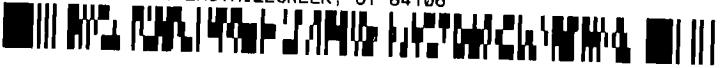


14076652 B: 11403 P: 4029 Total Pages: 15  
02/28/2023 01:23 PM By: adavis Fees: \$0.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: MILLCREEK CITY  
3330 SOUTH 1300 EAST MILLCREEK, UT 84106



**When recorded, return to:**

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

## **DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is entered into this 27<sup>th</sup> day of February 2023, by and between FLATS ON 13TH LLC ("Developer"), for the land to be included in or affected by the project located at approximately 1200 East Elgin Ave, 3060 South & 3070 South Richmond Street 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**, the Developer owns approximately 0.87 acres of real property located at 1200 East Elgin Ave, 3060 South & 3070 South Richmond Street in Millcreek, Utah ("Property"). A legal description of the Property is attached hereto as Exhibit "A." The Parties desire that the Property be developed (the "Project") in a unified and consistent fashion pursuant to the terms and conditions of this Agreement; and

**WHEREAS**, the west portion of the Property is zoned R-2-6.5 Medium Density Residential and the east portion of the Property is zone as R-M/zc Multi-Family Residential, with a zc (zone condition) which restricts the Property to a "Limit [of] 10 units total for acreage with max height of 35 feet to the midline [of] Property" as illustrated in Exhibit "B" (Zoning Map); and

**WHEREAS**, the Developer desires to rezone the west portion of the Property, as described in Exhibit "C" from the R-2-6.5 Zone to the R-M Multifamily Zone; and

**WHEREAS**, the Developer desires to remove the following zone condition described above; and

**WHEREAS**, the Developer intends to develop the Property consistent with the concept plans and terms identified in Exhibit "D" and "E"; and

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

**WHEREAS**, the 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 and Developer acknowledge that the terms of this Agreement shall be enforceable and the rights of the Developer relative to the Property shall vest only if the City Council, in its sole legislative discretion, approves to remove the 'zone condition' as listed on the east portion of the Property and approves the R-M Multifamily Zone on the west portion of the property; 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**, based on the foregoing recitals and 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 substantially as depicted and as set forth in the specific design conditions/criteria and terms set forth in exhibit “E” and “F”

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-** 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:

**FLATS On 13TH LLC**  
Gerald (Frank) Belko  
2178 Powderkeg Drive  
Sandy, Utah 84093

TO CITY:

Millcreek  
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.** This Agreement shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the Parties mutually agree to extend the term, this Agreement shall not extend further than a period of ten years from its date of recordation in the official records of the Salt Lake County Recorder's Office.

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, MMC, City Recorder

## CITY ACKNOWLEDGMENT

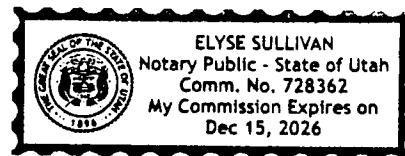
STATE OF UTAH )  
COUNTY OF SALT LAKE )  
:ss.

On the 27 day of February, 2023, personally appeared before me Jeff Silvestri, who being by me duly sworn, did say that he is the Mayor of Millcreek, a political subdivision of the State of Utah, and that said instrument was signed on behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.

## DEVELOPER

By:

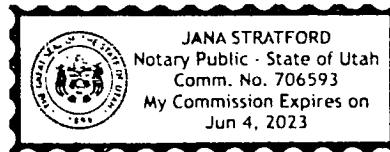
Title: Managing Member



## OWNER/DEVELOPER ACKNOWLEDGMENT

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

On the 24 day of February, 2023, personally appeared before me  
Gerald Frank Belko, who being by me duly sworn, did say that he is the Managing  
Member of the 'Flats on 13<sup>th</sup> LLC', Limited Liability company and that the foregoing instrument  
was duly authorized by the company at a lawful meeting held by authority of its bylaws and  
signed in behalf of said company.



**Exhibit A**  
(Overall Legal Description)

**Parcel Numbers, 16-29-278-017, 16-29-278-018, 16-29-278-058**

**Address: 3060 South Richmond St., 3070 South Richmond St., & 1200 East Elgin Ave.**

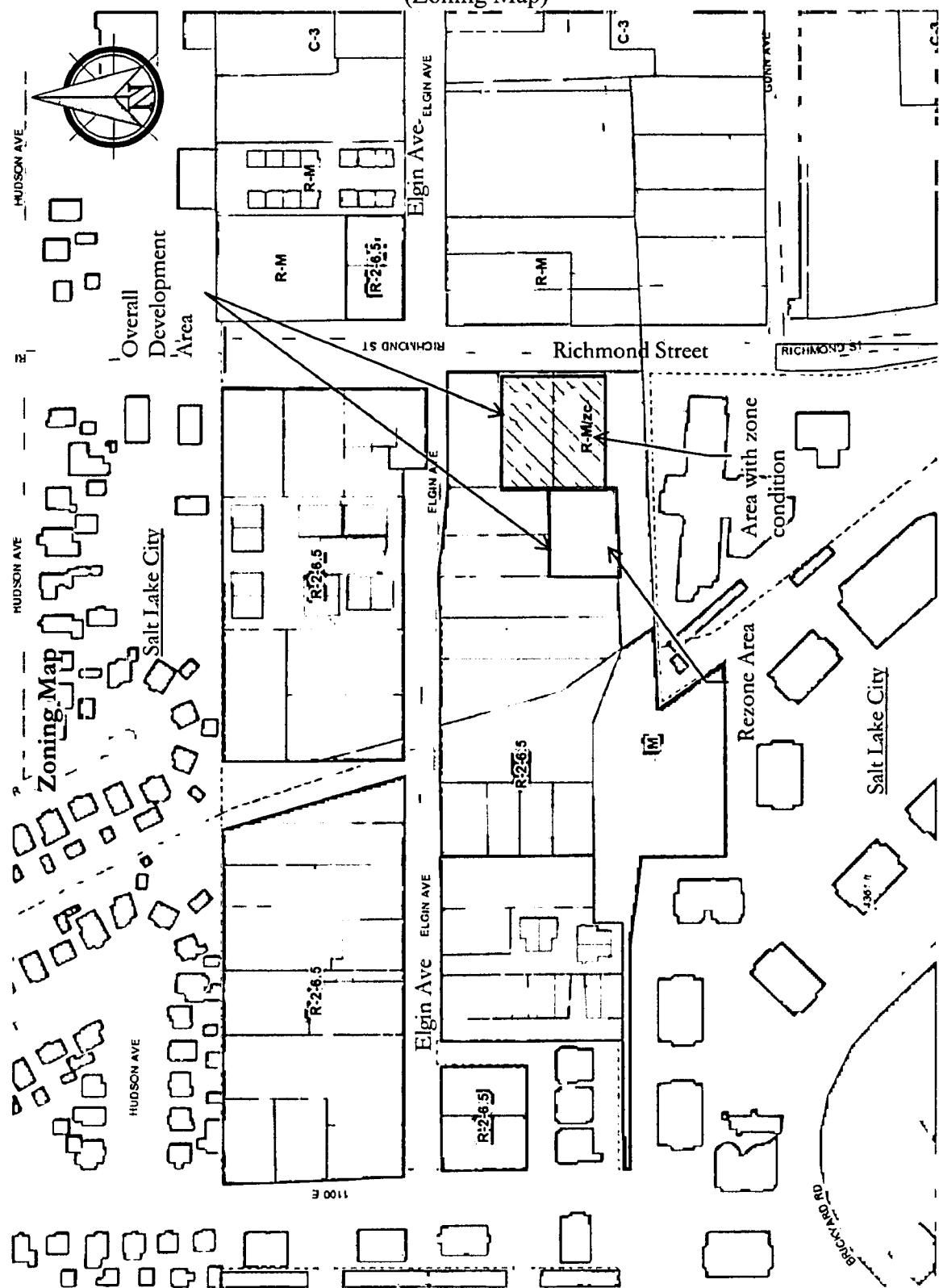
**BELKO 0.873-ACRE DESCRIPTION**

PART OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF RICHMOND STREET, SAID POINT IS THE NORTHEAST CORNER OF LOT 18 OF ELGIN ORCHARD SUBDIVISION, A SUBDIVISION RECORDED AT BOOK G, PAGE 22 OF PLATS IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER (S.L.C.R.), SAID NORTHEAST CORNER IS NORTH 00°00'00" EAST 391.23 FEET AND NORTH 90°00'00" WEST 669.18 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 29 (NOTE: BASIS OF BEARING IS NORTH 89°37'11" WEST 216.61 FEET BETWEEN A BRASS CAP MONUMENT IN HIGHLAND DRIVE AND A BRASS CAP MONUMENT AT SAID EAST QUARTER CORNER), AND RUNNING THENCE SOUTH 00°00'00" EAST 152.91 FEET ALONG SAID WEST LINE; THENCE NORTH 90°00'00" WEST 168.00 FEET TO THE WEST LINE OF SAID SUBDIVISION; THENCE SOUTH 00°00'00" EAST 12.27 FEET ALONG SAID WEST LINE TO THE SOUTHWEST CORNER OF LOT 19 OF SAID SUBDIVISION AND A POINT ON THE NORTHERLY LINE OF A TRACT OF LAND CONVEYED IN A WARRANTY DEED RECORDED AS ENTRY #10887696 (S.L.C.R.); THENCE SOUTH 87°31'00" WEST 115.63 FEET ALONG SAID NORTHERLY LINE; THENCE NORTH 90°00'00" WEST 13.48 FEET TO THE PROJECTED LINE OF AN EXISTING WIRE FENCE; THENCE NORTH 00°00'00" EAST 97.02 FEET ALONG SAID WIRE FENCE, AND PROJECTION THEREOF; THENCE NORTH 90°00'00" EAST 60.00 FEET; THENCE NORTH 87°14'16" EAST 69.08 FEET TO THE WEST LINE OF SAID SUBDIVISION; THENCE NORTH 00°00'00" EAST 69.84 FEET ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SAID LOT 18; THENCE NORTH 90°00'00" EAST 168.00 FEET ALONG THE NORTH LINE OF SAID LOT TO THE POINT OF BEGINNING.

CONTAINING 0.873 ACRES.

**Exhibit B**  
(Zoning Map)



**Exhibit C**  
(legal description - westerly portion of property)

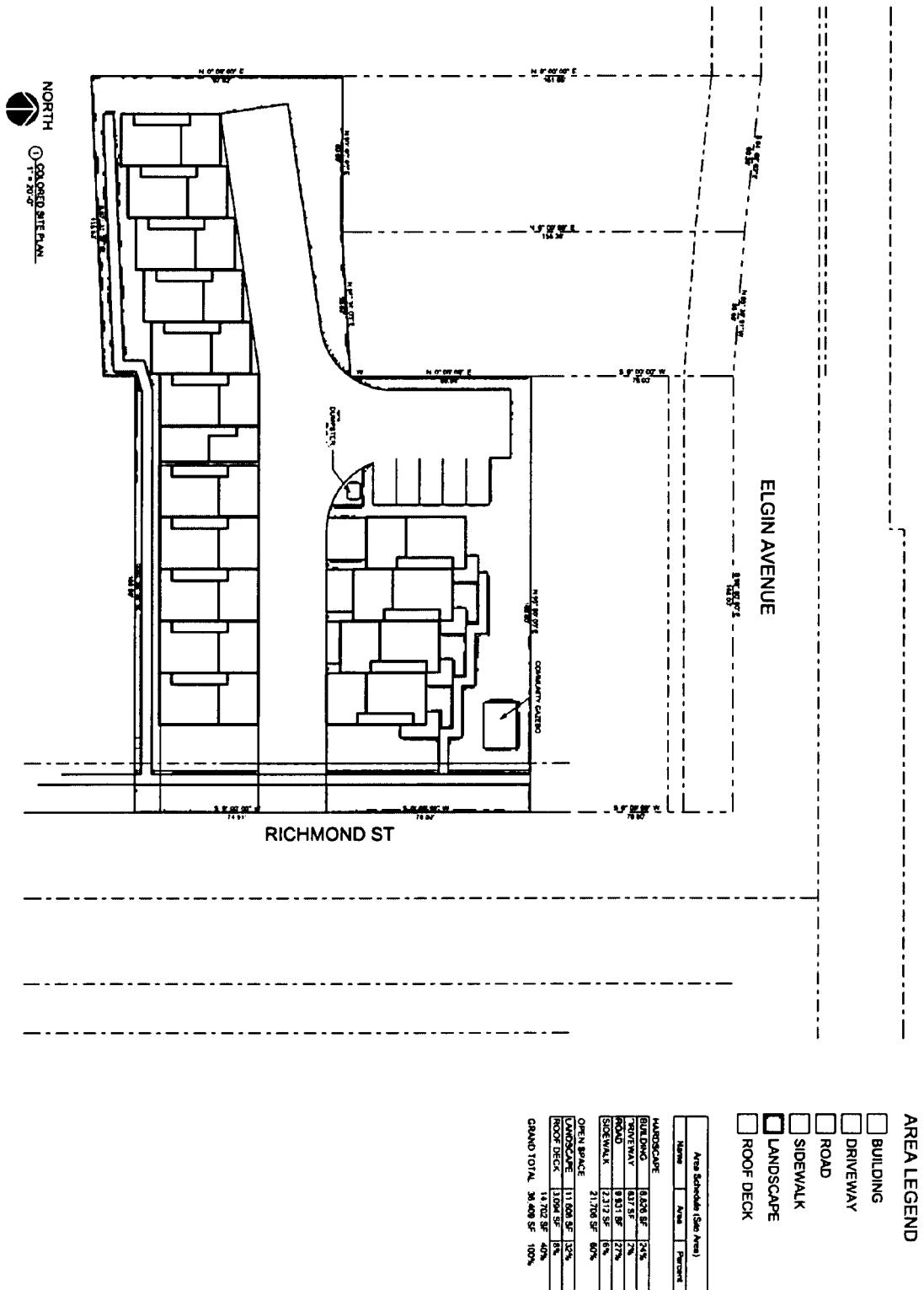
PART OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF ELGIN ORCHARD SUBDIVISION (RECORDED AT BOOK G, PAGE 22 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER [S.L.C.R.]), SAID POINT IS SOUTH 0°00'00" WEST 69.84 FEET ALONG SAID WESTERLY LINE FROM THE NORTHWEST CORNER OF LOT 18 (ALSO BEING THE SOUTHWEST CORNER OF LOT 17) OF SAID SUBDIVISION, SAID POINT ALSO BEING NORTH 0°00'00" EAST 391.23 FEET AND SOUTH 90°00'00" WEST 837.18 FEET AND SOUTH 0°00'00" WEST 69.84 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 29 (NOTE: BASIS OF BEARING IS NORTH 89°37'11" WEST 216.61 FEET BETWEEN A BRASS CAP MONUMENT IN HIGHLAND DRIVE AND A BRASS CAP MONUMENT AT SAID EAST QUARTER CORNER), AND RUNNING THENCE SOUTH 0°00'00" EAST 95.34 FEET ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF A TRACT OF LAND CONVEYED IN A WARRANTY DEED RECORDED AS ENTRY #10887696 (S.L.C.R.); THENCE SOUTH 87°31'00" WEST 115.63 FEET ALONG SAID NORTHERLY LINE; THENCE NORTH 90°00'00" WEST 13.48 FEET TO THE PROJECTED LINE OF A WIRE FENCE; THENCE NORTH 0°00'00" EAST 97.02 FEET ALONG SAID WIRE FENCE, AND PROJECTION THEREOF; THENCE NORTH 90°00'00" EAST 60.00 FEET; THENCE NORTH 87°14'16" EAST 69.08 FEET TO SAID WESTERLY LINE AND TO THE POINT OF BEGINNING.

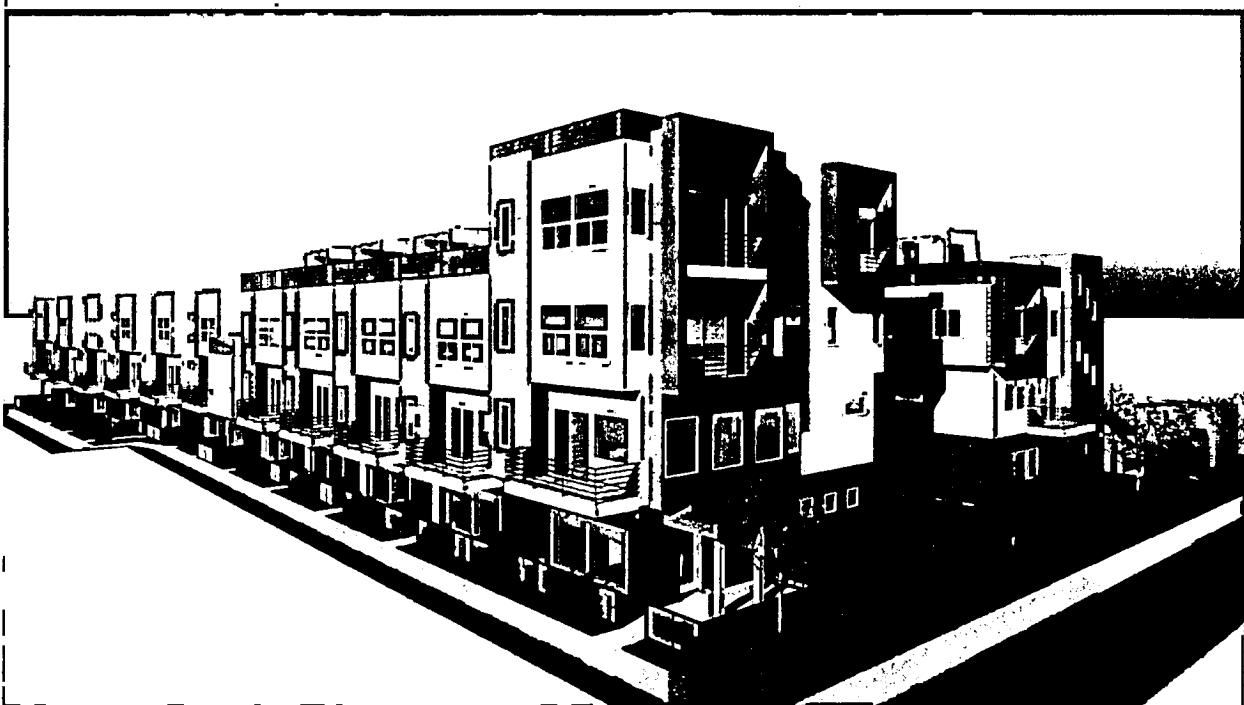
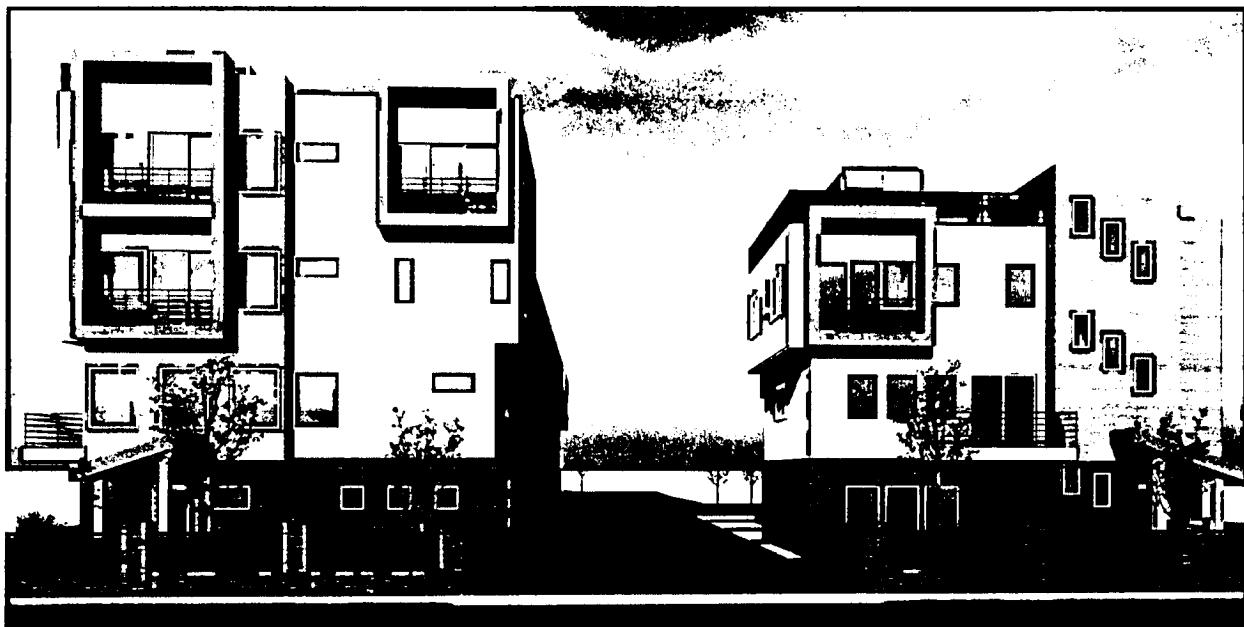
CONTAINING 0.283 ACRES.

## **Exhibit D**

The Parties agree that the Project will incorporate the following concepts.  
(Concept Plan)







## Exhibit E

The Parties agree that the Project will incorporate the following:  
(Terms)

1. **Dedication.** Prior to building permit, the Developer shall dedicate property abutting Richmond Street as public right-of-way, per the City's Master Transportation Plan, and provide a 10' wide public utility easement parallel to and abutting the new right-of-way. The Developer shall also install frontage improvement to the abutting right of way (e.g., curb, gutter, sidewalk, landscaped park strip, asphalt, utilities, etc.) prior to final building occupancy.
2. **Utilities.** All utilities shall be routed within the public right-of-way and placed underground with the appropriate access and maintenance easements, including private irrigation systems, (subject to utility providers approval).

If the City determines to relocate and/or bury overhead utilities that are located on the west side of Richmond Street, south of Elgin Avenue, the Developer shall pay its proportionate share of the cost, not to exceed \$58,000, based on estimates provided by the utility providers and/or licensed contractors. The proportionate share shall be determined by the north/south linear feet of street frontage abutting the Project. The City shall make this determination prior the applicant submitting for building permit, or within one year of the date from which this Agreement is recorded, whichever comes first.

3. **Orientation and Scale.** All buildings in the Project shall be oriented towards street frontages with an emphasis on creating an urban street edge according to CEPTED (Crime Prevention Through Environmental Design) principals, with large windows and balconies roof decks etc., as depicted on the concept plans.
4. **Parking.** The project shall include a minimum two covered parking stalls per unit, plus 0.33 guest parking stalls per unit, within the Project.
5. **Open Space/Landscaping.** The Project shall provide a minimum 40% usable open space, based upon the net acreage (after right-of-way dedication). Rooftop patios may be included as part of this requirement. The project shall include a minimum 2" caliper shade trees within the park strip at 45-foot intervals and other.
6. **Amenities.** The Project shall include the following residential amenities: semi-covered year-round rooftop patios, as depicted within the concept elevations, one garden box per each unit, and one community pavilion/pergola (min. 15' x 15') with seating, tables and cooking area per the concept site plan/elevations.
7. **Screening.** The Project shall include a six-foot-tall privacy fence with minimum seven-foot-tall evergreen trees at 30-foot intervals along the property lines abutting residential uses.

8. Units. The project shall not exceed 16 residential units.
9. Ownership. The developer shall plat each unit so as to be available as a for sale product. A subdivision plat shall be recorded prior to building permit.
10. Lighting. The developer shall install one to two standard streetlights, (pending spacing), within the new park strip directly abutting the Property along Richmond Street.
11. Materials. The project will consist of high quality, durable, low maintenance materials including those materials (e.g. composite siding and trellises, brick, stone, stucco, glass, and metal), as depicted on the concept plans and in accordance with the R-M Zone.