

When recorded, return to:

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

13210707
03/05/2020 04:01 PM \$0.00
Book - 10906 Pg - 2216-2224
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
MILLCREEK CITY
3330 SOUTH 1300 EAST
MILLCREEK UT 84106
BY: BRH, DEPUTY - WI 9 P.

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into this 24th day of February, 2020, by and between Midway Hospitality Partners, LLC ("Developer"), for the land to be included in or affected by the project located at approximately 3898 East Thousand Oaks Circle Millcreek, UT 84124, a municipal corporation of the State of Utah ("City"). The Developer and the City are sometimes referred to as the "Parties."

RECITALS

WHEREAS, Developer owns approximately 2.7 acres of real property located at 3898 East Thousand Oaks Circle, Millcreek, UT 84124 ("Property") and intends to develop the Property. A legal description of the Property is attached hereto as exhibit "A." The Parties desire that the Property be developed in a unified and consistent fashion and establish minimum standards for a new private use development consisting of single-family homes (the "Project") on the Property; and

WHEREAS, Developer hereby represents to the Millcreek Council that it is voluntarily entering into this Agreement; and

WHEREAS, Developer is willing to restrict 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 is willing to abide by the terms of this Agreement; and

WHEREAS, 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 is attached as 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. **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.** Developer acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it 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 and Millcreek meetings on 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 supersedes any and all development agreements that have been executed concerning the Property.

6. **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. This Agreement shall be binding upon any successors and assigns. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

7. **No Joint Venture, Partnership or Third-Party Rights.** This 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.

8. **Integration, Modification, and Entire Agreement.** 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. Exhibits A, B and C are hereby incorporated into this Agreement.

9. **Notices.** Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for whom intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the parties as follows:

TO DEVELOPER: Midway Hospitality Partners, LLC
210 E Main St, Suite 109
Midway, UT 84049
Brad Wagstaff

TO CITY: Millcreek
Jeff Silvestrini, Mayor
3330 South 1300 East
Millcreek, Utah 84106

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

10. **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.

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.** 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. The sole remedy available to Developer or and 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 Develop or any assignee.

13. **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 at the Office of the Salt Lake County Recorder within thirty (30) days of the Effective Date, the City may terminate this Agreement and Developer irrevocably consents that the Property be rezoned to its original zone(s). Additionally, if proposed plat is not recorded at the Office of the Salt Lake County Recorder within one (1) year of the Effective date the City may vacate or void the proposed plat and this Agreement and Developer irrevocably consents that the Property be rezoned to its original zone(s).

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 Sullivan, CMC, City Recorder

DEVELOPER

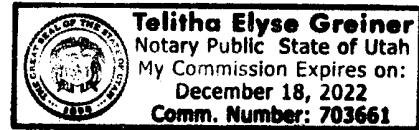
By:

Brad Wagstaff, Manager

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

The foregoing instrument was acknowledged before me this 25 day of February, 2020, by Jeff Silvestrini the Mayor 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 24 day of February 2020 by Brad Wagstaff

Jana Stratford
Notary Public

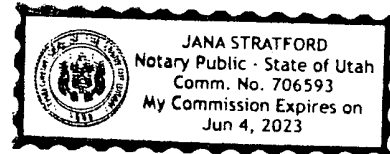


Exhibit A

Proposed Legal Descriptions and Survey

PARCEL A: BEGINNING AT A POINT ON THE SOUTHEAST LINE OF LOT 1508, MT. OLYMPUS HILLS NO. 15 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 00°03'00" EAST 3124.18 FEET ALONG THE QUARTER SECTION LINE TO A CORNER OF LOT 1506 OF SAID SUBDIVISION AND SOUTH 46°40'00" WEST 181.92 FEET FROM THE NORTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, AND RUNNING THENCE SOUTH 18°59'10" EAST 55.36 FEET TO THE WEST LINE OF LOT 1524 OF SAID SUBDIVISION; THENCE SOUTH 03°00'00" EAST 67.65 FEET ALONG SAID WEST LINE TO THE NORTH LINE OF THOUSAND OAKS CIRCLE; THENCE SOUTHWESTERLY 75.55 FEET ALONG SAID STREET AND ALONG A 45.00-FOOT-RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 96°11'18", CHORD BEARS SOUTH 38°54'16" WEST 66.98 FEET, TO A POINT OF REVERSE CURVATURE; THENCE SOUTHWESTERLY 12.62 FEET ALONG SAID STREET AND ALONG A 15.00-FOOT-RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 48°11'23", CHORD BEARS SOUTH 14°54'19" WEST 12.25 FEET; THENCE SOUTH 39°00'00" WEST 15.27 FEET ALONG SAID STREET TO THE EASTERN MOST CORNER OF LOT 1522 OF SAID SUBDIVISION; THENCE NORTH 51°00'00" WEST 120.61 FEET ALONG THE NORTHEAST LINE OF SAID LOT 1522 TO THE SOUTHEAST LINE OF LOT 1510 OF SAID SUBDIVISION; THENCE NORTH 46°40'00" EAST 174.61 FEET ALONG THE SOUTHEAST LINE OF LOTS 1510, 1509, AND 1508 OF SAID SUBDIVISION TO THE POINT OF BEGINNING.

PARCEL C: BEGINNING AT THE NORTHEAST CORNER OF LOT 1526, MT. OLYMPUS HILLS NO. 15 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 00°03'00" EAST 3643.21 FEET ALONG THE QUARTER SECTION LINE FROM THE NORTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, AND RUNNING THENCE NORTH 51°00'00" WEST 203.94 FEET ALONG THE NORTHEAST LINE OF SAID LOT TO THE SOUTHEAST LINE OF THOUSAND OAKS CIRCLE; THENCE NORTH 39°00'00" EAST 65.00 FEET ALONG SAID SOUTHEAST LINE; THENCE NORTHEASTERLY 12.62 FEET ALONG A 15.00-FOOT-RADIUS CURVE TO THE RIGHT AND ALONG SAID LINE THROUGH A CENTRAL ANGLE OF 48°11'23", CHORD BEARS NORTH 63°05'41" EAST 12.25 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG SAID LINE NORTHEASTERLY, A DISTANCE OF 39.32 FEET, ALONG A 45.00-FOOT-RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 50°03'45", CHORD BEARS NORTH 62°09'30" EAST 38.08 FEET; THENCE SOUTH 62°40'00" EAST 173.86 FEET; THENCE SOUTH 16°15'00" WEST 96.01 FEET; THENCE NORTH 85°10'00" WEST 54.91 FEET TO THE QUARTER SECTION LINE; THENCE SOUTH 00°03'00" EAST 34.76 FEET ALONG SAID QUARTER SECTION LINE TO THE POINT OF BEGINNING.

PARCEL E: BEGINNING AT A POINT ON THE QUARTER SECTION LINE AT A LOT CORNER OF LOT 1506, MT. OLYMPUS HILLS NO. 15 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 00°03'00" EAST ALONG THE QUARTER SECTION LINE 3124.18 FEET FROM THE NORTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH; RUNNING THENCE NORTH 00°03'00" WEST 14.72 FEET ALONG SAID LOT LINE AND QUARTER SECTION LINE; THENCE NORTH 50°50'00" EAST 82.08 FEET ALONG THE SOUTHEASTERLY LINE OF SAID LOT 1506; THENCE SOUTH 39°10'00" EAST 119.85 FEET TO THE NORTHWEST LINE OF COVERCREST DRIVE; THENCE SOUTH 50°50'00" WEST 2.99 FEET ALONG SAID LINE; THENCE SOUTHWESTERLY 11.35 FEET ALONG SAID LINE AND ALONG A 15.00-FOOT-RADIUS CURVE TO THE RIGHT, RUNNING THROUGH A CENTRAL ANGLE OF 43°20'42", CHORD BEARS SOUTH 72°30'21" WEST 11.08 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHWESTERLY 55.63 FEET ALONG SAID LINE AND ALONG A 40.00-FOOT-RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 79°41'08", CHORD BEARS SOUTH 54°20'08" WEST 51.25 FEET; THENCE SOUTH 62°29'22" WEST 69.81 FEET; THENCE NORTH 78°13'00" WEST 102.22 FEET TO A POINT ON THE SOUTHEAST LINE OF LOT 1507 OF SAID SUBDIVISION; THENCE NORTH 46°40'00" EAST 106.13 FEET ALONG SAID LOT LINE TO SAID QUARTER SECTION LINE AND TO THE POINT OF BEGINNING.

PARCEL B: BEGINNING AT A POINT ON THE SOUTHEAST LINE OF LOT 1508, MT. OLYMPUS HILLS NO. 15 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 00°03'00" EAST 3124.18 FEET ALONG THE QUARTER SECTION LINE TO A CORNER OF LOT 1506 OF SAID SUBDIVISION AND SOUTH 46°40'00" WEST 181.92 FEET FROM THE NORTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, AND RUNNING THENCE NORTH 46°40'00" EAST 75.79 FEET ALONG THE SOUTHEAST LINE OF SAID LOT 1508 AND OF LOT 1507 OF SAID SUBDIVISION; THENCE SOUTH 78°13'00" EAST 102.22 FEET; THENCE NORTH 62°29'22" EAST 69.81 FEET TO THE WEST LINE OF COVERCREST DRIVE; THENCE ALONG SAID WEST LINE, SOUTHEASTERLY 59.45 FEET ALONG A 40.00-FOOT-RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 85°09'21", CHORD BEARS SOUTH 28°05'07" EAST 54.13 FEET; THENCE SOUTH 19°20'13" WEST 130.78 FEET; THENCE SOUTH 24°59'00" WEST 139.00 FEET; THENCE NORTH 62°40'00" WEST 90.95 FEET TO THE SOUTH LINE OF THOUSAND OAKS CIRCLE; THENCE NORTHWESTERLY ALONG SAID STREET A DISTANCE OF 102.20 FEET ALONG A 45.00-FOOT-RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 130°07'43", CHORD BEARS NORTH 27°56'13" WEST 81.61 FEET TO THE WESTERLY SOUTHWEST CORNER OF LOT 1524 OF SAID SUBDIVISION; THENCE NORTH 03°00'00" WEST 67.65 FEET ALONG THE WEST LINE OF SAID LOT 1524; THENCE NORTH 18°59'10" WEST 55.36 FEET TO A POINT ON THE SOUTHEAST LINE OF LOT 1508 AND TO THE POINT OF BEGINNING.

PARCEL D: BEGINNING AT THE WESTERNMOST CORNER OF LOT 11, MT. OLYMPUS COVE NO. 6 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 00°03'00" EAST ALONG THE QUARTER SECTION LINE 3189.45 FEET AND NORTH 89°57'00" EAST 170.84 FEET FROM THE NORTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, AND RUNNING THENCE SOUTH 39°10'00" EAST 140.02 FEET ALONG THE SOUTHWEST LINE OF SAID LOT AND ITS EXTENSION; THENCE SOUTH 52°16'00" WEST 63.77 FEET; THENCE SOUTH 80°04'00" WEST 65.32 FEET; THENCE SOUTH 64°11'00" WEST 33.24 FEET; THENCE NORTH 83°01'00" WEST 48.02 FEET; THENCE NORTH 19°20'13" EAST 130.78 FEET TO THE SOUTH LINE OF COVERCREST DRIVE; THENCE ALONG SAID SOUTH LINE NORTHEASTERLY 71.10 FEET ALONG A 40.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 101°50'31", CHORD BEARS NORTH 58°24'57" EAST 62.10 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY 11.35 FEET ALONG SAID STREET AND ALONG A 15.00-FOOT-RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 43°20'19", CHORD BEARS NORTH 29°09'51" EAST 11.08 FEET; THENCE NORTH 50°50'00" EAST 3.00 FEET ALONG SAID LINE TO THE WESTERLY CORNER OF SAID LOT 11 AND TO THE POINT OF BEGINNING.

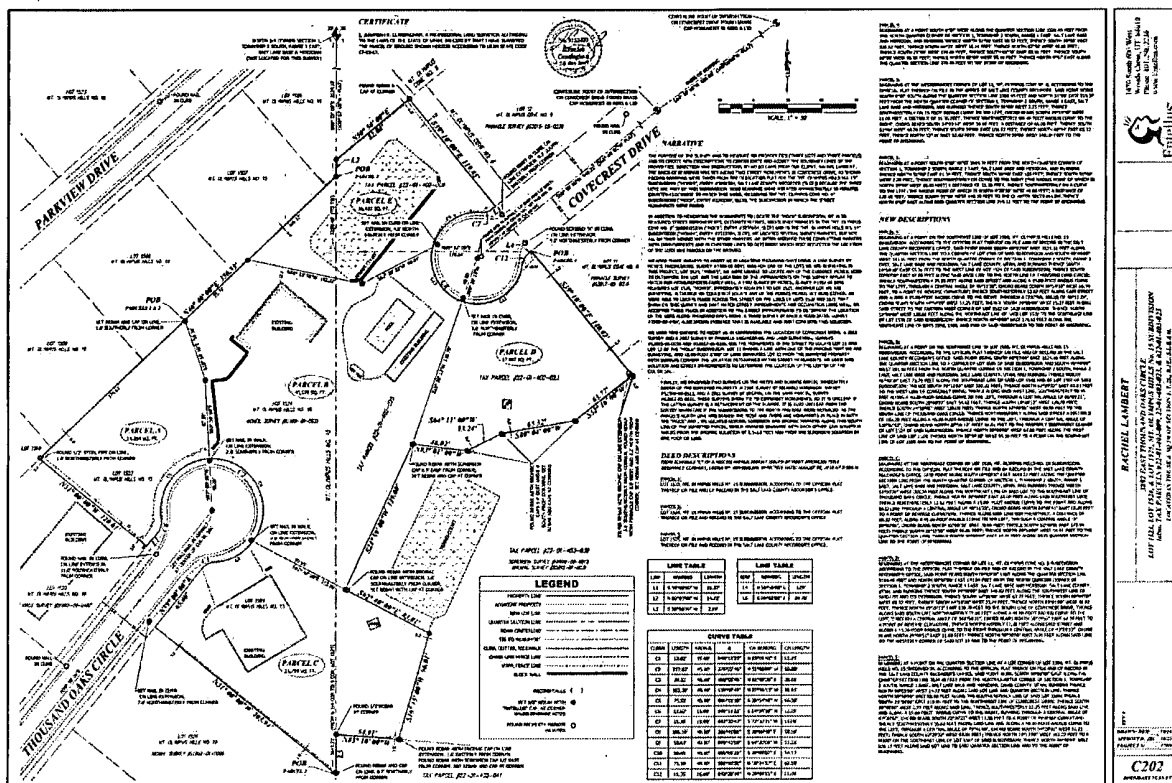


Exhibit A
(continued)

Existing Property (parcel identification numbers and addresses)

1. 22-01-332-013-0000 / 3887 E THOUSAND OAKS CIR
2. 22-01-332-012-0000 / 3898 E THOUSAND OAKS CIR
3. 22-01-402-009-0000 / 3898 E THOUSAND OAKS CIR
4. 22-01-376-001-0000 / 3892 E THOUSAND OAKS CIR
5. 22-01-403-025-0000 / 3898 E THOUSAND OAKS CIR
6. 22-01-403-023-0000 / 3898 E THOUSAND OAKS CIR

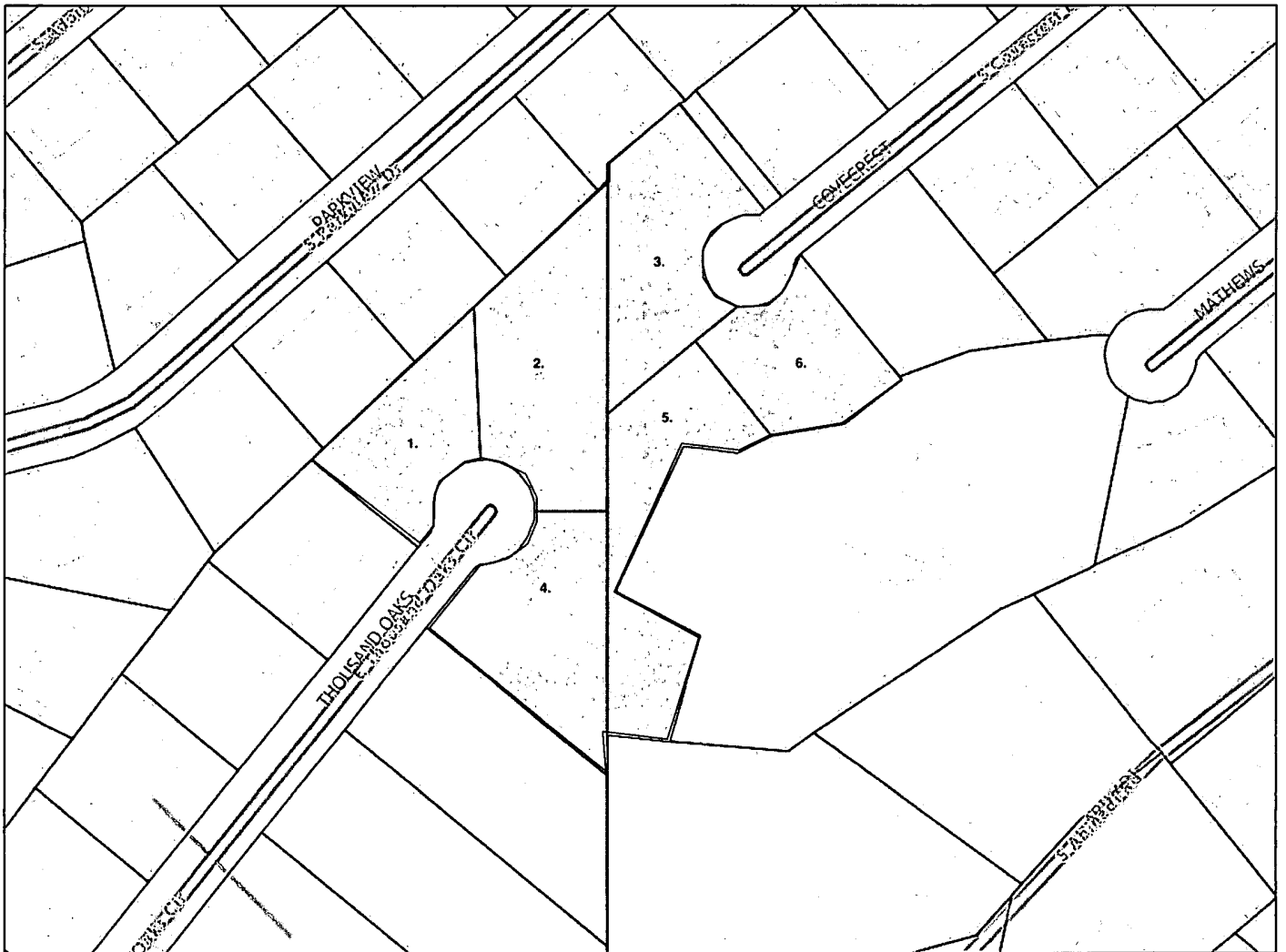


Exhibit B

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

1. No through street, private or public will connect Covecrest Drive and Thousand Oaks Circle
2. No more than 5 lots may be platted or developed on the Property. An amendment to this agreement will be necessary to plat or develop 6 lots.