

When recorded, return to:

Millcreek
Attn: Jeff Silvestrini
1330 E Chambers Ave
Millcreek, UT 84106



DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into this 13 day of May, 2024, by and between Garden Acres LLC (“Developer”), for the land to be included in or affected by the project located at approximately 4433 South Garden Drive, 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 .41 acres of real property located at 4433 South Garden Drive, 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 of this Agreement; and

WHEREAS, the Property is zoned Commercial R-1-10; and

WHEREAS, the Developer desires to rezone the entirety of the Property, as described in Exhibit “A” from the R-1 Residential Single-Family Zone to the R-4-8.5 Medium Density Residential Zone; and

WHEREAS, the Developer intends to develop the Property consistent with the certain development and design criteria as identified in Exhibit “B” and with the concept plans as shown in Exhibit “C”; 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 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 the rezone and 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.

3. **Vested Rights.** Except as provided below the Parties intend that this Agreement grants Developer the right to develop the Project in fulfillment of this Agreement.

3.1 **Exceptions.** The vesting as specified above is subject to the following exceptions:

3.1.1. City's future laws/ordinances that Developer agrees writing to the application thereof to the Project. If Developer makes the election for the City's future laws to apply to the Project, then such future laws shall apply for the remaining duration of the Project;

3.1.2 **State and Federal Compliance.** City's future laws 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;

3.1.3 **Codes.** City development standards, engineering requirements and supplemental specifications for Public Works and any new editions or replacement thereof and any City's future laws 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, AAHSTO 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;

3.1.4 **Taxes.** 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; or,

3.1.5 Fees. 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) and which are adopted pursuant to State law.

3.1.6 Impact Fees. Impact Fees or modifications thereto which are adopted and imposed by the City.

3.1.7 Compelling, Countervailing Interest. 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) (2019).

4. **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.

5. **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 City Council meetings on this matter.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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:	Garden Acres LLC Nathan Brockbank 2265 E Murray Holladay Rd. Holladay Ut 84117
---------------	-----------------------------------------------------------------------------------------

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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

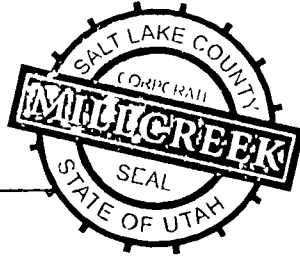
17. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

18. **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.

19. **Special Disclosure.** Developer acknowledges that its representative has read and understands all of the covenants, terms and conditions contained in this Agreement and that such covenants, terms and conditions are reasonable, fair and enforceable. Developer acknowledges that it has signed this Agreement as its own free and voluntary act; that this is an important and binding legal contract which has been reviewed by Developer's attorney; and that if Developer has not reviewed this Agreement with its attorney, it is because Developer has knowingly, intelligently, and voluntarily waived consultation with its attorney contrary to the City's recommendation. Developer further represent that it has made its own investigation into the "clearly established state law" as that term is used in Utah Code Ann. § 10-9a-532 (2)(c) and that this Agreement does not restrict any of Developer's rights under established state law, that as material consideration for the City agreeing to the terms hereof the City has relied upon Developer's own investigation of clearly established state law, and if any fact with respect to any matter covered by this Agreement is found hereinafter to be other than, or different from, the facts now believed by any of the Parties to be true, each of the Parties expressly accepts and assumes the risk of such possible difference in fact and agrees that the covenants, promises and obligations contained herein shall be and remain effective.

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

Millcreek
Jeff Silvestrini
Jeff Silvestrini, Mayor



ATTEST:
Elyse Sullivan
Elyse Sullivan, MMC, City Recorder

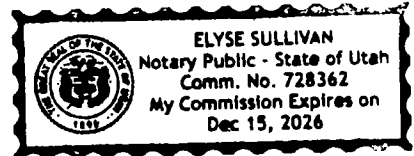
CITY ACKNOWLEDGMENT

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

On the 15 day of May, 2024, personally appeared before me
Jeff Silvestrini, 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.

Elyse Sullivan

DEVELOPER



By: Josh Romney
Title: authorized agent

OWNER/DEVELOPER ACKNOWLEDGMENT

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

On the 3 day of May, 2024, personally appeared before me
Josh Romney, who being by me duly sworn, did say that he is the Managing
Member of the No Garden Acres, a 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.

Candice Kidd

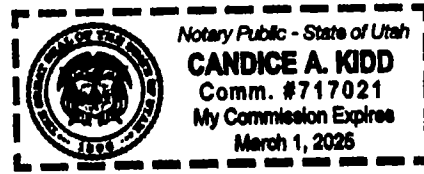


Exhibit A

Parcel 22-05-179-030

Legal description

LOT 4, GARDEN ACRES

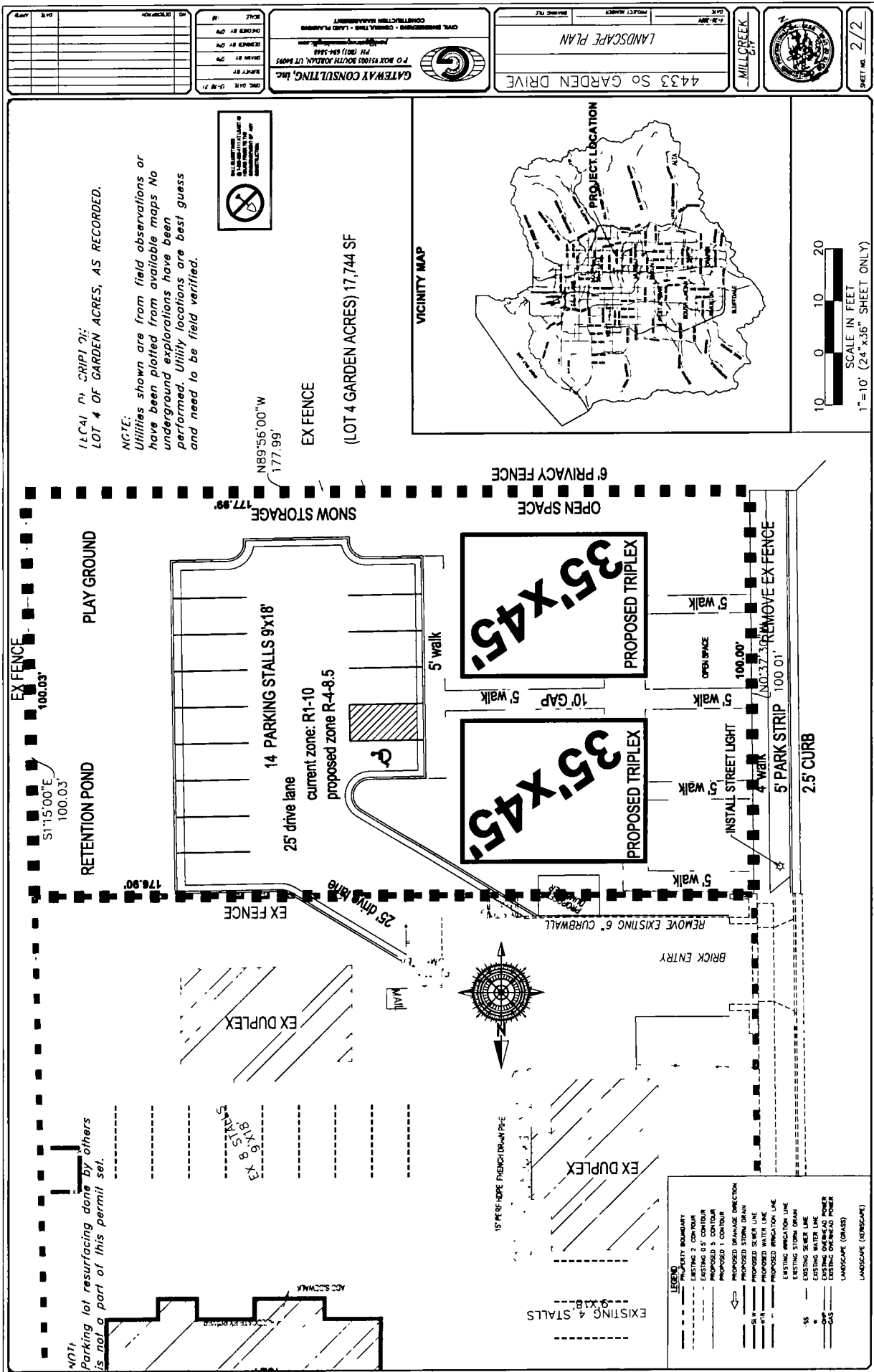
Exhibit B
Development and Design Criteria

Developer shall develop the Project consistent with the certain design criteria as identified below:

1. **Uses.** The Project shall consist of two residential buildings as proposed, each containing three units for a total of six (6) total residential units.
2. **Ownership.** Prior to submitting a building permit, the applicant shall record a subdivision plat, making each unit an individual lot and available for individual ownership.
3. **Parking.** The Project shall have at least 14 parking spaces. Six of the parking spaces shall be covered or enclosed.
4. **Landscaping and Open Space.** The Project shall provide the open space as substantially depicted within Exhibit C. The trees identified on Exhibit C shall at a minimum be at least two-inch (2") caliper shade trees and one minimum seven foot (7') tall evergreen tree and shall be installed every 40 feet along the east and south property lines and placed every forty feet (40') along the Garden Drive right-of-way.
5. **Fencing.** A minimum six foot (6') tall decorative masonry, metal, composite, or other similar privacy fence shall be installed along the east and south property lines abutting single family uses and zones. The fence height shall be reduced to three feet (3') tall for any side yard fence located within twenty-five feet of the public right-of-way.
6. **Architecture.** Each building shall be designed with certain characteristics of a single-family structure, including the design elements, substantially depicted within Exhibit C.
 - a. **Materials.** Building facades shall consist of high quality, durable, low maintenance materials (i.e., composite siding and trellises, brick, stone, glass, and

metal and may include not more than 20% stucco). Each building façade shall receive equal treatment and distribution of materials.

- b. **Building Height.** Building shall not exceed thirty-five (35') as measured from original grade. The applicant shall submit a topographical survey of the property prior to building demolition in order to establish the "original grade".
 - c. **Doors and windows.** Garage doors, if used, shall be located to the side or rear of the building. Buildings shall include one primary pedestrian door oriented towards the street. All other doors shall be located to the side or otherwise concealed from the public, as viewed from the street. The west facing façade of each building shall include expansive windows comprising of at least 20% of the building façade's surface area.
 - d. **Porches.** Each building shall include a minimum eighty (80) square foot covered front porch, which shall be oriented toward the public right of way. Porches may encroach up to five feet (5') into the front yard setbacks.
 - e. **Roof.** Each building shall include a minimum 5:12 roof pitch and shall include roof dormer(s) substantially as depicted within Exhibit C.
 - f. **Exterior Lighting.** All exterior light fixtures (excluding public streetlights) shall be shielded and directed downward to prevent outward glare.
7. **Right-of-way improvements.** Applicant shall provide the necessary property dedication and improvements for public right of way along Garden Drive. The amount of dedication shall be according to the Millcreek Master Transportation Plan or as determined by the City Engineer.
8. **Street Lighting.** The developer shall install one (1) standard streetlight within the park strip area along Garden Drive. The exact location and type shall be determined by the City Engineer.
9. **Utilities.** All utilities including open ditches as part of a private irrigation systems, shall be placed underground or piped, with the appropriate access and maintenance easements, (subject to utility providers approval).



1.641 D, CRIP1 21:
LOT 4 OF GARDEN ACRES, AS RECORDED.

NOTE:
 Utilities shown are from field observations or have been plotted from available maps. No underground explorations have been performed. Utility locations are best guess and need to be field verified.

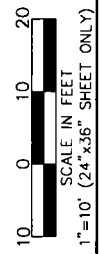
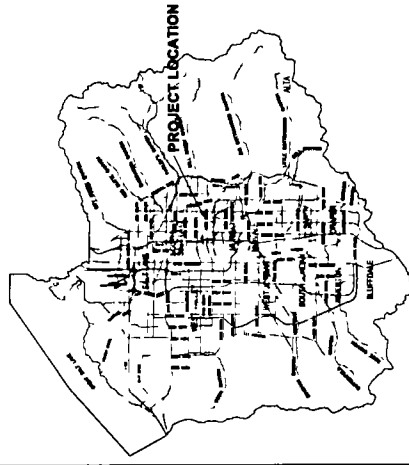


NBS 56'00" W
 177.99

EX FENCE

(LOT 4 GARDEN ACRES) 17,744 SF

VICINITY MAP



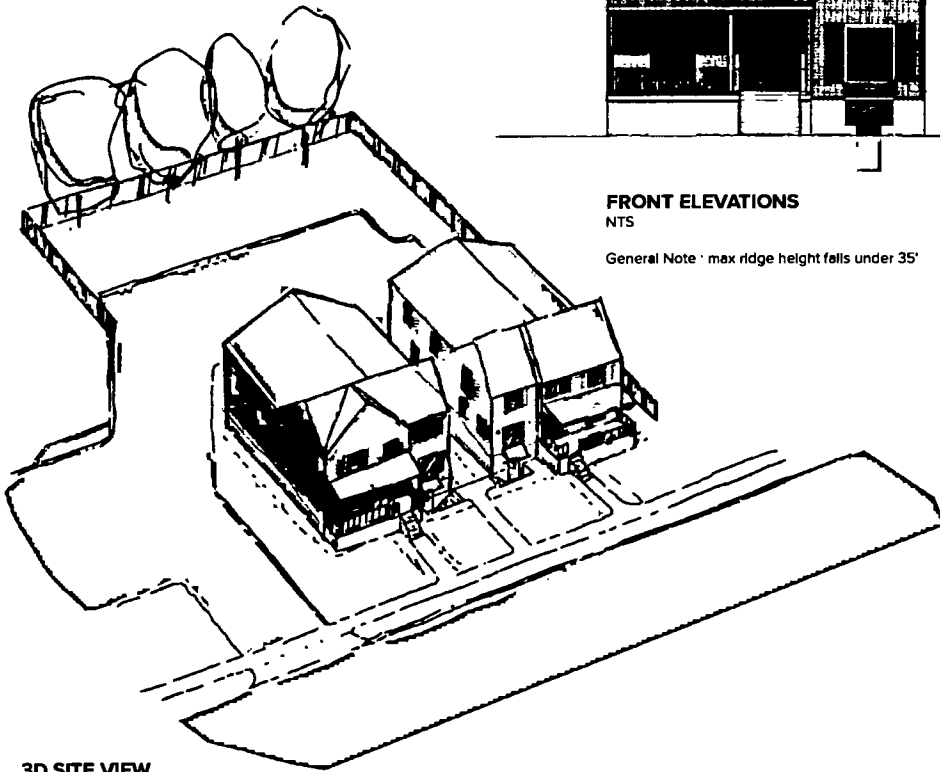
GATEWAY CONSULTING, INC. P.O. BOX 9180 SOUTH JORDAN, UT 84093 313.881.8888 gatewayconsulting.com		CIVIL ENGINEERING • SURVEYING • LAND PLANNING PROJECT NUMBER:	SHEET NO.: 2/2
		LANDSCAPE PLAN 4433 So GARDEN DRIVE MILL CREEK UT 84043	DATE:

S. GARDEN DR. CONCEPT
4433 S. Garden Dr.



FRONT ELEVATIONS
NTS

General Note : max ridge height falls under 35'



3D SITE VIEW
NTS



3D STREET VIEW
NTS