for the Site Plan, (b) full execution by Developer and the City of this Agreement, and (c) full execution by Developer and the Millcreek Community Reinvestment Agency of the Participation Agreement (as defined below), this Agreement shall vest the Developer with the right to develop the Project in accordance with this Agreement, the ordinances, policies, and standards but not procedures of the City in effect as of the date of this Agreement. Such rights shall include, without limitation, the right to develop the Property with up to one hundred fifty (150) Residential Units as generally set forth on the Site Plan and the Commercial Space. Up to six (6) of the Residential Units shall be approved as live/work Residential Units (i.e., the residents of such units may operate a commercial business in such Residential Units). The City acknowledges and approves development of the Project in several phases (each, a "Phase").

4. **Park Property.** Developer shall develop as provided herein and then convey not less than 1.09 acres of park property ("Park Property") as identified on the Site Plan to the City free and clear of all liens and encumbrances. The Developer shall develop the Park Property and install the park improvements at no cost or expense to the City subject to City standards and a design as approved by the City. Such improvements shall include a Pedestrian Bridge (defined below), if the timely requisite approvals for the Pedestrian Bridge are obtained, sod, irrigation system, public access as shown on the Site Plan to Main Street that is ADA accessible, benches, playgrounds, picnic tables, and eleven (11) dedicated parking stalls with signage approved by the City. After expiration of a one-year warranty period the City will maintain, or cause to be maintained, at no cost or expense to the Developer, the owners of the property comprising the Project, and all residents of the Project, the Park Property and all improvements located thereon in a clean and safe condition in perpetuity.

Upon completion of the Park Property infrastructure, the Developer reserves the right to maintain private ownership of the 1.09 improved Park Property for a period not exceeding 36 months. In the event the Developer elects to maintain private ownership of the Park Property, and not dedicate the property to Millcreek City for 0-36 months, the Developer is obligated to record a temporary public access & use easement for the said Park Property. The said easement will be automatically vacated upon dedication of the Park Property to Millcreek City. At which time the said public access and use easement is recorded, or ownership of the Park Property is dedicated to Millcreek City, (a) the one-year warranty period for landscaping and infrastructure begins, and (b) reimbursements associated with the Participation Agreement and Millcreek City Parks fees will be activated in accordance with those agreements, and (c) maintenance of the Park Property will be managed and paid for by Millcreek City.

5. **Pedestrian Bridge.** At no cost or expense to the City the Developer shall design and construct a Pedestrian Bridge (as defined below) subject to plans approved by the City. Developer shall use reasonable efforts to acquire all approvals and enter into agreements with all necessary parties, which may include the owner of the property directly south of the Property, the City of Murray and the Army Corps of Engineers, to construct and maintain a pedestrian bridge

crossing Big Cottonwood Creek to the south of the Property in the place indicated on the Site Plan (the "**Pedestrian Bridge**"). The City agrees to support Developer's efforts to obtain approval for the Pedestrian Bridge from all third parties and to provide Developer at no cost or expense to Developer such assistance in obtaining such third-party approval Developer may reasonably request. The City agrees to waive all permitting, design review, impact or other fees ordinarily imposed by the City in light of the fact that Developer is constructing the Pedestrian Bridge as an amenity for the City. If Developer is unable to obtain all requisite approvals for the Pedestrian Bridge within twenty-four (24) months after the City issues the first building permit for Residential Units then the City shall have an additional twelve (12) months after the expiration of the twenty-four month period to obtain all request approvals for the Pedestrian Bridge. If the Developer and the City are unable to obtain all requisite permits within the thirty-six (36) month period, Developer shall have the right to proceed with the development of the Park Property without any requirement or obligation to construct such Pedestrian Bridge. City shall at no cost or expense to Developer maintain, or cause to be maintained, the Pedestrian Bridge in perpetuity. Notwithstanding the foregoing, Developer, its successors or assigns shall provide snow removal for a path across the Pedestrian Bridge in the area highlighted on the diagram attached hereto as Exhibit B attached hereto and incorporated herein by reference.

6. **Access Road to Central Avenue/Main Street.** Developer shall provide, prior to the issuance of a building permit for the Project, a public access to Central Avenue and a secondary access to Main Street in the locations identified on exhibit "D." For purposes of this paragraph public access or secondary access shall mean completion of a private access road constructed pursuant to the approved Site Plan ("**Secondary Access**") or ownership of sufficient real property to construct the Secondary Access.

7. **Participation Agreement.** Developer is in the process of finalizing a Participation Agreement with the City redevelopment agency ("Agency") relating to development of the Property (the "**Participation Agreement**"). Developer and the Agency intend to enter into the Participation Agreement simultaneously. Developer's and Agency's execution of the Participation Agreement is a condition precedent to Developer's and City's obligations under this Agreement.

8. **Park Impact Fees; Reimbursement Agreement.** At such time as Developer completes construction of the Pedestrian Bridge or Park, the City shall refund to Developer all park impact fees paid by Developer to the City, and reimburse all future park impact fees assessed for the Property and paid by Developer pursuant to a Reimbursement Agreement to be executed by the parties (the "**Reimbursement Agreement**"). In the event the Park or the Pedestrian Bridge is developed and dedicated to the City in advance of Park Impact fees being collected on all Opus Green units, The City will waive, and or not charge the said Park Impact fees on the permits associated with the units to be built. Developer's and City's execution of the Reimbursement Agreement is a condition precedent to Developer's and City's obligations under this Agreement. The City's obligation to reimburse the Developer for the Park and/or Pedestrian Bridge shall commence on completion of the earlier of the Park and the Pedestrian Bridge. For the sake of

clarity, if the Park is complete before the Pedestrian Bridge, reimbursement for costs associated with the Park shall commence on the Park's completion, and reimbursement for the Pedestrian Bridge shall commence upon completion of such Pedestrian Bridge.

9. **Reserved Legislative Powers.** Notwithstanding any other provision of this Agreement to the contrary, the Developer acknowledges that the City is restricted in its authority to limit its police powers by contract and the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Developer as follows:

- (a) Changes that City and Developer agrees in writing to the application thereof to the Project.
- (b) Changes in City's laws and ordinances 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.
- (c) Changes in City's laws and ordinances 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, AASHTO 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 legitimate concerns related to public health, safety or welfare
- (d) 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.
- (e) Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule).
- (f) 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 Ann. § 10-9a-509(1)(a)(i) (2016).

Nothing contained in the foregoing subparagraphs (a)-(f) shall alter or limit any future approvals, permits or other action(s) by the City concerning the Project (e.g. issuance of conditional use permit or building permit) that would give rise to separate vested rights under applicable law.

10. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder, shall be deemed to run with the Property, and shall encumber the same; and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property. This Agreement supersedes any and all development agreements that have been executed concerning the Property.

11. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without the consent of the other party, which consent shall not be unreasonably withheld or delayed. Any successors and assigns shall be deemed to be the Developer for all purposes under this Agreement with respect to that portion of the Property transferred, and the transferring Developer shall not be released from any further obligations with respect to this Agreement as to the parcel so transferred. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

12. **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, except as expressly provided herein.

13. **Integration.** This Development 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.

14. **Notices.**

Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer: Millcreek OG LLC
 Attn: Micah W. Peters
 336 West Broadway, Suite 110
 Salt Lake City, UT 84101

To City: Millcreek
 Jeff Silvestrini, Mayor
 3330 South 1300 East
 Millcreek, UT 84106

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

15. **Choice of Law and Venue.** Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah. Any Utah litigation regarding this Agreement shall be filed in the Third District Court in Salt Lake City, Utah. Any federal litigation regarding this Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

16. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

17. **Term of Agreement.** The term of this Agreement shall be for a period of ten (10) years or until fulfillment of the obligations of the parties unless earlier terminated or modified by a written amendment agreed to and approved by the parties. If this Agreement is not recorded Office of the Salt Lake County Recorder within thirty (30) days of the Effective Date, the City may terminate this Agreement and Developer irrevocable consents that the Property be rezone A-1 (Agricultural Zone).

18. **Default.** Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Subject to paragraph 17 upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to pursue a remedy.

19. **Limitation on Recovery for Default – No Damages.** Anything in this Agreement notwithstanding no Party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto except that the City may unilaterally withhold all further reviews, approvals, licenses, building permits, certificate of occupancy and/or other permits for development of the Project in the case of a default by Developer. The sole and exclusive remedy available to Developer or assignees or successors shall be that of specific performance.

20. **Termination.** If City elects to consider terminating this Agreement due to a default of Developer, then City shall give Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines using its legislative discretion that a default has occurred and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail. Notwithstanding the specific performance limitation described above the City may thereafter pursue any and all remedies at law or equity.

21. **Force Majeure.** Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

22. **Exhibits and Recitals.** The Recitals at the beginning of this Agreement and exhibits attached hereto are hereby incorporated herein by this reference.

23. **No Waiver.** Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise such right at some future time said right or any other right it may have hereunder.

24. **Execution of Agreement.** This Agreement may be executed in multiple counterparts or originals.

25. **Titles and Captions.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

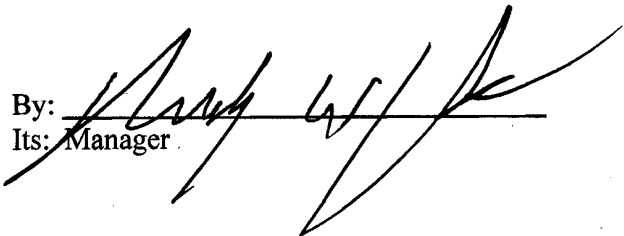
26. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

27. **Further Acts.** In addition to the acts recited in this Agreement to be performed by the parties hereto, the parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby and to carry out the terms and provisions, spirit and intent of this Agreement.

[Signatures on the following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

Millcreek OG, LLC

By: 
Its: Manager



Millcreek


Jeff Silvestrini, Mayor

Attest:

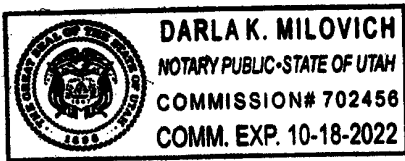

Elyse Greiner, CMC City Recorder
Sullivan

STATE OF UTAH)

: ss.

CITY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 7th day of April, 2021 by Micah W. Peters, the Manager of Millcreek OG, LLC.



[Handwritten Signature]

Notary Public

STATE OF UTAH)

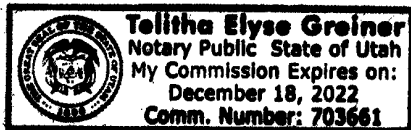
ss.:

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 14 day of April, 2021 by Jeff Silvestrin; the Mayor of Millcreek, State of Utah.

[Handwritten Signature]

Notary Public



[Notarial Seal]

EXHIBIT A
Legal Description of the Property

A parcel of land situated in the Northeast quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Commencing at the East Quarter corner of said Section 1; thence North 87°01'34" East 16.16 feet to the Monument Line of Main Street; thence North 0°15'54" East 1741.07 feet along the said Monument Line; thence North 76°16'11" West 33.93 feet to the True Point of Beginning, said point being the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek and a line 33 feet West of the Main Street Monument Line; and running from the above described point of beginning along the annexation boundary as follows:

North 76°16'11" West 23.32 feet; thence North 40°00'30" West 154.80 feet; thence North 68°26'54" West 290.80 feet; thence North 76°57'23" West 457.00 feet; thence South 29°13'33" West 51.05 feet to the point of intersection with a line parallel to and 33.00 feet Easterly of the railroad centerline; thence North 8°59'00" West along the East railroad right-of-way line 359.40 feet; thence South 89°14'45" East 748.55 feet more or less to a point on the West boundary line of Gordon's South Lawn Addition Subdivision; thence South 3°50'00" West along said West boundary line 368.14 feet to the Southwest corner of Lot 21, Block 4, Gordon's South Lawn Addition; thence North 85°15' East along the South line of said Lot 21, 197.01 feet; thence South 0°15'54" West 283.64 feet to the Point of Beginning.

Parcel No. 21-01-228-015-0000

Address: 4186 South Main Street

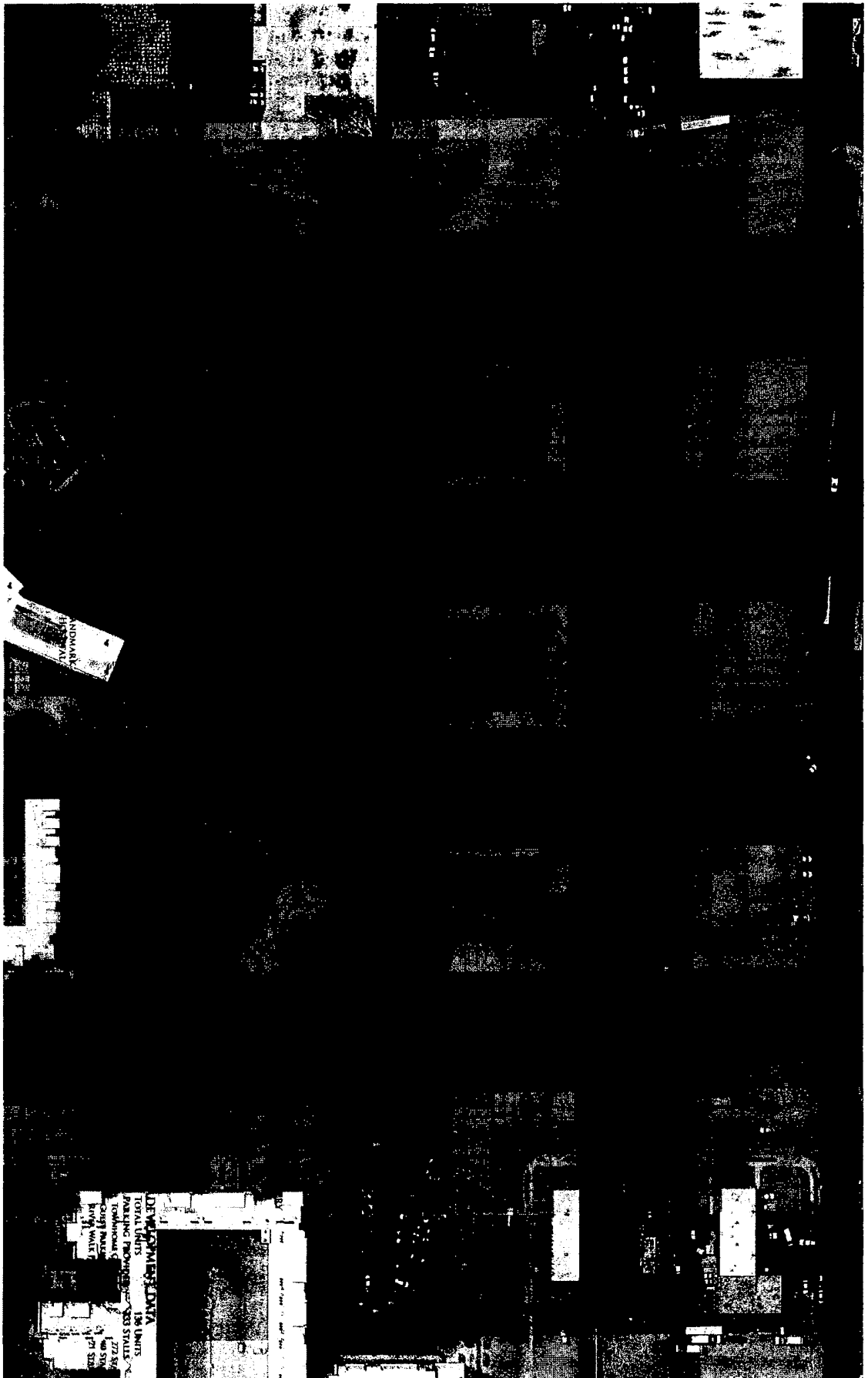
EXHIBIT B

Site Plan

CLEARWATER
H O M E S



OPUS GREEN
MASTER PLAN



CLEARWATER
HOMES



SCALE 1"=80'

OPUS GREEN
MASTER PLAN

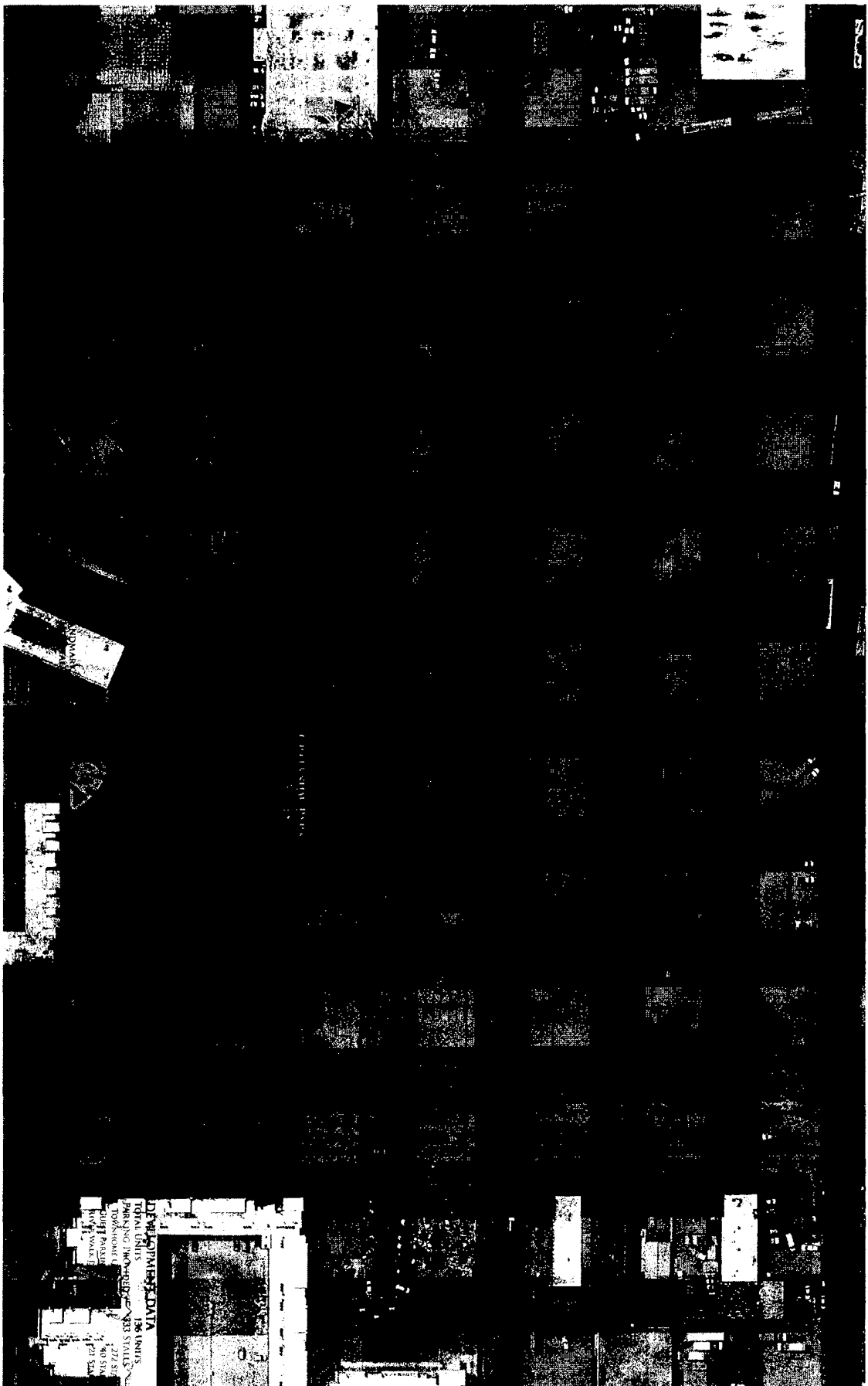


EXHIBIT C
Development Criteria

1. The maximum height of the residential buildings will not exceed 32 feet in height. The maximum height of the commercial buildings will not exceed 50 feet in height.
2. The setbacks for the builds will be as established on the site plan.
3. Parking will be as required by ordinance, specifically 2 stalls per 2-bedroom or more unit, .33 guest stalls per unit, 1 space per 250 sq. ft. of commercial space.
4. Project will consist of 25 percent open space, excluding the to be dedicated to the city. The open space will include a pedestrian bridge across Big Cottonwood Creek, to be approved by the city, a playground and a walking trail.
5. The project will consist of up to 150 residential units, with up to six being live-work units, with a commercial component consisting of at least 2,200 square feet.
6. Planting on the park needs to consist of water-wise drought tolerant plants commonly found in stream corridors in northern Utah and shall comply with MKC 19.77 and is subject to approval by Millcreek City. The landscape plan is to be done by a licensed landscape architect or arborist and city to approve the landscape plan.
7. The developer will install Dark-sky compliant street lighting in accordance with Millcreek City standards.
8. The North and West reaches of the development property to be fenced. Permitted fencing materials include precast wall, CMU, vinyl, black coated chain link, or other high quality cementitious fence materials".
9. Uses will be limited to multi-family residential, live/work style commercial units and general commercial retail.
10. Snow removal be managed so that guest parking stalls are not used for snow storage.
11. Homeowners Association documents and the CC&Rs shall include provisions requiring garages to be used for parking only and not for storage.
12. The draft HOA CC&R's need to be reviewed by staff.
13. HOA shall clear snow on pedestrian path from main street to and across the pedestrian bridge, as indicated in Exhibit D.
14. The City reserves the right to establish limits on the parking immediately fronting the park, for the benefit of park patrons and customers for the business, including but not limited to posting parking signs prohibiting overnight parking in the stalls allocated for park and commercial uses.

Exhibit C – 2: Phasing, sequencing, timing of development and public improvements

Phase	Completion Date	Project Amenities
Phase 1	By December 31st, 2022	<ul style="list-style-type: none">-35 or more Residential units including 3-6 live/work units and all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all Horizontal improvements associated with the 35 or more lots, and the vertical completion of the Phase 1 townhomes will be subject to market forces.-Market Deli consisting of at least 2,200 SF to be complete to "greyshell" within 18 months of Millcreek City issuance of first vertical construction permit-Riverfront Park & Bridge amenity comprising of 1.09 acres to be completed and dedicated to the City within 18 months of Millcreek City issuance of first vertical construction permit
Phase 2	By December 31st, 2023	<p>35 or more residential units including all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all horizontal improvements associated with the phase, and the vertical completion of phase 2 townhomes will be subject to market forces.</p>

Phase	Completion Date	Project Amenities
Phase 3	By December 31st, 2024	30 or more residential units including all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all horizontal improvements associated with the phase, and the vertical completion of phase 3 townhomes will be subject to market forces.
Phase 4	By December 31st, 2025	30 or more residential units including all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all horizontal improvements associated with the phase, and the vertical completion of phase 3 townhomes will be subject to market forces.

EXHIBIT D
Secondary Access

CLEARWATER
HOMES



Opus Green
MASTER PLAN

