

13

**When recorded, return to:**

Millcreek  
Attn: Jeff Silvestrini  
3330 South 1300 East  
Millcreek, UT 84106

12971139  
04/19/2019 11:57 AM \$0.00  
Book - 10771 Pg - 5470-5482  
**RASHELLE HOBBS**  
RECORDER, SALT LAKE COUNTY, UTAH  
MILLCREEK CITY  
3330 SOUTH 1300 EAST  
MILLCREEK UT 84106  
BY: EAA, DEPUTY - WI 13 P.

**DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is entered into this 8 day of April, 2019, by and among Capri Village Two, LLC ("Developer"), Capri Park Townhome Apartments Homeowners Association ("HOA"), and Millcreek, a Utah municipal corporation ("City"). Developer and HOA are jointly referred to as Developers and the Developers and the City are sometimes referred to as the "Parties."

**RECITALS**

A. HOA is the owner of certain real property located at or near 3580 South 900 East, in Millcreek, Utah ("Property").

B. Developer is under contract to construct 40 new one-bedroom condominium units and will become the owner of the units and the HOA will retain ownership of the common areas (collectively the "Project").

C. The Parties desire that the Project be developed in a unified and consistent fashion, establish minimum standards for development of the Project, add new amenities, and revitalize some existing amenities.

D. Developers hereby represent to the Millcreek Council that they are voluntarily entering into this Agreement.

E. Developers are willing to restrict development of the Property in a manner that is in harmony with the objectives of the City's General Plan and long-range development objectives, and which addresses the more specific development issues set forth in this Agreement and are willing to abide by the terms of this Agreement.

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 and conditions contained herein, the parties agree as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries, and upon which the 40 units may be constructed, is attached as exhibit "A." The amenities and improvements listed in Exhibit B may be constructed in other areas on the land inside of the HOA as depicted on Exhibit B. 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 Developers and the City.

2. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land-use plans, policies, ordinances and regulations after the date of this Agreement, provided that the adoption and exercise of such power shall not restrict Developer's vested rights to develop the Project as provided herein. This Agreement is not intended to and does not bind the Millcreek Council in the independent exercise of its legislative discretion with respect to such zoning regulations.

3. **Compliance with City Ordinances and Standards.** Developers acknowledge and agrees that nothing in this Agreement shall be deemed to relieve them from the obligation to comply with all applicable ordinances and requirements of the City necessary for development of the Project, including the payment of fees, and compliance with applicable City standards.

4. **Specific Design Conditions.** The Project shall be developed and constructed as set forth in the specific design conditions/criteria set forth in exhibit "B". The Project shall also comply with all requirements set forth in the minutes of the Millcreek Planning Commission of \_\_\_\_\_ and Millcreek Council of \_\_\_\_\_ regarding this matter.

5. **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



Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

11. **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.

12. **Limitation on Recovery for Default – No Damages.** None of the Parties 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. The sole remedy available to Developers or any assignee shall be that of specific performance. Notwithstanding such limitation the City may withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Developers or any assignee.

13. **Term of Agreement.** The term of this Agreement shall be until December 31, 2028 and shall automatically expire on such date.

14. **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.

15. **Construction.** The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

16. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

17. **No Waiver.** The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.


IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**Millcreek**



\_\_\_\_\_  
Jeff Silvestrini, Mayor

ATTEST:



\_\_\_\_\_  
Elyse Greiner, CMC, City Recorder

**DEVELOPER**

By: 

Title: OWNER

**HOA**

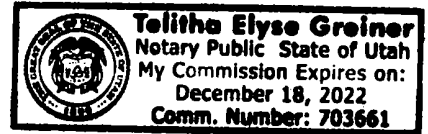
By: 

Title: President  
Copie Hot

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 8 day of April, 2019, by Jeff Silvestrini and Elyse Greiner as the Mayor and the City Recorder, respectively, of Millcreek, a Utah municipality.

Telitha Elyse Greiner  
Notary Public



STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 19 day of April 2019 by Stanford Bull, of Capri Village Two, LLC, and Gordon Edward Holt of the HOA.

[Signature]  
Notary Public

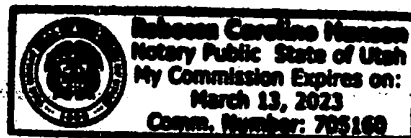


Exhibit A

**Part of Parcel No. 16-32-156-001-0000  
3580 South 900 East  
Millcreek, UT 84106**

**Legal Description**

All of the Capri Park Homes, a Utah Condominium Project, as shown on the plat recorded in the Salt Lake County Recorder's Office on 29 July 1974 in Book 747, Page 123.



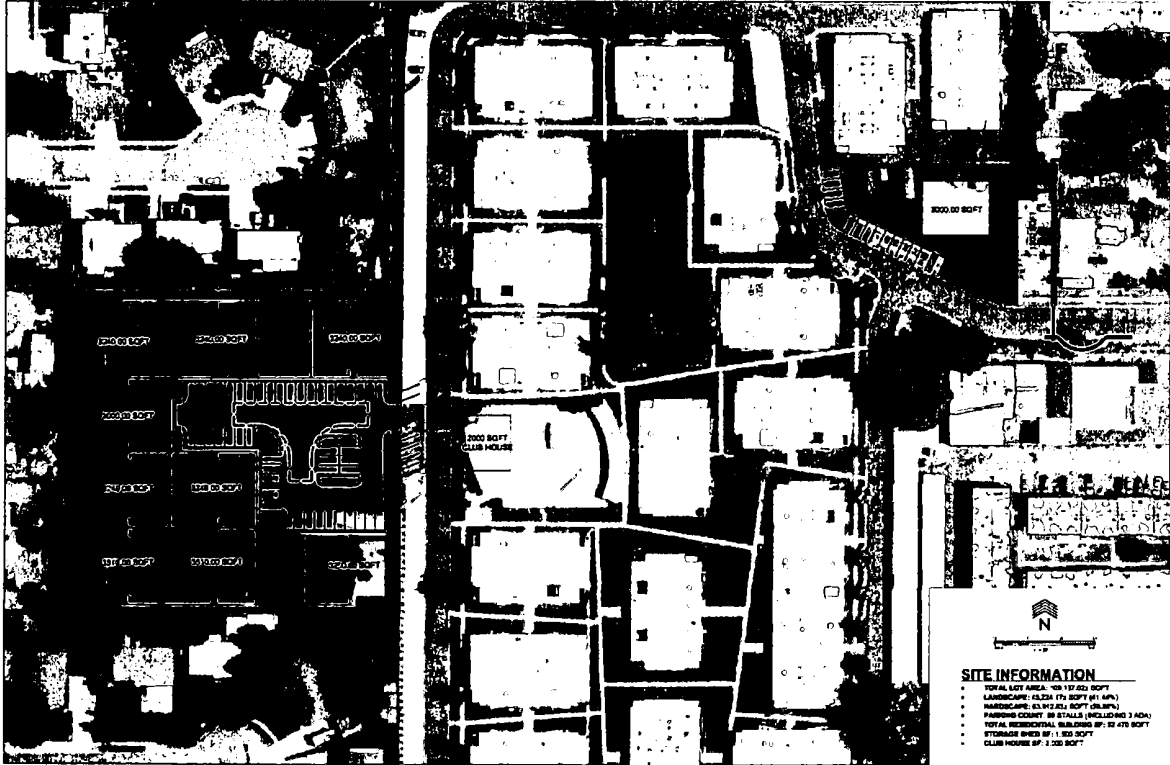
## Exhibit B

Developer and the City agree that the proposed development will incorporate the following:

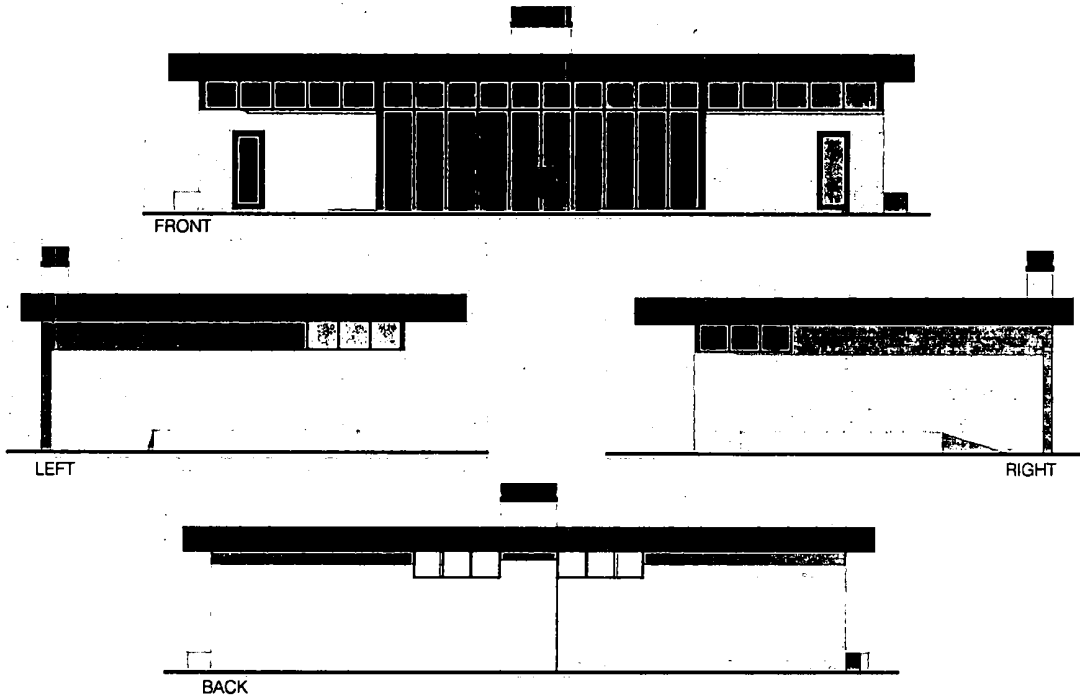
1. The Project shall consist of not more than of 40 new single level one-bedroom units on the Property. Each unit shall be a minimum of 750 square feet, not to exceed 30 feet in height measured from original grade and be constructed sustainably as depicted in the attached exhibit. The units shall be compatible with existing structure and cladding materials will be limited to a brick veneer to match the materials on the existing structures and will incorporate approximately 3/12 pitch roofs.
2. Development and construction of a 2,000 to 2,300 square foot club house in the location depicted on the attached exhibit (consisting of the preliminary site plan). The clubhouse is preliminarily intended to include a small conference room of approximately 195 square feet, a storage room of approximately 96 square feet, two ADA complaint restrooms, a large gathering place, a fireplace, and a food serving area with a sink and countertops but no appliances.
3. Development and construction of a maintenance shed of at least 1,500 square feet in the location depicted on the attached exhibit. The maintenance shed is preliminarily intended to include a small office of approximately 100 square feet, a restroom, and a large maintenance and storage area. The maintenance shed shall be constructed of the following materials: Cement pad with a pole barn structure and metal/aluminum siding and roofing.
4. The Project shall include an additional 66 parking stalls in the locations depicted on the attached exhibit.
5. A newly poured pool deck.
6. Deed-restrict a minimum of six of the units to provide affordable owner-occupied senior housing for at least 15 years. Senior housing means rental dwelling units that are compliant with the Housing for Older Persons Act of 1995, 42 USC § 3601. Owner-occupied means that the owner of the unit must occupy the unit and is prohibited from renting to third parties, subject to the exceptions in Utah Code section 57-8-10.1. Affordable means that the units will be restricted to a sales price of \$173,203 upon initial sale and may, after the initial sale of the unit, increase in sale price by 2.5% per year over the previous years' value.
7. Update the covenants, conditions and restrictions that have been approved by the City and shall be recorded against the entire HOA.
8. The construction of a vehicular access gate from 900 East including security cameras, with sufficient queuing area as determined by the City Engineer.

9. Compliance with the fire code, including the provision of fire suppression systems in all new structures, as determined by the City Fire Marshal.
10. No structures in the Project will utilize aluminum or vinyl siding except for the maintenance shed.
11. The City shall waive, and the Builder shall be entitled to a waiver of, the parks and recreation fees typically assessed against this type of development.

**Exhibit B  
Site Plan**



**Exhibit B  
Clubhouse Elevations**



**Exhibit B  
Building Elevations**



FRONT



LEFT

RIGHT



BACK