

When recorded, return to:

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

13359777
08/13/2020 11:32 AM \$0.00
Book - 10998 Pg - 672-680
RASHELLE HOBBS
RECODER, SALT LAKE COUNTY, UTAH
MILLCREEK CITY
3330 SOUTH 1300 EAST
MILLCREEK UT 84106
BY: DSA, DEPUTY - WI 9 P.

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into this 27th day of July, 2020, by and between Skylar Nielsen ("Developer"), for the land to be included in or affected by the project located at approximately 755 East 2910 South, Millcreek, UT 84106 in Millcreek Utah, 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 1.18 acres of real property located at 755 East 2910 South, Millcreek, UT 84106 in Millcreek, Utah ("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 represent 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".

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 of property 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 and B 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:

Skylar Nielsen
755 East 2910 South
Millcreek, UT 84106

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 until July 27, 2030 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 Sullivan, CMC, City Recorder

Alexander Wendt, Deputy City Recorder

DEVELOPER

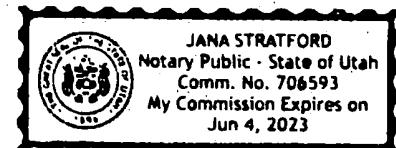
By: S. Founder

Title: Founder

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

The foregoing instrument was acknowledged before me this 3 day of August, 2020, by Jeff Silvestrini and ^{Alexander Wendl} Elyse Sullivan as the Mayor and the City Recorder, respectively, of Millcreek, a Utah municipality. ^{Deputy}

Jana Stratford
Notary Public



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

The foregoing instrument was acknowledged before me this 23rd day of July, 2020 by Nylar Nielsen.

Nylar Nielsen
Notary Public

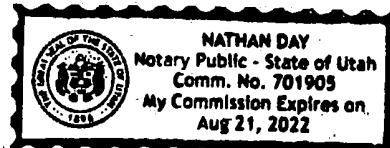


Exhibit A

Parcel No. 16-29-106-045-0000

Address: 755 E 2910 S

Legal Description

BEG S 325.05 FT & E 286 FT FR NW COR LOT 7, BLK 29, 10 AC PLA, BF SUR; S 74.38 FT; E 440 FT; N 74.38 FT; W 440 FT TO BEG. ALSO BEG N 24.75 FT & E 437.17 FT FR SW COR LOT 7, BLK 29, 10 AC PL A, BF SUR; N 90.02 FT; E 50 FT; S 90.02 FT; W 50 FT TO BEG. ALSO BEG E 437.17 FT & N 114.76 FT FR SD SW COR LOT 7; N 60 FT; E 50 FT; S 60 FT; W 50 FT TO BEG. 0.92 AC M OR L.

Parcel No. 16-29-106-046-0000

Address: 755 E 2910 S

Legal Description

BEG E 537.17 FT & N 114.76 FT M OR L FR SW COR LOT 7, BLK 29, 10 AC PL A, BF SUR; E 50 FT; N 60 FT; W 50 FT; S 60 FT TO BEG. ALSO BEG W 33 FT & N 114.77 FT FR SE COR LOT 7, BLK 29, 10 AC PL A, BF SUR; N 60 FT; W 138.83 FT; S 60 FT; E 138.83 FT TO BEG. 0.26 AC M OR L.

Exhibit B

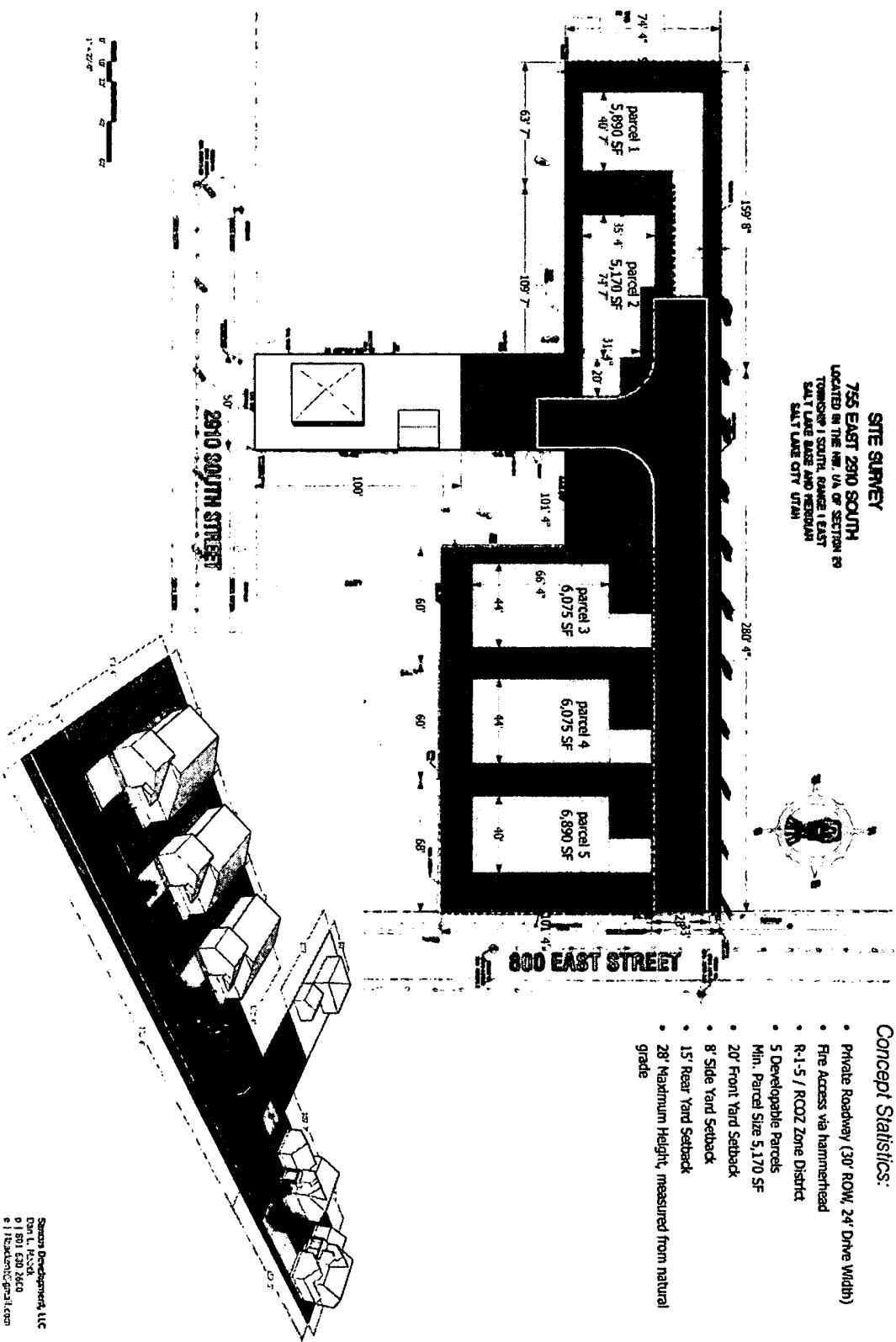
Developer and the City agree that the proposed development will incorporate the following:

1. The existing home with an address of 755 East 2910 South, Millcreek, Utah, is not subject to the development or design requirement of this Agreement unless for any reason, any remodel, repair or structural alteration that requires the demolition of an outside wall of the existing home is made, then all future development must adhere to all the design requirements and setbacks of this Agreement.
2. The development shall be required to record a properly approved subdivision plat at the Salt Lake County Recorder's Office that is approved by the City that meets all requirements of Title 18, Millcreek subdivision code and the conditions in this development agreement within 1 year of the approved rezone.
3. The height of each single-family dwelling will not exceed 28' feet in height as measured from natural original grade.
4. Each single-family dwelling must incorporate a pitched roof with a pitch no less than a 3/12 pitch.
5. The setbacks for each single-family dwelling will be as established on the attached site plan, Exhibit C and be as follows below:
 - a. Front: 20' feet
 - b. Rear: 15' feet
 - c. Side interior: 8' feet
 - d. Side facing public street: 20' feet
6. The development is subject to all requirements of the Residential Compatibility Overlay Zone located in Chapter 19.71 of the Millcreek City Code.
7. Each single-family dwelling must include two-car garage parking and shall have a minimum unobstructed size of 18' feet wide by 18' feet in length, or 18' feet wide by 18' feet in length.
8. Each single-family dwelling must include drive-way parking capable of accommodating two cars measured at a minimum of 18' x 18'
9. The development is limited to 6 single-family detached dwelling units.
10. The development shall be designed to accommodate and efficiently manage the collection, storage, and removal of garbage in harmony with the neighborhood so as to minimize detrimental effects of the collection, storage, and removal on any residence within the development or abutting neighborhoods.
11. Developer agrees to meet all requirements and standards of the proposed Millcreek Fencing Ordinance. Specifically, the developer shall install a minimum 6' foot tall fence along the entire north property line of proposed development as shown in Exhibit C. Acceptable fencing materials include vinyl, composite products, architecturally designed brick, stone, or block, or pre-cast concrete.

12. A minimum of eleven (11) medium size trees (minimum 2" caliper) that are permanently irrigated shall be provided along the north property line along the private road as shown in Exhibit C. A maximum of two tree species shall be required.
13. Each single-family dwelling located in the project shall consist of the following exterior materials. No single material is allowed to exceed 40 percent on the private street façades or the street facing façade of Parcel 5 facing 800 East. Other materials may be considered for soffits, or as an accent or architectural feature.
 - a. Stone
 - b. Cementitious Fiber Board
 - c. Stucco
 - d. Aluminum soffit, fascia, and gutters
14. The development shall be approved subject to the submission and recordation of legal instruments setting forth a plan or manner of permanent care and maintenance of all common open space and other facilities, including the private road provided in the development plan shown in Exhibit C.
15. The construction of the proposed private road within the development shall comply with the requirements of Title 14 of the Millcreek Code for private streets. All private streets shall be conveyed to a private association.

Exhibit C

Concept Option



Concept Statistics.

- Private Roadway (30' ROW, 24' Drive Width)
- Fire Access via hammerhead
- R-1.5 / RCO2 Zone District
- 5 Developable Parcels
- Min. Parcel Size 5,170 SF
- 20' Front Yard Setback
- 8' Side Yard Setback
- 15' Rear Yard Setback
- 28' Maximum Height, measured from natural grade