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Millcreek OG, LLC
336 W. Broadway, Suite 110
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14268200 B: 11506 P: 8324 Total Pages: 103
07/25/2024 11:02 AM By: zjorgensen Fees: \$316.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

Tax Parcel 21-01-228-020 through 21-01-228-069, inclusive
21-01-228-070 through 21-01-228-108, inclusive
21-01-228-110 through 21-01-228-140, inclusive
21-01-228-141 through 21-01-228-167, inclusive

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR OPUS GREEN P.U.D.

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This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Opus Green P.U.D. (the “Declaration”) is adopted by Millcreek OG, LLC, a Utah limited liability company (“Declarant”) and is effective as of the date it is recorded in the Salt Lake County Recorder’s Office.

RECITALS

A. Opus Green P.U.D., is a mixed-use planned unit development located in Millcreek City, Salt Lake County, Utah;

B. Opus Green P.U.D. was originally made subject to that certain document entitled Declaration of Covenants, Conditions and Restrictions for Opus Green P.U.D., recorded on March 12, 2024 as Entry No. 14215388 in the Salt Lake County Recorder’s Office (the “Enabling Declaration”);

C. The Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project, subject to the following covenants, conditions, restrictions, easements and limitations herein set forth which are hereby declared to be for the benefit of the whole tract and all of the Project described herein and the owners thereof, their successors and assigns;

D. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration;

E. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit “A” and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

F. This Declaration replaces the Enabling Declaration in its entirety and any amendments thereto;

G. The Association has been incorporated as a Utah nonprofit corporation and is entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time;

H. Pursuant to Section 13.1 of the Enabling Declaration, the undersigned hereby certifies that (i) all of the requirements to amend the Enabling Declaration have been satisfied, (ii) that Declarant owns one or more Lots within the Project, (iii) Declarant approves the unilateral amendment of the Enabling Declaration pursuant to its authority;

NOW THEREFORE, pursuant to the Recitals set forth above and incorporated herein by reference and subject to the benefits and covenants below, the Declarant hereby adopts this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Opus Green P.U.D. for the benefit of the Project and the Owners thereof, and hereby declares the following covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

1 DEFINITIONS

Capitalized terms used in the Governing Documents (including recitals) have the following meanings:

1.1 Additional Land

Additional Land shall mean that certain real property described in Exhibit C to this Declaration.

1.2 Articles

Articles mean the Articles of Incorporation for Opus Green Homeowners Association, Inc., as amended from time to time.

1.3 Association

Association means Opus Green Homeowners Association, Inc. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval. Any actions taken during any period of un-incorporation shall be binding.

1.4 Board

Board means the Board of Directors. The Board governs the Project, business, and affairs of the Association.

1.5 Building

Building means one of the buildings and associated structures built upon and affixed to the real property subjected to this Declaration at any time and from time to time where such Building

contains one or more Lots. For the avoidance of doubt, each Building within the Project shall be as identified below:

Phase 1 Buildings:

Building A: Contains all or a portion of Lots 101-103
Building B: Contains all or a portion of Lots 104-106
Building C: Contains all or a portion of Lots 107-112
Building D: Contains all or a portion of Lots 113-120
Building E: Contains all or a portion of Lots 121-128
Building F: Contains all or a portion of Lots 129-136
Building G: Contains all or a portion of Lots 137-145

Phase 2 Buildings:

Building A: Contains all or a portion of Lots 201-209
Building B: Contains all or a portion of Lots 210-217
Building C: Contains all or a portion of Lots 218-225
Building D: Contains all or a portion of Lots 226-231
Building E: Contains all or a portion of Lots 232-238

Phase 3 Buildings:

Building A: Contains all or a portion of Lots 301-305
Building B: Contains all or a portion of Lots 306-311
Building C: Contains all or a portion of Lots 312-318
Building D: Contains all or a portion of Lots 319-330

Phase 4 Buildings:

Building A: Contains all or a portion of Lots 401-405
Building B: Contains all or a portion of Lots 406-410
Building C: Contains all or a portion of Lots 411-415
Building D: Contains all or a portion of Lots 416-418
Building E: Contains all or a portion of Lots 419-421
Building F: Contains all or a portion of Lots 422-426

1.6 Bylaws

Bylaws mean the bylaws of the Association, as amended or restated from time to time. The Bylaws are attached to this document as Exhibit "B."

1.7 Common Areas

Common Areas mean the open space and any improvements constructed thereon as shown on the Map, excluding the Green Space. The Common Areas may consist of landscaping, entry monument, irrigation equipment, walkways, private streets, parking areas, and other improvements. The Association owns all Common Areas. The Common Areas include all privately owned utility lines and installations (such as sewer, water, electrical, and gas lines) that are shared by two or more Living Units up to the point that such line or installation services only one Living Unit.

1.8 Common Expenses

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas;

expenses agreed upon as common expenses by a majority of a quorum of Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; any other expenses necessary for the common benefit of the Owners.

1.9 Community Association Act

Community Association Act shall mean Utah Code §§ 57-8a-1 *et seq.*, as amended or replaced from time to time.

1.10 Declaration

Declaration means this document, as amended, annexed, supplemented, or restated from time to time.

1.11 Director

Director means a member of the Board.

1.12 Governing Documents

Governing Documents mean the Declaration, Bylaws, Articles of Incorporation, Map, and the rules and regulations of the Association.

1.13 Green Space

Green Space shall refer to Parcel A as shown on the Map and the improvements thereon.

1.14 Improvement

Improvement means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Living Unit, Live-Work Unit, building garage lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction, and also includes landscaping.

1.15 Limited Common Area

Limited Common Area means Common Area designated for exclusive use by the Owner of a particular Lot. Limited Common Area may be designated as such on the Map or in this Declaration.

1.16 Living Unit

Living Unit means a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

1.17 Live-Work Unit

Live-Work Unit means a structure or portion of a structure which is designed and intended for use and occupancy as a Living Unit and/or as a commercial office space, together with all improvements located on the Lot concerned which are used in conjunction with such unit. There may be no more than six (6) Live-Work Units designated within the Project. Such Live-Work Units may be located in Building A only. At the election of the Owner of any such Live-Work Unit, such unit may be use for residential and/or commercial purposes to the extent permitted by this Declaration and applicable law, including but not limited to Millcreek City ordinances.

1.18 Lot

Lot means a separately numbered parcel of property as shown on the Map, referred to therein as “units”. Lots shall include the Living Unit constructed on a Lot (if any) or any Live-Work Unit, and all utility lines, and other installations exclusively serving the Lot whether under or over the Common Areas or not, and any fenced yard areas. The Lot shall extend to the centerline of any party wall, as that term is further described in Section 5.3.

1.19 Map

Map means the plat map or plat maps for Opus Green P.U.D. Phases 1, 2, ,3 and 4, on file with the Salt Lake County Recorder and any amendments or supplements thereto or any plat maps recorded for additional phases. For reference, such plats are attached hereto as Exhibit “F”.

1.20 Member

Member means an Owner. If an Owner is not a natural person, the Owner may designate a natural person in writing to act as its representative. If no representative is designated, then an officer, trustee, director, manager, or member as shown in the entities formative documents shall be its representative.

1.21 Nonprofit Act

Nonprofit Act means Utah Code §§ 16-6a-101 *et seq.*, as amended or replaced from time to time.

1.22 Owner

Owner means the fee simple owner of a Lot. If a Lot is subject to an executory purchase contract such as a real estate purchase contract or a contract for deed, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

1.23 Person

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

1.24 Project

Project means Opus Green P.U.D., as shown on the Map and any expansions thereof, excluding the Green Space and Parcel I. The Project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit “A” contains the legal description for the Project.

1.25 Resident

Resident means any Person living or staying at the Project. Residents include without limitation: Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

1.26 Turnover Meeting

Turnover Meeting means the meeting described in Section 10.1.

2 SUBMISSION AND EXPANSION

2.1 Submission

The Project is submitted to be bound by the Governing Documents, the provisions of the Community Association Act, and the Nonprofit Act. All Owners shall take title subject to the Governing Documents, Community Association Act, and Nonprofit Act. All Residents and other

users of the Project shall be subject to the Governing Documents and Community Association Act.

2.2 Expansion

The Project is expandable. Subsequent phases may also be constructed in accordance with the plat approvals and zoning requirements of Salt Lake City. Declarant is under no requirement to construct additional buildings or to subject the Additional Land identified herein to this Declaration, and any such construction or expansion shall be in Declarant's sole discretion. If Declarant elects to so expand the Project to include the Additional Land, then the same shall be annexed into, and made a part of this Project by recording an instrument on the Additional Land confirming the Declarant's intention to expand the Project to include one or more additional phases. Such instrument shall be a "Supplemental Declaration". Upon the recordation of a Supplemental Declaration on the Additional Land, the Additional Land and any and all improvements thereon shall automatically become part of the Project, subject to and governed by all of the terms and provisions of this Declaration. Upon the filing of any Supplemental Declaration, record owners of such Additional Land shall be subject to the same obligations and entitled to the same privileges as apply to the Owners. Such Supplemental Declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Land not inconsistent with the scheme of this Declaration. In the event that Declarant elects to subject all or a portion of the Additional Land to the terms of the Declaration, Declarant shall be entitled to remove (at Declarant's cost) some or all of the precast wall located on the northern boundary of the Project.

2.3 Withdrawal

Prior to the Turnover Meeting, and subject to any development agreement between Declarant and Millcreek City, the Declarant may withdraw any property owned by it from the Project. Such withdrawn property shall no longer be subject to the covenants and restrictions of this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which burdens the withdrawn property for the benefit of any property which is subject to the Declaration. Such withdrawal shall be made by recording a supplement to this Declaration with the Salt Lake County Recorder's Office, withdrawing the effect of the covenants and restrictions of the Governing Documents from the withdrawn property. Such withdrawn property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

3 PROPERTY RIGHTS IN LOTS

3.1 Use and Occupancy

Except as otherwise expressly provided in the Governing Documents, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot and Living Unit or Live-Work Unit. Each Lot shall be bound by, and the Owner shall comply with the Governing Documents for the mutual benefit of the Owners.

3.2 Easements Reserved

In addition to the easements shown on the Map or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance and determining whether or not the Lot is in

compliance with the Governing Documents. Requests for entry shall be made in advance. Entry shall be made at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. The right of entry granted by this subsection is in addition to the Association's enforcement rights and applies only to Lots upon which the Association has maintenance responsibilities as provided for in the Governing Documents.

Easement for Encroachment. If any part of the Common Areas encroaches on a Lot, an easement for the encroachment and for maintenance shall exist. If any part of a Lot encroaches upon the Common Areas or any other Lot, an easement for the encroachment and for maintenance shall exist. Such encroachments will not be considered to be encumbrances to the Common Areas or Lots. Encroachment causes include, without limitation, errors in the original construction; errors in the Map; settling, rising, or shifting of the earth; or changes in position caused by good faith mistakes in the repair or reconstruction of the Project.

Utility Easements. The Association or any public utility provider shall have an easement over all Lots for the installation, maintenance, and development of utilities and drainage facilities. The easement area of each Lot and all Improvements therein shall be maintained continuously by the Owner of the Lot of the Association in accordance with the terms of the Governing Documents, except for those improvements for which a public authority or utility provider is responsible.

Additionally, in the event a Lot is being served by wet or dry utility lines that pass over or through an adjoining Lot, the Owner of the Lot so served shall have an easement over any such adjoining Lot for access, maintenance, repair or replacement of such utilities. When practicable, prior to making use of such easement an Owner shall provide the adjoining Owner with at least twenty-four (24) hours prior notice, except in case of emergency.

Anything to the contrary herein notwithstanding, Declarant shall have the right to restrict or obstruct as necessary or convenient to Declarant, the easements shown on the Map or provided for under this Declaration, the Bylaws or law that are for the benefit of the Owners or the Association in order to construct buildings, Living Units, roads, or other improvements in, on, under or adjacent to the Project, including but not limited to the right to restrict or obstruct access to the Common Areas, Green Space or any other portion of the Project and the right to store materials on any portion of the Project. Such restriction or obstruction shall not constitute unreasonable interference with any easement rights held by any Owner or the Association.

3.3 Easements Shown on the Map

Lots shall be subject to the easements - if any - shown on the Map.

4 PROPERTY AND USE RIGHTS IN COMMON AREAS

4.1 Members' Right of Enjoyment

The Project will have Common Areas as designated in the Map for the benefit of all Owners. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment in and to the Common Areas and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

Subject to the Governing Documents, each Resident, guest, or invitee has the right to ingress and egress across the Common Areas necessary for access to his or her Lot. The rights described in this Section are appurtenant to and pass with title to the Lot.

No portion of the Common Areas may be used exclusively by any Owner or Owners for personal gardens, storage facilities, or for any other purpose.

4.2 Delegation of Right of Use

Any Member of the Association may delegate its rights to the use and enjoyment of the Common Areas to one or more Residents. For example, a Member may delegate such rights to one or more Residents to whom the Member has leased its Unit, or to Residents who live with Member in Member's Unit. The foregoing notwithstanding, the rights of a Member to delegate its rights to the use and enjoyment of the Common Areas shall be subject to such reasonable rules and regulations which the Association may adopt.

4.3 Compliance with Covenants and Restrictions and Rules and Regulations

Each Owner and Resident shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Areas. Further, each Owner and Resident shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area.

5 MAINTENANCE

5.1 Association Responsibility

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Areas located within the Project as shown on the Map.

The Board, after notice and opportunity for hearing, or in the case of an emergency immediately, may assume the maintenance responsibility over a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Should the Board exercise its right under this provision, it shall not be liable for trespass or nuisance and shall have the right to levy an Individual Assessment to recover its maintenance costs.

All expenses for water and sewer service (including maintenance, repair and replacement of the sewer lift station) to Lots shall be paid by the Association as a Common Expense and then recuperated by the Association from its Members through assessments. The costs for water shall be apportioned among the Lots either on a per unit basis or on a pro rata basis per the square footage of each Living Unit or Live-Work Unit, as the Board (or Declarant, if the Turnover Meeting has not yet occurred) may, in its discretion, determine as being most fundamentally fair. Additionally, the Association shall establish and pay for trash removal services at one or more designated locations within the Project. The costs associated with such trash removal services shall be a Common Expense. All other utilities and services shall be paid for directly by the Owner of the Lot benefitted thereby.

The Association shall have the responsibility to perform snow removal on the streets within the Project, and the costs thereof shall be a Common Expense.

Additionally, the Association shall be responsible for removing snow from all sidewalks within the

Project and also along all paved walkways connecting to the north end of the footbridge constructed in the Green Space, where such walkways either originate on Association property or run to the north end of the bridge from Main Street. The Association shall also clear snow from the footbridge itself. The costs for such maintenance shall be a Common Expense. Exhibit “D” hereto further delineates the Association’s general snow removal obligations. The obligations of the Association for snow removal on any portion of the Green Space shall terminate after one (1) year from the date this Declaration is recorded. .

5.2 Owner Responsibility

Unless otherwise assigned herein, all maintenance, repair, and replacement of the Lots, Limited Common Area within a fenced yard area (if any such areas exist), and improvements shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in good repair and in accordance with the Governing Documents. Maintenance responsibility shall include, by way of illustration only: all interior and structural components; exterior doors, door frames, door casings, door jambs, door hardware, thresholds, and any weatherproofing required for the exterior doors; garage doors, garage door casing and molding, garage door hardware and openers; windows, window frames, window casing, window hardware, any weatherproofing required for the windows; exterior light fixtures, exterior surfaces, exterior walls, exterior electrical outlets, light bulbs; HVAC installations; plumbing installations; electrical installations; and any other component of the Limited Common Area or Lot not expressly assumed by the Association or otherwise expressly assigned herein.

5.3 Party Walls

Each wall used as the dividing line between Living Units and Live-Work Units are a party wall. Nothing in this section shall alter or limit the general rules of law regarding party walls and liability for damage due to negligence, willful acts, or omissions. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use the party wall in proportion to their use. If a party wall is destroyed or damaged by fire or other casualty, and is not a covered loss under insurance, either Owner may restore the wall and the other Owner shall contribute to the cost of restoration in proportion to the damage sustained by the Owner compared to all damage to the party wall. The right of an Owner to contribution from any other Owner for party wall costs shall be appurtenant to and run with the land and shall pass to an Owner’s successor in title. Each Owner is granted an easement inside of the party wall that adjoins their Living Unit for the installation, operation, maintenance, repair, and replacement of water lines, sewer lines, electrical lines, data cables, and other similar utility lines and for the installation and maintenance of soundproofing materials.

5.4 Roofs of Buildings

The costs associated with the maintenance, repair and replacement of the roofs of each Building shall be borne by the Owners of such Building as follows: The Association may elect (but is not obligated to) perform such maintenance, repair, and replacement of the roof of a Building and recover the costs for such by levying Individual Assessments against the Owners of Lots contained, in whole or in part, within such Building. The Association may apportion such costs amongst the affected Owners as the Association deems equitable. Should the Association elect to perform maintenance, repair, or replacement as described herein, such shall not be construed to create a continuing obligation of the Association to perform the maintenance, repair or replacement of such roof.

Should the Association not elect to perform maintenance, repair, or replacement of a roof as described above, the Owners shall be responsible to arrange for and to pay for such maintenance, repair or replacement, subject to the Association’s prior written approval of both the work and the

entity or individual the Owners seek to have do the maintenance, repair, or replacement. Such approval by the Association shall not be unreasonably withheld. The right of an Owner to contribution from any other Owner for roof costs shall be appurtenant to and run with the land and shall pass to an Owner's successor in title.

6 ARCHITECTURAL CONTROL

6.1 Structures

Any Improvements on any Lot shall be consistent with an shall not detract from the nature of the Project. Subject to the Declarant exemptions contained herein, there shall be no temporary or prefabricated structures, mobile homes, trailer houses, or other nonpermanent structures allowed in the Project.

6.2 Specific Design Standards

The provisions of this section shall apply to any Living Unit or Live-Work Unit constructed within the Project and shall be binding on all future Owners, Residents and commercial builders:

- 6.2.1 The maximum height of any residential unit shall not exceed thirty-two (32) feet.
- 6.2.2 Setbacks shall conform to Millcreek City code and such setbacks as are shown on the Map.

7 ASSESSMENTS

7.1 Covenant for Assessment

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, supplemental assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney's fees, shall pass to the successor in title. A successor in title is entitled to a statement from the Association setting forth the amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

7.2 Declarant's Covenant for Assessments

Declarant shall not be obligated to pay assessments. However, during the period that Declarant owns any Lots, it shall provide the difference between the Association's expenses and actual assessment collections. Declarant may provide the difference with money, services, or in kind.

7.3 Annual Budget

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; maintenance of other areas required to be maintained by the Association; contributions toward the Association's responsibilities as to the Green Space; insurance; all other Common Expenses; and the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

7.4 Reserve Account

The Association shall establish a reserve account to fund long-term maintenance and replacement items. The Board shall follow any statutory requirement to conduct reserve analyses and to utilize such reserve analyses in making decisions regarding the funding of a reserve account. The Board shall use reasonable efforts, subject to the Owners' rights under the Community Association Act, to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board until the Declarant relinquishes control of the Association as described herein.

7.5 Regular Assessment

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to adjust a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect, whether or not notice is sent.

7.6 Special Assessment

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, maintenance, repair, or replacement of the Common Areas or exteriors of Lots, or other components of the Project that the Association is responsible for. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

7.7 Supplemental Assessment

If the regular assessments are inadequate to pay the Common Expenses, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget. The Association may levy a supplemental assessment to fund the supplemental budget. The Association may levy a supplemental assessment up to 50% of the original annual budget without approval from the Owners. If a supplemental assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

7.8 Individual Assessment

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

Fines, late fees, interest, collection costs (including attorney's fees);

Reinvestment fees due at the time a Lot transfers to a new Owner. The amount of the reinvestment fee shall as set forth in Section 14.13 of this Declaration, subject to the provisions of such Section.

Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas; and

Any charge described as an individual assessment by the Governing Documents.

7.9 Apportionment of Assessments

Except as otherwise expressly provided herein, regular, special, and supplemental assessments will be apportioned equally among the Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

7.10 Nonpayment of Assessment

Assessments not paid within 10 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee established by rule. Late fees may only be charged once per missed payment.

7.11 Application of Payments

Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7.12 Acceleration

If an Owner fails to pay their assessments for 61 days or more, the Board may elect to accelerate the remainder of the Assessments due that year.

7.13 Suspension of Voting Rights

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

7.14 Lien for Assessment

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

7.15 Enforcement of Lien

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

7.16 Appointment of Trustee

The Owners hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to a member of the Utah State Bar, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

7.17 Subordination of Lien

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay six months of assessments, late fees, and penalties.

7.18 Termination of Utilities/Access to Recreational Facilities

If an Owner fails to pay their assessments, the Association may terminate utility services paid in common and access to recreational facilities. The Board shall establish procedures for terminating utilities and access to recreational facilities, which shall comply with the Community Association Act.

7.19 Collection of Rent from Tenant

If an Owner rents their Lot and fails to pay their assessments, the Association may demand the tenants to pay the Association any rent owed to the Owner. Payment of rent to the Association shall not be a violation of the lease by the tenant. The Board shall establish procedures for collecting rents from tenants, which shall comply with the Community Association Act.

8 RESTRICTIONS ON USE

8.1 Use of Lots - Residential Use

With the exception of any Live-Work Units each of the Lots in the Project is limited to single-family, residential use only. The use is or may be further defined by Millcreek City zoning code. Each Lot and Owner is subject to the uses and restrictions imposed by such restrictions (including any parking restrictions).

8.2 No Obstruction of Common Areas

There shall be no obstructions of the Common Areas by the Owners, Residents, and their tenants, guests or invitees without the prior written consent of the Board. The Board may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots or the Common Areas.

Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Board.

8.3 Cancellation of Insurance, Illegal Activity

Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

8.4 Nuisances

No Resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes behavior which annoys, disturbs or interferes with other Residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot, Limited Common Area, or the Common Areas;

The storage of any item, property or thing that will cause any Lot, Limited Common Area,

or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses;

The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board or the Association;

The storage of any substance, thing or material upon any Lot, Limited Common Area, or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other Residents at the Project;

The creation or maintenance of any noxious or offensive condition or activity in or about any Lot, Limited Common Area, or the Common Areas;

Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other Residents, their guests or invites, particularly if the police, or sheriff, or other law enforcement officer must be called to restore order;

Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Community by other Residents, their guests or invitees;

Excessive noise in, on or about any Lot, Limited Common Area, or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.;

Excessive traffic in, on or about any Lot, Limited Common Area, or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.;

Allowing a pet to be unleashed while outside of the Lot;

Continuous barking, meowing, or other animal noises;

Allowing a pet to urinate or defecate in the Limited Common Area, Common Areas, or failing to clean up immediately any feces deposited by a pet in the Limited Common Area or Common Area;

Flying of drones or unmanned aircraft in or above any Lot or Common Areas;

Any other activity defined as nuisance under Utah law.

8.5 Rules and Regulations

No Owner or Resident shall violate the Rules and Regulations for the use of the Lots and of the Common Areas as adopted from time to time by the Board. An Owner shall be responsible to advise their guests and invitees about the rules and shall be responsible for their guests and invitees compliance with the Rules and Regulations.

8.6 Structural/Exterior Alterations

Except for initial construction and landscaping performed by an agent of Declarant, no improvements, alterations, repairs, maintenance, excavation or other work which in any way

alters the exterior appearance of a Lot or the improvements located thereon shall be made without the prior approval of the Board. No exterior alterations to a Living Unit or Live-Work Unit may be performed without the prior approval of the Board and the appropriate governmental entity. No building, fence, wall, or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Board.

8.7 Window Coverings

Under no circumstances shall any cardboard or tinfoil be used as window coverings in the Project. Additionally, no stickers or non-holiday decorations will be permitted in windows.

8.8 Signs

No signs shall be erected or maintained in the Common Areas without the prior written consent of the Board, with such consent not to be unreasonably withheld in regards to Live-Work Units.

8.9 Pets

No animals, livestock, birds, insects, reptiles or poultry of any kind shall be raised, bred, or kept on any Lot, except for domesticated dogs, cats, birds, and fish, and only then in accordance with animal rules adopted by the Board and in accordance with Millcreek City code. Such permitted animals may not unreasonably bother or constitute a nuisance to others and such animals must be kept in compliance with the rules and regulations of the Association. In no case shall any Owner raise, breed or keep more than two animals total, regardless of species, at any time. The Board has authority to establish an animal fee as part of the rules pertaining to animals and their owners.

If a pet owner violates any of pet rules and regulations, the Board shall have the express authority to issue citations or levy assessments, and collect these by judgment, lien or foreclosure. In extreme cases, the Board may require that the Owner or Resident to remove their pet from the Project.

8.10 Live-Work Units

No portion of a Live-Work Unit may be utilized as a warehouse; secondhand store; unemployment or welfare office; barber shop or beauty shop; pet shop; animal raising business; veterinary hospital; any medical use generating bio-hazardous materials; pool hall; "adult" type bookstore; liquor store; bar or tavern; private club; commercial laundry; dry cleaning plant; laundromat; massage parlor; sexually oriented business (as that term is defined in the Millcreek City Code); theater exhibiting pornographic movies or productions; arcade or game room; smoke shop; head shop or any establishment displaying or selling drug paraphernalia; tattoo studio; sports game or off-track betting facility; mortuary, crematorium, or funeral home; auto parts store; convenience store; fire sale, bankruptcy sale, or auction house operation; or any other operation which causes unreasonable amounts of traffic or noise, leads to loitering on the sidewalks or stoops, or which causes objectionable odors. Should any Live-Work Unit violate these restrictions, the Association may, after notice to the Owner, evict the tenant for violation of the restrictions. Any expenses incurred by the Association, including attorney's fees and court costs, shall be collectable from the Owner as an assessment.

8.11 Storage and Parking of Vehicles

The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

The parking rules and regulations adopted by the Board from time to time;

No recreational, commercial or oversized vehicles shall be allowed within the Project unless said vehicle or trailer is kept at all times within the garage and the garage door is closed, or for purposes of loading or unloading passengers or supplies (for a period of time up to 24 hours);

No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot or parking space or to create an obstacle;

No resident shall repair or restore any vehicle of any kind in, on a Lot (outside the garage), Limited Common Areas, or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility;

No trailer or seasonal recreational vehicles may utilize the community's surface parking stalls for greater than seven (7) consecutive days or more than fourteen (14) days total in any given calendar year.

Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the owner's sole expense.

8.12 Aerials, Antennas, and Satellite Dishes

Aerials, antennas, and satellite dishes larger than one meter in diameter are prohibited. Aerials, antennas, and satellite dishes may not be installed on Common Areas. One antenna or satellite dish smaller than one meter in diameter may be installed within the Lot. The Association may create policies to create a hierarchy of preferred installation locations to protect the aesthetics of the Project. The hierarchy of preferred installation locations may not interfere with reception.

8.13 Timeshares

Timeshares and time-sharing of Living Units or Live-Work Units is prohibited, and under no circumstances shall any Living Unit or Live-Work Unit be owned or used for time sharing, including but not limited to a "Timeshare Interest" as that term is defined in Utah Code Ann. § 57-19-2(27), as amended.

8.14 Leases

Leases shall be subject to the following restrictions:

Living Units or Live-Work Units may be rented only to a single Family. Dormitory, hostel, hotel, or nightly rentals are strictly prohibited.

All leases and lessees shall be subject to the provisions of the Governing Documents. Any Owner who leases their Living Unit or Live-Work Unit shall be responsible for assuring the occupants' compliance with the Governing Documents.

The leasing of Living Units or Live-Work Units shall comply with this Section. "Leasing" means granting the right to use or occupy a Living Unit or Live-Work Unit to a non-owner while no Owner occupies the Living Unit or Live-Work Unit as their primary residence.

Living Units or Live-Work Units owned by business entities shall be considered leased regardless of who occupies the Living Unit or Live-Work Unit.

Initial Lease Term. The initial lease term shall be a thirty (30) day minimum.

The Owner shall provide the tenant with a copy of the Governing Documents. In the event the Governing Documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership.

Violations of the Governing Documents. If a tenant or Owner is in violation of the Governing Documents, the Board may assess fines against the Owner in an amount to be determined by the Board. Regardless of whether any fines have been imposed, the Board may seek any available legal or equitable remedies, including but not limited to, an action to terminate the lease agreement and evict the occupant(s).

Failure to Take Legal Action. Failure by an Owner to take legal action against their occupant who is in violation of the Governing Documents within ten (10) days after delivery of written demand to so do from the Board, shall entitle the Association to take any and all action for and in behalf of said Owner including, the institution of legal proceedings on behalf of such Owner against his or her occupant for eviction, injunctive relief, or damages. Neither the Association nor its agents shall be liable to the Owner or occupant for any legal action commenced under this Section that is made in good faith. The Owner hereby appoints the Board as his or her attorney in fact to take any action authorized by this provision as if the Owner was performing it.

Recovery of Costs and Attorney Fees; Owner Liable. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section, regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Lot as an assessment pursuant to this Declaration. Additionally, the Owner shall be liable for all fines, assessments, or other penalties levied due to violations of their tenant. The Owner shall be personally liable for any violations caused by their tenant. Any assessments, fines or penalties levied under this Section shall be collectible as an assessment.

Bank Owned Lots: A lender in possession of a Living Unit or a Live-Work Unit as a result of a default in a first mortgage, a foreclosure proceeding, or a deed in lieu of foreclosure is exempt from the provisions of this Section, except, that any lease shall be in writing and shall have a minimum initial term of six (6) months.

8.15 Temporary Structures, etc.

No structure of a temporary character, or trailer, camper, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, unless first approved in writing by the Board.

8.16 Repair of Buildings

No improvement upon any Lot shall be permitted to fall into disrepair, and each such improvement shall be at all times be kept in good condition and repair and adequately painted or otherwise finished.

8.17 Subdivision of Lots

No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. Except as expressly provided otherwise herein, no further covenants, conditions restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use in compliance with this Declaration.

8.18 Clothes Drying Facilities

Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any portion of the Project.

8.19 Front Porches

Front porches are required to be maintained in a clean and tidy fashion. Any outdoor furniture kept on the front porch shall be well maintained and in good condition. The Association may require worn furniture or furniture that detracts from the aesthetic of the Project to be removed from the front porch.

Front porches shall not be used for storage. Examples of items prohibited from being kept on front porches include, without limitation, bicycles, toys, barbecues, trash receptacles, ash trays, and anything else which appears unkempt, dirty, or detracts from the appearance of the Project.

8.20 Alternative Energy Solutions

No solar panels shall be installed on any Lot.

8.21 Off Road Vehicles

No off-road motor vehicles, including but not limited snow mobiles, three wheelers or four wheelers may be driven on the roads, streets, footpaths, walkways, Limited Common Areas or Common Areas within the Project.

8.22 Firearms and Projectile Weapons

The use of firearms, airsoft guns, BB guns, pellet guns, archery equipment, or any other projectile weapon, however powered, is prohibited.

8.23 Garages

Garages may not be used solely for storage.

9 MEMBERSHIP AND ASSOCIATION

9.1 Membership

Every Owner is a Member of the Association. Membership in the Association is mandatory, is appurtenant to the Lot, and shall not be separated from the Lot.

9.2 Voting Rights

Voting is governed by the Bylaws.

9.3 Status and Authority of Board

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. Any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

9.4 Composition and Selection of Board

The Bylaws govern how the Board is established and selected.

9.5 Adoption of Bylaws

The Association has adopted Bylaws which are being recorded simultaneously with this Declaration.

10 DECLARANT RIGHTS

10.1 Administrative Control of Association

Declarant shall assume full administrative control of the Association through an appointed interim Board, which shall serve until the Turnover Meeting.

The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than three (3) years from the date the last Lot to be developed in the Project is sold.

Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

10.2 Other Rights

In addition to any other rights under the Governing Documents, as long as Declarant owns at least one Lot within the Project or the Green Space, Declarant:

Sales Office and Model. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

"For Sale Signs." May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Project, including without limitation, the Common Areas.

Declarant Exemption. Unless specifically and expressly bound by a provision of the

Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

Amendment Veto. Declarant may veto, nullify or otherwise render ineffective any amendment to the Governing Documents by recording an instrument stating the same.

10.3 Easements Reserved to Declarant

The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Map as "public utility easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Map.

An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

An easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Project in, over, through, upon and across any portion of the Project including roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot.

The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Map. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Map, without the prior written approval of the Board. The foregoing restriction on road, street, avenue, alley, right of way or easement lay out and construction notwithstanding, Declarant shall have the right, at Declarant's election and in Declarant's sole discretion, to extend Shakedown Street from the northeast portion of the Project to Central Avenue, without any obligation

of Declarant to do so.

Furthermore, Declarant shall have the right – without approval from the Board – to extend the currently existing trail system located on Parcel I to Central Avenue, without any obligation of Declarant to do so.

Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street, sidewalk, or other improvement or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

Declarant further reserves unto itself, for itself and its successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Project other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Project.

11 COMPLIANCE AND ENFORCEMENT

11.1 Compliance

Each Owner or Resident of a Lot shall comply with the provisions of the Governing Documents and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner.

11.2 Remedies

Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board acting on behalf of the Association, the right, in addition to any other rights set forth in the Governing Documents, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished. Costs and attorney's fees shall be an Individual Assessment;

To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board. In the absence of a resolution to the contrary, fines shall be \$100.00 for non-continuing violations and \$100.00 per day for continuing violations up to a maximum to be set by the Board by rule (subject to applicable laws, if any). Unless otherwise defined in a resolution, a continuing violation is one that is not cured 48 hours after the Association gives Owner notice of the violation. All other violations shall be non-continuing;

To terminate the right to receive utility services paid for out of assessments, if any, or, except for the right to an assigned parking space, to terminate the right of access to and

use of recreational and service facilities of the Association, until the correction of the violation has occurred; or

The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the Governing Documents; or

Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. Costs and attorney's fees shall be an Individual Assessment.

11.3 Action by Owners

Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against another Owner, person, or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

11.4 Injunctive Relief

Nothing in this Section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

11.5 Hearing

The Board shall, by resolution, promulgate procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's resolution on hearings.

12 INSURANCE

12.1 Types of Insurance Maintained by the Association

The Association shall maintain insurance as set forth below and as required by the Act or other applicable laws in amounts that meet or exceed any specific limits set forth herein or otherwise prescribed by law:

- 1) A blanket policy of property insurance for the Project or portions thereof as required by Community Association Act Sections 401 through 407, as amended or replaced from time to time;
- 2) Liability insurance for the Project or portions thereof as required by the Act, with the coverage limits of such policy to be not less than two million dollars (\$2,000,000) and covering all claims for death or injury to any one person or property damage in any single occurrence, and furthermore with such insurance to contain a severability of interest endorsement or equivalent coverage which should preclude the insurer from denying the claim of an owner because of the negligent acts of the Association or another Owner;
- 3) Directors and officers insurance for at least \$1,000,000.00, including coverage for: (1) volunteers and employees, (2) monetary and non-monetary claims, (3) claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation;
- 4) Fidelity bond or dishonest acts insurance for at least the value of the reserves and operating capital of the Association; and

- 5) Worker's compensation insurance for all employees of the Association (if any) to the extent that such insurance is required by law and as the Board deems appropriate.

The Board may adopt insurance rules and policies to maintain the insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

The Board may maintain broader coverage if afforded by the insurance contract(s).

12.2 Insurance Company

The Association shall use an insurance company knowledgeable with community association insurance, which is licensed in Utah.

12.3 Premium as Common Expense

The premiums for the Association's insurance policies shall be a Common Expense.

12.4 Insurance by Owner

Owners shall obtain insurance for personal property, contents, and personal liability. Owners shall also obtain loss assessment and dwelling coverage in the amount of the Association's deductible.

12.5 Payment of Deductible

The deductible on a claim made against an Association policy shall be allocated amongst the parties to the loss as described in Community Association Act Section 405(7)-(8), as amended or replaced from time to time.

12.6 Right to Adjust Claims

The Association has the right and authority to adjust claims.

12.7 Damage to the Project/Insurance Proceeds

If the Project is damaged or destroyed, the Association shall follow Community Association Act Section 407, as amended or replaced from time to time, to determine whether to rebuild and how to use insurance proceeds.

13 AMENDMENT AND DURATION

13.1 Amendments

Approval Required. Except as otherwise provided herein, this Declaration may be amended by approval of Owners holding sixty-seven percent (67%) of the voting rights of the Association.

Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the Salt Lake County Recorder's Office, Utah.

Declarant's Right to Amend. Notwithstanding anything in this Declaration, so long as the Class B membership exists or the Declarant owns either at least one Lot or the Green Space, the written consent of the Declarant is required to amend this Declaration or the

Map. As long as Declarant owns any Lot, the Declarant shall have the unilateral right to amend the Declaration and to record the same against the Project or any portion thereof.

14 MISCELLANEOUS PROVISIONS

14.1 Professional Management

The Association may be managed by a professional management company. The Board may select the professional management company using criteria set by the Board and complying with Utah law.

14.2 Invalidity; Number; Captions

The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

14.3 Joint Owners

In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

14.4 Lessees and Other Invitees

Lessees, invitees, contractors, family members and other persons entering the Project under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Project. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

14.5 Covenants Run with the Land

The Declaration contains covenants which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Association, all parties who hereafter acquire any interest in or occupy a Lot or any part of the Project, their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. Each Owner or Resident shall comply with the Governing Documents. All interests in the Lots shall be subject to the Governing Documents. Failure to comply shall be grounds for an action for damages or injunctive relief by the Association or an Owner. By acquiring any interest in a Lot, each Owner or Resident agrees to be bound by the Governing Documents. Furthermore, each Owner or Resident acknowledges that the Project is subject to a Development Agreement recorded as Entry No. 13654448 on May 5, 2021 in the offices of the Salt Lake County Recorder (the "Development Agreement"). Each Owner and Resident acknowledges and understands that said Development

Agreement is subject to amendment by the parties thereto and that any such amendment may impose additional obligations upon Members and/or the Association. The Development Agreement is attached hereto as Exhibit "D".

Additionally, the Project is subject to an Environmental Covenant which shall be binding upon all Owners and Residents, a copy of which is attached hereto as Exhibit "E".

14.6 Waiver, Precedent and Estoppel

No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.

14.7 Notice of Sale, Mortgage, Rental, or Lease

Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenants.

14.8 Taxes on Lots

Each Owner will pay all taxes which may be assessed against him or his Lot.

14.9 Service of Process

The registered agent of the Association will be the Person named in the corporate records on file with the Utah State Department of Commerce. If the corporate status of the Association expires, the president shall be the successor agent. The name and address of the president shall be kept with the Association's records at its principal place of business.

14.10 Conflicts

If the Declaration conflicts with the Map, the Map shall control. If the Declaration conflicts with the Bylaws, Articles, or rules, the Declaration shall control.

14.11 Parcel C

At the time this Declaration is recorded, Declarant intends to develop Parcel C into a market deli. However, Declarant reserves the right to not develop Parcel C into a market deli and to instead develop Parcel C in any way Declarant deems appropriate in the exercise of Declarant's sole discretion and as may be permitted by applicable law, including but not limited to the decision to not develop Parcel C.

14.12 Parcel I

Anything to the contrary herein notwithstanding, to the extent that Parcel I is deemed to be bound by this Declaration, the owner(s) of Parcel I shall not be deemed to be an Owner or a Member of the Association and Parcel I shall not be deemed to be a Lot, and the owners thereof shall not have any of the rights or obligations of either an Owner or a Member hereunder, including but not limited to the right to vote and the obligation to pay assessments. All expenses related to Parcel I shall be borne solely by the owner(s) thereof, including but not limited to the costs associated with snow removal.

14.13 Reinvestment Fee

Following the original conveyance of title to a Lot by Declarant to the initial Owner of such Lot (which original conveyance is exempt for the Reinvestment Fee herein described), with respect to each and every subsequent conveyance of title to the Lot to a new Owner, a fee in the amount of nine-hundred dollars and zero cents (\$900.00) (the "Reinvestment Fee") shall be paid by the buyer of the Lot to the Association. The Board shall have authority, by written resolution, to modify the amount of the Reinvestment Fee (but no obligation to do so), according to the financial needs of the Association. The foregoing notwithstanding, no Reinvestment Fee may be levied or collected by the Association for transfers under the conditions set forth in Utah Code Ann. §57-1-46(8), except and to the extent expressly permitted therein, as the same may be amended from time to time. To the fullest extent practicable, the Reinvestment Fee shall be collected at the closing of the purchase/sale transaction by the title company, escrow company, or other persons involved with the transaction, and paid directly to the Association. In no event shall the amount of the Reinvestment Fee exceed the statutory maximum, which is currently established at 0.5% of the purchase price of the Lot.

The Association shall have a lien against the Lot of the buyer/new Owner to secure payment and collection of the Reinvestment Fee. The lien securing payment of the Reinvestment Fee shall be enforceable in the same manner and in all respects as a lien securing payment of assessments as provided in the provisions in this Declaration.

The obligation to pay the Reinvestment Fee shall be a personal and continuing obligation of the buyer/new Owner.

The Association shall use the funds obtained from payment of all Reinvestment Fees to benefit the Project, and, more specifically, to cover Association expenses, including without limitation: administrative expenses; purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair, or replacement of association facilities, including expenses for taxes, insurance, operating reserves, capital reserves, and emergency funds; common planning, facilities, and infrastructure expenses; obligations arising from an environmental covenant; community programming; resort facilities; open space; recreation amenities; or charitable expenses.

The provisions of this Section 14.13 shall be interpreted and enforced in a manner that complies with the provisions pertaining to "reinvestment fee covenants" in Section 57-1-46, *et seq.* of the Utah Code, as the same may be amended. The provisions of this Section 14.13 are intended to run with the land of the Lots, and to be binding upon all successors and assigns, and inure to the benefit of the Association.

The existence of this Reinvestment Fee covenant precludes the imposition of an additional reinvestment fee covenant on the Project.

The duration of this Reinvestment Fee covenant shall be perpetual.

Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the transfers described below:

- 1) An involuntary transfer;
- 2) A transfer that results from a court order;
- 3) A bona fide transfer to a family member of the seller within three degrees of

- consanguinity who, before the transfer, provides adequate proof of consanguinity;
- 4) A transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution, except for the sale of the Lot by the estate of an Owner;
 - 5) A transfer of burdened property by a financial institution, though in the event of such transfer the buyer shall be responsible to pay a reinvestment fee of up to \$250 to compensate the Association for its costs directly related to the transfer of the burdened property;
 - 6) A transfer to the United States or any agency or instrumentality thereof, or to the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah;
 - 7) A transfer to the Association or its successors;
 - 8) A transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the transfer is no greater than ten percent (10%) of the value of the Lot transferred;
 - 9) A transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a transfer previously recorded, or removing clouds on title;
 - 10) A transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation; or
 - 11) A transfer in connection with either the foreclosure of a deed of trust or mortgage or a deed given in lieu of foreclosure.

No lease for a period of less than thirty (30) years shall be deemed to be a transfer.

14.14 Litigation

To avoid lawsuits that may negatively impact Owners' ability to sell their Lots and to protect the Association's budget and reserves, as well as the value of the community, the following restrictions on litigation are hereby implemented:

The Board may, on behalf of the Association, instigate litigation to enforce the provisions of the Governing Documents or any other common law or statutory right which the Association is granted. However, other than litigation required for the collection of past due assessments, the Association shall not commence any litigation in which attorney fees or costs or both are reasonably expected to exceed five thousand dollars (\$5,000) without: (1) approval of seventy-five percent (75%) or more of the Members to file suit; (2) approval of seventy-five percent (75%) or more of the Members of a litigation budget for such suit; and (3) funds in an amount equal to the approved litigation budget that are dedicated to payment of the litigation costs and not for any other purpose, with such funds to be raised by Special Assessment.

14.15 Dispute Resolution

Declarant, Association, its officers and directors and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

- (a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein individually as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- a. The nature of the Claim, including the persons involved and the Respondent's role in the Claim;
 - b. The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
 - c. The proposed remedy;
 - d. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
 - e. That the person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.
- (b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (c) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties, or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following one hundred eighty (180) days of the original notice.
- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
- a. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes, without limitation, a statement describing the nature of the Claim, the manner in which the litigation of the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
 - b. Call and hold a Special Meeting of the Owners to discuss the Claim and disclosures, and provide at least seventy-two (72) hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the Special Meeting;
 - c. Receive approval from seventy percent (70%) of the Members to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable.
- (e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provision of this Section. The Bound Parties hereby covenant, stipulate, and agree that in the event a Bound Party Claimant fails to satisfy the prerequisites set forth herein, such non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-

breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section will result in damages to Declarant, including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

- (f) Any provision to the contrary in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any legal proceeding against Declarant or an affiliate of Declarant; and (2) any institution, prosecution or maintenance of, or intervention in, such proceeding by the Board without first strictly complying with, and thereafter continuing to comply with each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, such proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written consent of (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, (b) not less than seventy-five percent (75%) of the total voting power of the Board, and (c) the Declarant during the period of Declarant control. Any purported amendment or deletion of this Section or any portion hereof without all of these express prior written approvals shall be void.
- (g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

IN WITNESS WHEREOF, the Declarant hereby certifies that Declarant may execute this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Opus Green P.U.D. without the consent or signature of any other party or Owner as provided in Section 13.1 of the Enabling Declaration and has caused this Declaration to be executed by its duly authorized agent.

DATED: July 25, 2024.

DECLARANT:

MILLCREEK OG, LLC

Micah W. Peters
Signed with **Stavvy**

By: Micah W. Peters

Its: Manager

STATE OF UTAH)

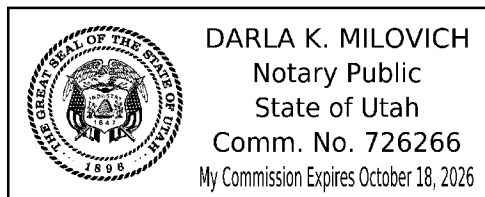
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County of SALT LAKE)

On this 25th day of July, 2024, personally appeared before me Micah W. Peters who being by me duly sworn, did say that they are the authorized agent of the Declarant authorized to execute this Declaration and did certify that this Declaration was approved by Declarant's members. This act was performed via remote online audio-visual communication.

Darla K. Milovich
Signed with **Stavvy**

NOTARY PUBLIC



Notarized remotely via audio/video communication using Stavvy

Exhibit A

Legal Description

Proposed OPUS GREEN, PLANNED UNIT DEVELOPMENT, PHASE 1, being more particularly described as follows:

A portion of the NE1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located N0°15'54"E 655.15 feet along the monument line of Main Street and West 33.00 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located N0°06'21"W along the Section line 1749.94 feet and West 5.31 feet from the East 1/4 Corner of Section 1, T2S, R1W, SLB&M; thence N76°16'11"W 23.32 feet to a point on the Northerly boundary of BIRKHILL PHASE 2 recorded as Entry No. 11227070, Book 2011P, Page 104 in the Office of the Salt Lake County Recorder; thence along said plat the following four (4) courses: (1) N40°00'30"W 154.80 feet; thence (2) N68°26'54"W 290.80 feet; thence (3) N76°57'23"W 457.00 feet; thence (4) S29°13'33"W 50.46 feet to the Easterly line of the UTA Right of Way as depicted on that record of survey filed as Survey No. S1997090651 in the Office of the Salt Lake County Surveyor; thence along said right of way N09°02'04"W 68.07 feet; thence S89°14'11"E 135.12 feet; thence S69°54'54"E 84.79 feet; thence S79°19'07"E 158.94 feet; thence S89°10'35"E 142.15 feet; thence N00°49'25"E 47.49 feet; thence N89°10'35"W 124.07 feet; thence N00°14'04"E 27.00 feet; thence S89°10'35"E 41.00 feet; thence along the arc of a curve to the left with a radius of 7.50 feet a distance of 11.78 feet through a central angle of 90°00'00" Chord: N45°49'25"E 10.61 feet; thence N00°49'25"E 203.49 feet; thence S89°10'35"E 29.25 feet; thence N00°49'25"E 56.96 feet to the Southerly line of that Real Property described in Deed Entry No. 7808706, Book 8419, Pages 2042-2043 recorded in the Office of the Salt Lake Recorder; thence along said deed S89°14'06"E 197.40 feet to a corner of that Real Property described in Deed Entry No. 4341938, Book 5834, Page 2967 recorded in the Office of the Salt Lake County Recorder; thence along said deed S89°14'45"E 35.17 feet to the Westerly line of GORDONS SOUTH LAWN ADDITION recorded as Entry No. 252873, Book "F" of Plats, Page 9 in the Office of the Salt Lake County Recorder; thence along said plat the following two (2) courses: (1) S04°01'54"W 367.72 feet; thence (2) N85°26'54"E 197.01 feet to the Westerly Right of Way of Main Street; thence along said right of way S00°15'54"W 283.63 feet to the point of beginning.

Proposed OPUS GREEN, PLANNED UNIT DEVELOPMENT, PHASE 2, being more particularly described as follows:

A portion of the NE1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located N0°15'54"E 949.98 feet along the monument line of Main Street and West 394.47 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located along the section line N0°06'21"W 2044.77 feet and West 364.87 feet from the East 1/4 Corner of Section 1, T2S, R1W, SLB&M; thence N89°10'35"W 142.15 feet; thence N79°19'07"W 136.15 feet; thence N10°40'55"E 74.49 feet; thence S79°19'06"E 44.92 feet; thence along the arc of a curve to the left with a radius of 11.50 feet a distance of 20.04 feet through a central angle of 99°51'29" Chord: N50°45'10"E 17.60 feet; thence N00°49'25"E 241.94 feet to the Southerly line of that Real Property described in Deed Entry No. 7808706, Book 8419, Pages 2042-2043 recorded in the Office of the Salt Lake Recorder; thence along said deed S89°14'06"E 159.22 feet; thence S00°49'25"W 56.96 feet; thence N89°10'35"W 29.25 feet; thence S00°49'25"W 203.49 feet; thence along the arc of a curve to the right with a radius of 7.50 feet a distance of 11.78 feet through a central angle of 90°00'00" Chord: S45°49'25"W 10.61 feet; thence N89°10'35"W 41.00 feet; thence S00°14'04"W 27.00 feet; thence S89°10'35"E 124.07 feet; thence S00°49'25"W 47.49 feet to the point of beginning.

Proposed OPUS GREEN, PLANNED UNIT DEVELOPMENT, PHASE 3, being more particularly described as follows:

A portion of the NE1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located N0°15'54"E 1295.18 feet along the monument line of Main Street and West 596.93 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located along the section line N0°06'21"W 2389.97 feet and West 565.10 feet from the East 1/4 Corner of Section 1, T2S, R1W, SLB&M; thence S00°49'25"W 241.94 feet; thence along the arc of a curve to the right with a radius of 11.50 feet a distance of 20.04 feet through a central angle of 99°51'29" Chord: S50°45'10"W 17.60 feet; thence N79°19'06"W 44.92 feet; thence S10°40'55"W 74.49 feet; thence N79°19'07"W 22.80 feet; thence N69°54'54"W 84.79 feet; thence N89°14'11"W 11.00 feet; thence N00°49'25"E 74.38 feet; thence S89°10'35"E 10.93 feet; thence along the arc of a curve to the right with a radius of 76.50 feet a distance of 25.61 feet through a central angle of 19°10'50" Chord: S79°35'10"E 25.49 feet; to a point of reverse curvature; thence along the arc of a curve to the left having a radius of 13.50 feet a distance of 25.73 feet through a central angle of 109°10'50" Chord: N55°24'50"E 22.01 feet; thence N00°49'25"E 112.92 feet; thence along the arc of a curve to the left with a radius of 7.50 feet a distance of 11.78 feet through a central angle of 90°00'00" Chord: N44°10'35"W 10.61 feet; thence N89°10'35"W 87.98 feet; thence N00°49'25"E 27.00 feet; thence N00°45'54"E 56.57 feet to the Southerly line of that Real Property described in Deed Entry No. 7808706, Book 8419, Pages 2042-2043 recorded in the Office of the Salt Lake Recorder; thence along said Southerly line S89°14'06"E 225.53 feet to the point of beginning.

Proposed OPUS GREEN, PLANNED UNIT DEVELOPMENT, PHASE 4, being more particularly described as follows:

A portion of the NE1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located N0°15'54"E 1289.19 feet along the monument line of Main Street and West 822.45 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located along the section line N0°06'21"W 2392.98 feet and West 790.60 feet from the East 1/4 Corner of Section 1, T2S, R1W, SLB&M; thence S00°45'54"W 56.57 feet; thence S00°49'25"W 27.00 feet; thence S89°10'35"E 87.98 feet; thence along the arc of a curve to the right with a radius of 7.50 feet a distance of 11.78 feet through a central angle of 90°00'00" Chord: S44°10'35"E 10.61 feet; thence S00°49'25"W 112.92 feet; thence along the arc of a curve to the right with a radius of 13.50 feet a distance of 25.73 feet through a central angle of 109°10'50" Chord: S55°24'50"W 22.01 feet; to a point of reverse curvature; thence along the arc of a curve to the left having a radius of 76.50 feet a distance of 25.61 feet through a central angle of 19°10'50" Chord: N79°35'10"W 25.49 feet; thence N89°10'35"W 10.93 feet; thence S00°49'25"W 74.38 feet; thence N89°14'11"W 124.12 feet to the Easterly line of the UTA Right of Way as depicted on that record of survey filed as Survey No. S 1997090651 in the Office of the Salt Lake County Surveyor; thence along said Right of Way N09°02'04"W 291.17 feet to the Southwest corner of that Real Property described in Deed Entry No. 7808706, Book 8419, Pages 2042-2043 recorded in the Office of the Salt Lake Recorder; thence along said deed S89°14'06"E 132.43 feet to the point of beginning.

Exhibit B

Bylaws of Opus Green Homeowners Association, Inc.

1 Bylaw applicability/definitions

1.1 Definitions

The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

1.2 Bylaw Applicability

The provisions of these Bylaws are binding upon the Association and the Owners. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

2 Association

2.1 Composition

All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Association. Except for matters specifically reserved for a vote of the Owners, the Board, on behalf of the Owners, shall administer the Association's affairs.

2.2 Annual Meeting

Annual meetings shall be held once a year. The Board shall determine the date, time, and place of the annual meeting. The Association shall send notice of annual meetings at least 10 days but not more than 60 days in advance of the meeting. At the annual meeting the Association shall conduct the following business in any order the Board sees fit:

- Roll call and verification of quorum;
- Approval of minutes from preceding annual meeting;
- Reports of officers;
- Special committee reports;
- Election of Directors;
- Unfinished business from preceding annual meeting; and
- New business.

2.3 Special Meeting

Special meetings may be held at any time for any purpose. A special meeting may be called by a majority of the Directors or upon petition of at least 20% of the Owners in good standing. The Association shall schedule and send notice of a special meeting within 30 days of request. The notice of a special meeting shall state the date, time, place, and purpose of the meeting. The Association shall send notice of a special meeting at least 10 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice.

2.4 Place of Meeting

Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Salt Lake County.

2.5 Conduct of Meeting

The President shall preside over all meeting of the Association. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

2.6 Quorum

A quorum shall be the Owners present in person or by proxy at a meeting.

2.7 Voting

The Association shall initially have the following two classes of votes:

Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to 2 votes for every Lot owned by Declarant plus 2 votes for every Class A vote. The Class B Membership shall automatically cease and be converted to a Class A membership upon the sale of the last Lot.

If a Lot is owned by more than one Person and multiple Owners are present at a meeting, the vote appertaining to that Lot shall be cast by agreement of a majority of the Owners. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. The Association may conclusively presume the consent of all a Lot's Owners when a vote is cast by a Lot with multiple Owners.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of Directors, any decision requiring Owner consent shall be passed by majority vote of a quorum.

2.8 Good Standing

An Owner shall be in good standing if he has paid assessments levied against his Lot, including late fees, interest, fines, collection costs, and attorney fees. An Owner must have paid in full at least three days prior to the meeting or action.

2.9 Proxies

An Owner in good standing may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Association in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxies name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation delivered to the Association, a subsequent proxy appointment, notice of death or incapacity of the Owner, or the passage of 11 months.

2.10 Mail-in Ballots

Any action requiring a vote of the Owners, except election of Directors, may be taken by mail-in ballots. Action by mail-in ballot shall comply with the procedures set forth in Nonprofit Act Section 16-6a-709, as amended from time to time. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

2.11 Written Consent in Lieu of Vote

Any action requiring a vote of the Owners, except election of Directors, may be taken by written consent. Action by written consent shall comply with the procedures set forth in Nonprofit Act Section 16-6a-707, as amended from time to time. Written consents may be collected electronically.

2.12 Record Date

The record date for determining which people are entitled to vote shall be the date notice of the meeting or action is sent. The Board may change the record date prior to sending notice of the action. The Owners shown on the records of the Association on the record date shall be the people entitled to vote on an action.

3 Board of Directors

3.1 Number and Qualification of Directors

There shall be three Directors. Except for Directors appointed by Declarant, Directors must be Members in good standing.

3.2 Selection and Term of Directors

After the Turnover Meeting, Directors shall serve for a term of two years and shall serve until their successors have been elected. There is no limit on the number of terms an Owner may serve as a Director. Directors terms shall be staggered as follows: (i) two Directors shall be elected in years ending with an even number; and (ii) one Director shall be elected in years ending with an odd number. At the initial election of the Directors, the newly elected Directors shall determine their terms.

3.3 Vacancies

After the Turnover Meeting, director vacancies, for any reason other than removal by vote of the Association, shall be filled by vote of a majority of the remaining Directors. The Board shall conduct a special meeting for the purpose of filling the vacancy. The meeting shall be valid even if a quorum is not present. Each replacement Director shall serve until the next annual Owners' meeting, then the vacancy shall be filled by vote of the Owners. The replacement Director elected by the Owners shall serve the remaining term of the replaced Director.

3.4 Removal of Directors

After the Turnover Meeting, a Director may be removed with or without cause by vote of a majority of a quorum of Owners. If the Owners propose to remove a Director, the Association shall give the Director and Owners at least 15 day written notice of the meeting and the purpose of the meeting. The Director shall be given an opportunity to be heard at the meeting prior to the vote to remove him. At any meeting where a Director is removed by the Owners, the Owners must vote to replace the Director. The replacement will serve the remaining term of the removed Director.

After the Turnover Meeting, any Director who allows his assessments to become more than 90 days past due may be removed and replaced by vote of a majority of the Board. The Board shall give the Director 10 day written notice to cure the default prior to voting to remove the Director.

3.5 Organization Meeting

The Directors shall hold a meeting following the annual owners meeting for the purpose of electing officers. Notice of the organization meeting shall be given verbally at the annual meeting. The organization meeting shall be conducted at the next regular meeting of the Board or may be

conducted at a special meeting.

3.6 Regular Meetings

The Board shall hold regular meetings. The Board shall determine frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Director at least three days prior to the meeting.

3.7 Special Meetings

A Director may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

3.8 Conduct of Meetings

The President shall preside over all meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

3.9 Quorum

A majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. If less than a quorum is present at a meeting, the majority of those present may adjourn the meeting until such time as a quorum is present. Once established, a quorum will be present even if Directors leave. Directors may attend a meeting telephonically.

3.10 Notice and Waiver of Meeting Notice

Notice to Directors may be personally delivered, mailed, or delivered by any available electronic means, including, without limitation: text, email, fax, or posting on the website. Directors may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Director at a meeting will be considered a waiver of notice, unless the Director attends to dispute notice. If all Directors are present at a meeting, notice of the meeting is waived and any business may be conducted.

3.11 Action without Meeting

Any action by the Board may be taken without a meeting if all the Directors submit a written vote either for, against, or abstaining from the action. Written votes may be given in person, by mail, or electronically. The Association shall file the written votes with its record of minutes.

3.12 Powers and Duties

The Board shall manage the affairs and business of the Association. The Board is vested with all power and authority necessary to administer the affairs of the Association in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law.

Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority:

3.12.1 Prepare an annual budget and establish what constitutes a Common Expense;

3.12.2 Adopt and amend rules, regulations, policies, and procedures governing the Common Areas, administration of the Association, and to enforce and interpret the Governing Documents;

3.12.3 Delegate authority to a managing agent to act on behalf of the Association;

- 3.12.4 Provide for the maintenance, repair, and replacement of the Common Areas and exterior of Living Units and Live-Work Units;
- 3.12.5 Hire, contract for, and terminate personnel or contractors necessary for the maintenance repair and replacement of the Common Areas, exterior of Living Units and Live-Work Units, and administration of Association business;
- 3.12.6 Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Association;
- 3.12.7 Open and maintain bank accounts on behalf of the Association. Designate authorized signers for the bank accounts;
- 3.12.8 File lawsuits or initiate other legal proceedings on behalf of the Association, though for any litigation that is not directly related to the collection of past due assessments and in which attorney fees or costs or both are reasonably expected to exceed five thousand dollars (\$5,000), the Board must first obtain: (1) approval of seventy percent (70%) or more of the Members to file suit; (2) approval of seventy percent (70%) or more of the Members of a litigation budget for such suit; and (3) funds in an amount equal to the approved litigation budget that are dedicated to payment of the litigation costs and not for any other purpose, with such funds to be raised by Special Assessment;
- 3.12.9 Defend lawsuits, administrative actions, and other legal proceedings against the Association;
- 3.12.10 Pay costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;
- 3.12.11 Keep books with detailed accounts of the receipts and expenditures of the Association;
- 3.12.12 Make the books available to the Owners as required by the Community Association Act and Nonprofit Act (the books shall be kept in accordance with generally accepted accounting practices);
- 3.12.13 Upon resolution by the Board, retain an independent auditor to audit the books;
- 3.12.14 Grant easements, licenses, or permission over, under, and through the Common Areas;
- 3.12.15 Upon approval by 67% of the ownership interest in the Common Areas, to convey Common Areas;
- 3.12.16 Create committees;
- 3.12.17 Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act;
- 3.12.18 Any act allowed or required to be done in the name of the Association.

3.13 Manager

The Board shall employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed in Bylaw Sections 3.12.2, 3.12.6, 3.12.7, 3.12.8, 3.12.9, 3.12.14, 3.12.15, and 3.12.16.

3.14 Compensation

Directors shall not be compensated for their work. However, Directors may seek reimbursement for actual costs and mileage incurred during their service.

3.15 Limitation of Liability

The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Association shall indemnify and hold the Directors harmless against liability to third parties for actions taken on behalf of the Association, while acting in their capacity as Director, unless the action constitutes willful misconduct or criminal conduct.

4 Officers

4.1 Election and Term of Officers

The Board shall elect the officers of the Association. Officers shall be elected from the Directors. Officers shall serve one-year terms and shall serve until their successor is elected.

4.2 Removal of Officers

The Board may remove any officer with or without cause by affirmative vote of a majority of a quorum of the Board. If an officer is removed, the Board shall replace them.

4.3 Offices

The Association officers shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers, who need not be Directors, as it may deem necessary. Except for the president, the same person may hold two offices.

President

The president shall be the chief executive officer. He shall preside at meetings of the Association and the Board. He shall be an unofficial member of all committees. He shall have general and active management of Association business. He shall see that all resolutions and policies of the Association are executed.

Vice President

The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the Board shall appoint a Director to fulfill the duties on an interim basis.

Secretary

The secretary shall attend all meetings and take minutes thereof. He shall also make record of all resolutions, rule, policies, and procedures. He shall give or cause to be given notice of all meetings. He shall compile or cause to be compiled a complete list of the owners and their contact information.

Treasurer

The treasurer shall oversee the finances of the Association. He shall be responsible to ensure that the Association has full and accurate records of income and expenses. He shall give financial reports at regular Board meetings and the annual Owners' meeting.

4.4 Delegation of Duties

The Association officers may delegate any of their duties to a manager or to a committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are being properly discharged.

4.5 Compensation

Officers shall not be compensated for their work. However, officers may seek reimbursement for actual costs and mileage incurred during their service.

5 Notice

5.1 Manner of Notice

All notices and other communications required under the Governing Documents shall be in writing.

Notices to Owners may be delivered using the following methods:

By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Association;

By hand to the address of the Lot or to any other address designated by the Owner in writing to the Association;

By posting on the Association website; or

By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Association.

Notice to the Association may be delivered using the following methods:

By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Association as designated in writing to the Owners; or

By facsimile, electronic mail, or any other electronic means to the Associations official electronic contact as designated in writing to the Owners.

Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

5.2 Waiver of Notice

Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

6 Finances

6.1 Fiscal Year

The fiscal year of the Association shall be the calendar year.

6.2 Checks, Agreements, Contracts

All checks, contracts, deeds, leases, and other instruments used for expenditures or obligations may be executed by any person authorized by the Board.

6.3 Availability of Records

Association financial records shall be available as provided by the Community Association Act and Nonprofit Act.

7 Amendment to Bylaws

7.1 Amendments

These Bylaws may be amended by a majority vote of a quorum of the Owners. As long as Class B membership exists, the Declarant may unilaterally amend these Bylaws.

7.2 Recording

Any amendment to these Bylaws shall become effective on the date it is recorded in the Salt Lake County Recorder's Office.

8 Miscellaneous

8.1 Office

The principal office of the Association shall be located at any place within the State of Utah which may be designated from time to time by the Board.

8.2 Conflicts

The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Map, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Association.

8.3 Severability

If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

8.4 Waiver

No provision of these Bylaws shall be deemed to be waived because of a failure to enforce the provision.

8.5 Captions

The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.

8.6 Gender, etc.

Whenever the context so requires, the singular shall include the plural and vice versa. The use of

any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed by its duly authorized officers.

DATED: July 25, 2024.

DECLARANT:
Millcreek OG, LLC

Micah W. Peters
Signed with **Stavvy**

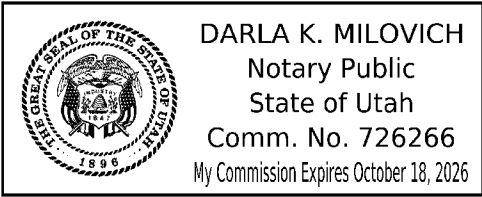
By: Micah W. Peters
Its: Manager

STATE OF UTAH)
) :ss.
County of SALT LAKE)

On this 25th day of July, 2024, personally appeared before me Micah W. Peters who being by me duly sworn, did say that they are the authorized agent of the Declarant authorized to execute these Bylaws and did certify that these Bylaws were approved by Declarant's members. This act was performed via remote online audio-visual communication.

Darla K. Milovich
Signed with **Stavvy**

NOTARY PUBLIC



Notarized remotely via audio/video communication using Stavvy

Exhibit C

Legal Description of Additional Land

PARCEL 1:

Beginning at a point on the South line of Central Avenue being North 89°58'30" West 450.00 feet and South 00°01'30" West 33.00 feet from the monument at the intersection of Central Avenue and Main Street, said monument being South 41°47'06" East 50.05 feet from the Northeast corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, said point being on a curve to the right, the radius point of which bears North 00°01'30" East 2590.25 feet, and running thence Northwesterly along the arc of said curve 283.43 feet to the East line of West Temple Street; thence South 00°04'53" West along said East line 15.49 feet to the original South line of Central Avenue; thence South 89°58'30" East along said South line 282.88 feet to the point of beginning.

PARCEL 2:

Beginning at a point on the South line of Central Avenue being North 89°58'30" West 450.00 feet, South 00°01'30" West 33.00 feet to a point of curvature to the right, the radius point of which bears North 00°01'30" East 2590.25 feet, and Northwesterly along the arc of said curve 3.13 feet from the monument at the intersection of Central Avenue and Main Street, said monument being South 41°47'06" East 50.05 feet from the Northeast corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°05'39" West 157.15 feet to a point 10.00 feet Northerly from the centerline of an East-West spur line; thence South 89°14'06" East parallel with said spur line 212.51 feet; thence South 00°45'54" West 35.00 feet to a point 25.00 feet Southerly from the centerline of said spur line; thence North 89°14'06" West parallel with said spur line and the Westerly extension thereof 714.57 feet to a point on the Easterly right-of-way of the Union Pacific Railroad, said point being 33.00 feet Easterly from the centerline of the mainline track; thence North 09°02'48" West parallel with said mainline track 52.81 feet to a point of curvature to the left, the radius point of which bears South 80°57'12" West 5762.65 feet; thence Northwesterly along the arc of said curve and parallel with said mainline track 182.66 feet to the South line of Central Avenue; thence South 83°15'40" East along said South line 244.61 feet to a point of curvature to the left, the radius point of which bears North 06°44'20" East 2590.25 feet; thence Southeasterly along the arc of said curve 300.40 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM any portion lying within the bounds of the following described tract of land:

Beginning at a point on the South line of Central Avenue being North 89°58'30" West 450.00 feet and South 00°01'30" West 33.00 feet from the monument at the intersection of Central Avenue and Main Street, said monument being South 41°47'06" East 50.05 feet from the Northeast corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, said point being on a curve to the right, the radius point of which bears North 00°01'30" East 2590.25 feet, and running thence Northwesterly along the arc of said curve 283.43 feet to the East line of West Temple Street; thence South 00°04'53" West along said East line 15.49 feet to the original South line of Central Avenue; thence South 89°58'30" East along said South line 282.88 feet to the point of beginning.

PARCEL 3:

Beginning at a point on the South line of Central Avenue (4115 South), said point being 50.05 feet South 41°47'06" East and 199.25 feet North 89°58'30" West and 33.00 feet South 00°01'30" West from the Northeast corner of said Section 1; thence along said South line North 89°58'30" West 253.93 feet; thence South 00°05'39" West 157.15 feet to a point 10.00 feet Northerly from the centerline of an East-West railroad spur line; thence South 89°14'06" East parallel with said spur line 212.51 feet; thence South 00°41'24" West 34.95 feet; thence South 89°14'45" East 34.04 feet to a point on the West line of "Gordon's South Lawn Addition" Subdivision; thence along said West line North 03°50'00" East 192.52 feet; thence North 56°20'00" West 5.76 feet to the point of beginning.

Exhibit D
Development Agreement

13654448
5/5/2021 4:40:00 PM \$40.00
Book - 11169 Pg - 7290-7308
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 19 P

WHEN RECORDED RETURN TO:

Millcreek
Attn: Jeff Silvestrini
3330 South 1300 East
Millcreek, UT 84106
21-01-228-015

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made and entered into as of this 14 day of April, 2021 (“**Effective Date**”), by and between **Millcreek OG, LLC**, a Utah limited liability company (the “**Developer**”), and **Millcreek**, a Utah municipality (the “**City**”).

RECITALS:

- A. Developer is the owner of certain real property located at or near 4186 South Main Street, Millcreek City, Salt Lake County, Utah, as more particularly described in exhibit “A” (the “**Property**”).
- B. The Developer proposes to construct a mixed-use, transit oriented development (“**Project**”) as illustrated on the site plan (the “**Site Plan**”) attached hereto as exhibit “B.”
- C. The Property has been zoned Mixed Development (MD).
- D. Developer hereby represents to the City that it is voluntarily entering into this Agreement.
- E. The City and Developer desire to enter into this Agreement to further memorialize the development rights, terms, requirements and conditions for the development of the Project, as more fully described herein.
- 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 contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the City hereby agree to as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries to which this Agreement applies is attached and specifically described in 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. **Specific Design Conditions; Development Rights.** The Project shall be developed and constructed substantially as set forth in the Site Plan and the specific timing and sequencing and criteria (the "**Development/Design Criteria**") set forth in exhibit "C. "

- (a) **Density.** The Project shall include up to one hundred fifty (150) residential units (the "**Residential Units**"). Developer shall have the right to move the 16' and 20' Residential Units within the Project based on market demand, provided, that the final Site Plan, as revised in accordance with this provision, and the road layout remain substantially similar to exhibit "C."
- (b) **Commercial Component.** As part of the commercial component of the Project, Developer intends to include an approximately 2,200 square foot neighborhood market/coffee shop along the Main Street frontage (the "**Commercial Space**"). Developer shall construct the Commercial Space within eighteen (18) months of the City's issuance of the first building permit for Residential Units in the Project. Because similar retail uses are contemplated on neighboring property on Main Street, Developer reserves the right to convert such Commercial Space to retail, creative office or another commercial use under the following conditions after completion of the shell of the Commercial Space: (1) such space has been marketed unsuccessfully for six (6) months after completion of the shell and no tenant has been identified; and (2) Developer provides the City a detailed monthly report outlining Developer's commercially-reasonable efforts to market the Commercial Space as a neighborhood market/coffee shop without success prior to executing a lease that contemplates another commercial use. Such monthly report shall contain a description of all showings and/or activity with qualified lessees. Developer also shall provide the City with a copy of Developer's listing agreement for the Commercial Space.
- (c) **Lighting.** All lighting fixtures shall be directed downward with mechanisms to prevent dark sky illumination as approved by the City.
- (d) **Amenities.** Developer shall have the right to construct a swimming pool and/or clubhouse, if Developer so elects.
- (e) **For Sale-For Rent Requirement.** As a requirement of the "Opportunity Zone" funds used for the subject development, developer shall make best efforts to sell 50% of the total units, no later than eleven (11) years from the date that the first building permit is issued to begin vertical construction. Developer shall have the right to utilize the remaining fifty percent (50%) of the Residential Units (i.e., those units that are not For Sale Residential Units) as rental units (the "**For Lease Residential Units**"), or can sell such Residential Units as For Sale Residential Units, at Developer's sole discretion. The Declaration governing the Project shall contain the guidelines set

forth in this Agreement regarding the For Sale Residential Units and the For Lease Residential Units.

3. **Vested Rights.** Upon the last to occur of the following: (a) Developer's receipt of final approval from the City for the Site Plan, (b) full execution by Developer and the City of this Agreement, and (c) full execution by Developer and the Millcreek Community Reinvestment Agency of the Participation Agreement (as defined below), this Agreement shall vest the Developer with the right to develop the Project in accordance with this Agreement, the ordinances, policies, and standards but not procedures of the City in effect as of the date of this Agreement. Such rights shall include, without limitation, the right to develop the Property with up to one hundred fifty (150) Residential Units as generally set forth on the Site Plan and the Commercial Space. Up to six (6) of the Residential Units shall be approved as live/work Residential Units (i.e., the residents of such units may operate a commercial business in such Residential Units). The City acknowledges and approves development of the Project in several phases (each, a "Phase").

4. **Park Property.** Developer shall develop as provided herein and then convey not less than 1.09 acres of park property ("Park Property") as identified on the Site Plan to the City free and clear of all liens and encumbrances. The Developer shall develop the Park Property and install the park improvements at no cost or expense to the City subject to City standards and a design as approved by the City. Such improvements shall include a Pedestrian Bridge (defined below), if the timely requisite approvals for the Pedestrian Bridge are obtained, sod, irrigation system, public access as shown on the Site Plan to Main Street that is ADA accessible, benches, playgrounds, picnic tables, and eleven (11) dedicated parking stalls with signage approved by the City. After expiration of a one-year warranty period the City will maintain, or cause to be maintained, at no cost or expense to the Developer, the owners of the property comprising the Project, and all residents of the Project, the Park Property and all improvements located thereon in a clean and safe condition in perpetuity.

Upon completion of the Park Property infrastructure, the Developer reserves the right to maintain private ownership of the 1.09 improved Park Property for a period not exceeding 36 months. In the event the Developer elects to maintain private ownership of the Park Property, and not dedicate the property to Millcreek City for 0-36 months, the Developer is obligated to record a temporary public access & use easement for the said Park Property. The said easement will be automatically vacated upon dedication of the Park Property to Millcreek City. At which time the said public access and use easement is recorded, or ownership of the Park Property is dedicated to Millcreek City, (a) the one-year warranty period for landscaping and infrastructure begins, and (b) reimbursements associated with the Participation Agreement and Millcreek City Parks fees will be activated in accordance with those agreements, and (c) maintenance of the Park Property will be managed and paid for by Millcreek City.

5. **Pedestrian Bridge.** At no cost or expense to the City the Developer shall design and construct a Pedestrian Bridge (as defined below) subject to plans approved by the City. Developer shall use reasonable efforts to acquire all approvals and enter into agreements with all necessary parties, which may include the owner of the property directly south of the Property, the City of Murray and the Army Corps of Engineers, to construct and maintain a pedestrian bridge

crossing Big Cottonwood Creek to the south of the Property in the place indicated on the Site Plan (the “**Pedestrian Bridge**”). The City agrees to support Developer’s efforts to obtain approval for the Pedestrian Bridge from all third parties and to provide Developer at no cost or expense to Developer such assistance in obtaining such third-party approval Developer may reasonably request. The City agrees to waive all permitting, design review, impact or other fees ordinarily imposed by the City in light of the fact that Developer is constructing the Pedestrian Bridge as an amenity for the City. If Developer is unable to obtain all requisite approvals for the Pedestrian Bridge within twenty-four (24) months after the City issues the first building permit for Residential Units then the City shall have an additional twelve (12) months after the expiration of the twenty-four month period to obtain all request approvals for the Pedestrian Bridge. If the Developer and the City are unable to obtain all requisite permits within the thirty-six (36) month period, Developer shall have the right to proceed with the development of the Park Property without any requirement or obligation to construct such Pedestrian Bridge. City shall at no cost or expense to Developer maintain, or cause to be maintained, the Pedestrian Bridge in perpetuity. Notwithstanding the foregoing, Developer, its successors or assigns shall provide snow removal for a path across the Pedestrian Bridge in the area highlighted on the diagram attached hereto as Exhibit B attached hereto and incorporated herein by reference.

6. **Access Road to Central Avenue/Main Street.** Developer shall provide, prior to the issuance of a building permit for the Project, a public access to Central Avenue and a secondary access to Main Street in the locations identified on exhibit “D.” For purposes of this paragraph public access or secondary access shall mean completion of a private access road constructed pursuant to the approved Site Plan (“**Secondary Access**”) or ownership of sufficient real property to construct the Secondary Access.

7. **Participation Agreement.** Developer is in the process of finalizing a Participation Agreement with the City redevelopment agency (“Agency”) relating to development of the Property (the “**Participation Agreement**”). Developer and the Agency intend to enter into the Participation Agreement simultaneously. Developer’s and Agency’s execution of the Participation Agreement is a condition precedent to Developer’s and City’s obligations under this Agreement.

8. **Park Impact Fees; Reimbursement Agreement.** At such time as Developer completes construction of the Pedestrian Bridge or Park, the City shall refund to Developer all park impact fees paid by Developer to the City, and reimburse all future park impact fees assessed for the Property and paid by Developer pursuant to a Reimbursement Agreement to be executed by the parties (the “**Reimbursement Agreement**”). In the event the Park or the Pedestrian Bridge is developed and dedicated to the City in advance of Park Impact fees being collected on all Opus Green units, The City will waive, and or not charge the said Park Impact fees on the permits associated with the units to be built. Developer’s and City’s execution of the Reimbursement Agreement is a condition precedent to Developer’s and City’s obligations under this Agreement. The City’s obligation to reimburse the Developer for the Park and/or Pedestrian Bridge shall commence on completion of the earlier of the Park and the Pedestrian Bridge. For the sake of

clarity, if the Park is complete before the Pedestrian Bridge, reimbursement for costs associated with the Park shall commence on the Park's completion, and reimbursement for the Pedestrian Bridge shall commence upon completion of such Pedestrian Bridge.

9. **Reserved Legislative Powers.** Notwithstanding any other provision of this Agreement to the contrary, the Developer acknowledges that the City is restricted in its authority to limit its police powers by contract and the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Developer as follows:

- (a) Changes that City and Developer agrees in writing to the application thereof to the Project.
- (b) Changes in City's laws and ordinances 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.
- (c) Changes in City's laws and ordinances 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, AASHTO 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
- (d) 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.
- (e) 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).
- (f) 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) (2016).

Nothing contained in the foregoing subparagraphs (a)-(f) shall alter or limit any future approvals, permits or other action(s) by the City concerning the Project (e.g. issuance of conditional use permit or building permit) that would give rise to separate vested rights under applicable law.

10. **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.

11. **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, which consent shall not be unreasonably withheld or delayed. Any successors and assigns shall be deemed to be the Developer for all purposes under this Agreement with respect to that portion of the Property transferred, and the transferring Developer shall not be released from any further obligations with respect to this Agreement as to the parcel so transferred. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

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

13. **Integration.** This Development Agreement contains the entire Agreement 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 by the parties hereto.

14. **Notices.**

Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer: Millcreek OG LLC
 Attn: Micah W. Peters
 336 West Broadway, Suite 110
 Salt Lake City, UT 84101

To City: Millcreek
 Jeff Silvestrini, Mayor
 3330 South 1300 East
 Millcreek, UT 84106

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

15. **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.

16. **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.

17. **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 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 A-1 (Agricultural Zone).

18. **Default.** Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Subject to paragraph 17 upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to pursue a remedy.

19. **Limitation on Recovery for Default – No Damages.** Anything in this Agreement notwithstanding 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 except that the City may unilaterally withhold all further reviews, approvals, licenses, building permits, certificate of occupancy and/or other permits for development of the Project in the case of a default by Developer. The sole and exclusive remedy available to Developer or assignees or successors shall be that of specific performance.

20. **Termination.** If City elects to consider terminating this Agreement due to a default of Developer, then City shall give Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines using its legislative discretion that a default has occurred and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail. Notwithstanding the specific performance limitation described above the City may thereafter pursue any and all remedies at law or equity.

21. **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.

22. **Exhibits and Recitals.** The Recitals at the beginning of this Agreement and exhibits attached hereto are hereby incorporated herein by this reference.

23. **No Waiver.** Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise such right at some future time said right or any other right it may have hereunder.

24. **Execution of Agreement.** This Agreement may be executed in multiple counterparts or originals.

25. **Titles and Captions.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

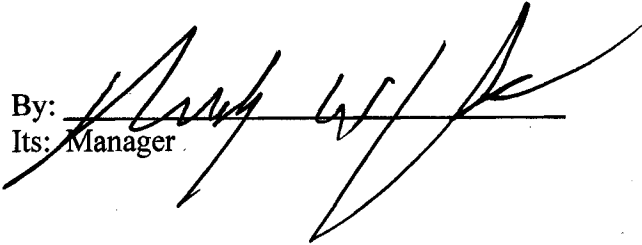
26. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

27. **Further Acts.** In addition to the acts recited in this Agreement to be performed by the parties hereto, the parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby and to carry out the terms and provisions, spirit and intent of this Agreement.

[Signatures on the following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

Millcreek OG, LLC

By: 
Its: Manager



Millcreek


Jeff Silvestrini, Mayor

Attest:


Elyse Greiner, CMC City Recorder
Sullivan

STATE OF UTAH)

: ss.
CITY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 7th day of April, 2021 by Micah W. Peters, the Manager of Millcreek OG, LLC.



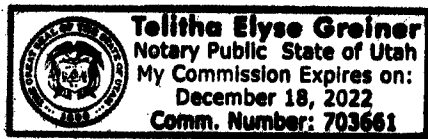
[Signature]

Notary Public

STATE OF UTAH)

) ss.:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 14 day of April, 2021 by Jeff Silvestrin; the Mayor of Millcreek, State of Utah.



[Signature]

Notary Public

[Notarial Seal]

EXHIBIT A
Legal Description of the Property

A parcel of land situated in the Northeast quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Commencing at the East Quarter corner of said Section 1; thence North 87°01'34" East 16.16 feet to the Monument Line of Main Street; thence North 0°15'54" East 1741.07 feet along the said Monument Line; thence North 76°16'11" West 33.93 feet to the True Point of Beginning, said point being the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek and a line 33 feet West of the Main Street Monument Line; and running from the above described point of beginning along the annexation boundary as follows:

North 76°16'11" West 23.32 feet; thence North 40°00'30" West 154.80 feet; thence North 68°26'54" West 290.80 feet; thence North 76°57'23" West 457.00 feet; thence South 29°13'33" West 51.05 feet to the point of intersection with a line parallel to and 33.00 feet Easterly of the railroad centerline; thence North 8°59'00" West along the East railroad right-of-way line 359.40 feet; thence South 89°14'45" East 748.55 feet more or less to a point on the West boundary line of Gordon's South Lawn Addition Subdivision; thence South 3°50'00" West along said West boundary line 368.14 feet to the Southwest corner of Lot 21, Block 4, Gordon's South Lawn Addition; thence North 85°15' East along the South line of said Lot 21, 197.01 feet; thence South 0°15'54" West 283.64 feet to the Point of Beginning.

Parcel No. 21-01-228-015-0000

Address: 4186 South Main Street

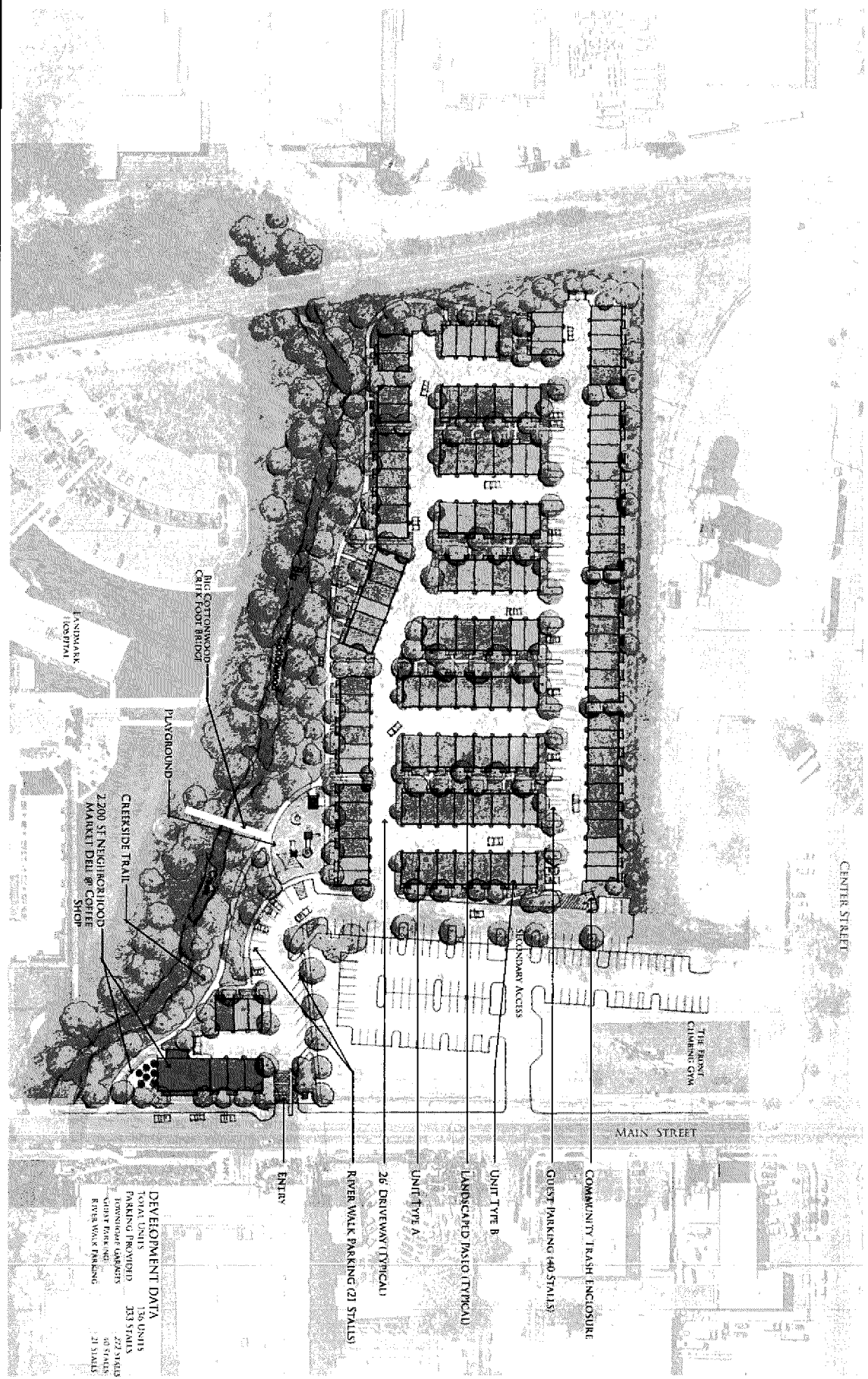
EXHIBIT B

Site Plan

CLEARWATER HOMES



OPUS GREEN MASTER PLAN



DEVELOPMENT DATA

TOTAL UNITS	136 UNITS
PARKING PROVIDED	333 STALLS
DOWNHOLE GARAGES	272 STALLS
GUEST PARKING	40 STALLS
RIVER WALK PARKING	21 STALLS

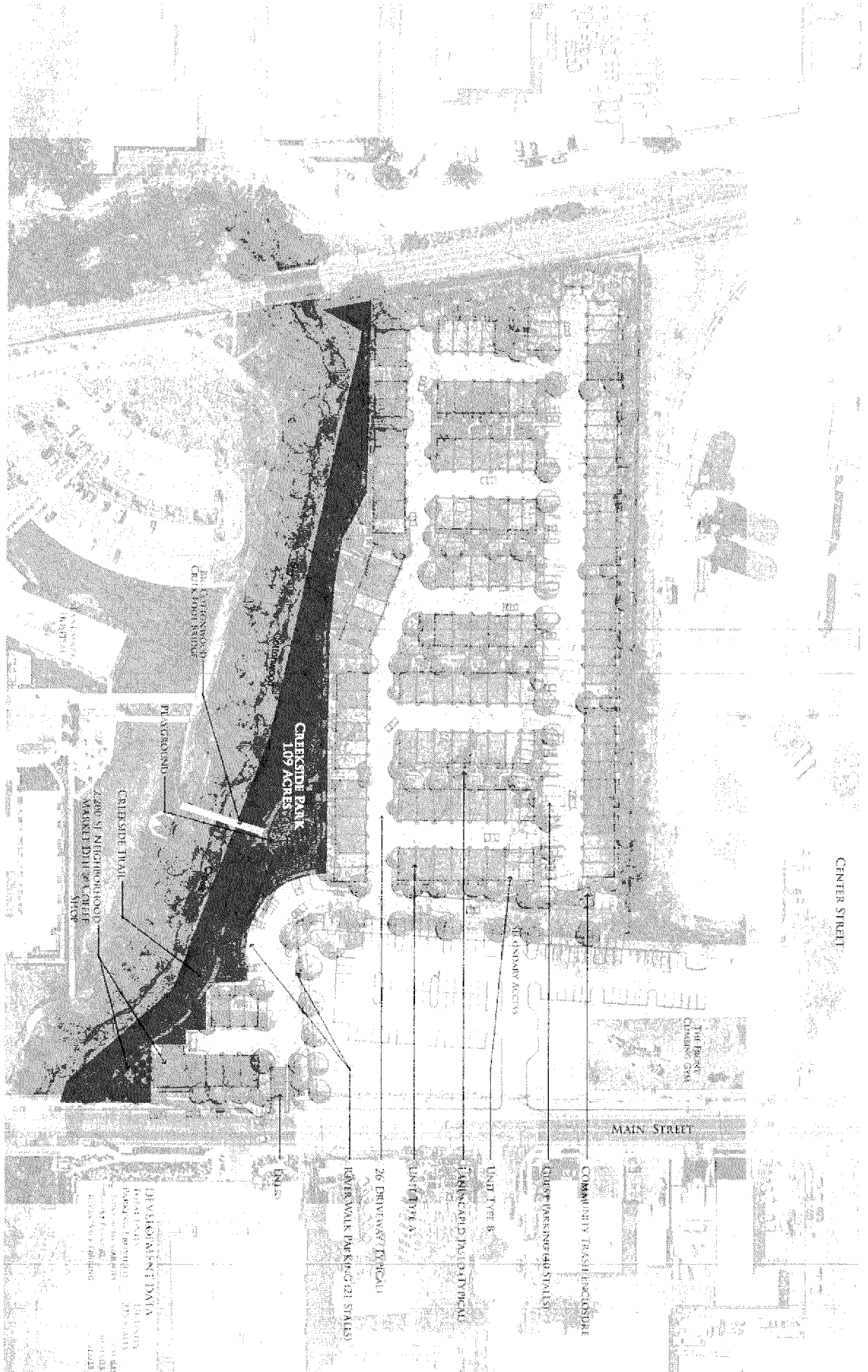
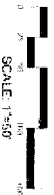


EXHIBIT C
Development Criteria

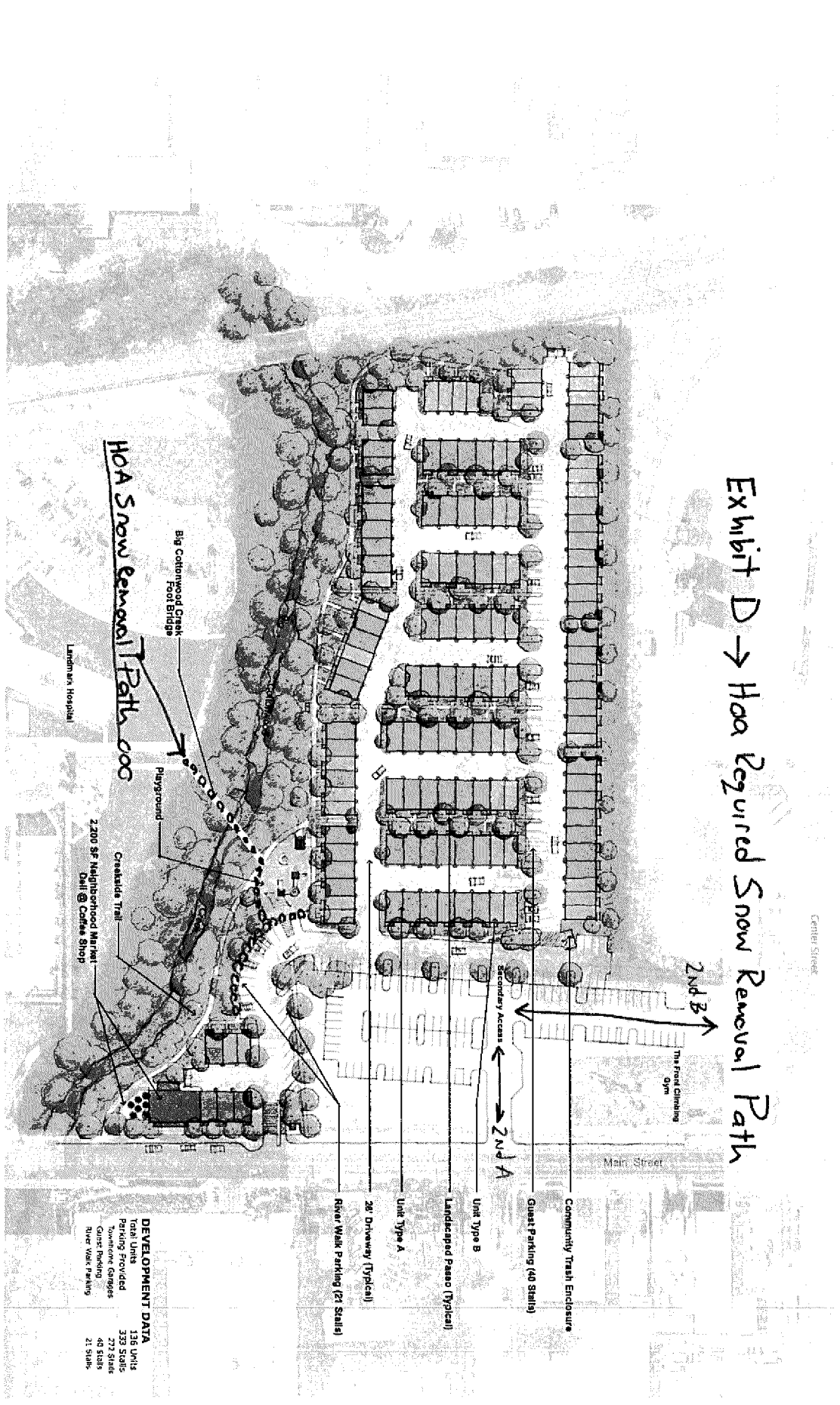
1. The maximum height of the residential buildings will not exceed 32 feet in height. The maximum height of the commercial buildings will not exceed 50 feet in height.
2. The setbacks for the builds will be as established on the site plan.
3. Parking will be as required by ordinance, specifically 2 stalls per 2-bedroom or more unit, .33 guest stalls per unit, 1 space per 250 sq. ft. of commercial space.
4. Project will consist of 25 percent open space, excluding the to be dedicated to the city. The open space will include a pedestrian bridge across Big Cottonwood Creek, to be approved by the city, a playground and a walking trail.
5. The project will consist of up to 150 residential units, with up to six being live-work units, with a commercial component consisting of at least 2,200 square feet.
6. Planting on the park needs to consist of water-wise drought tolerant plants commonly found in stream corridors in northern Utah and shall comply with MKC 19.77 and is subject to approval by Millcreek City. The landscape plan is to be done by a licensed landscape architect or arborist and city to approve the landscape plan.
7. The developer will install Dark-sky compliant street lighting in accordance with Millcreek City standards.
8. The North and West reaches of the development property to be fenced. Permitted fencing materials include precast wall, CMU, vinyl, black coated chain link, or other high quality cementitious fence materials".
9. Uses will be limited to multi-family residential, live/work style commercial units and general commercial retail.
10. Snow removal be managed so that guest parking stalls are not used for snow storage.
11. Homeowners Association documents and the CC&Rs shall include provisions requiring garages to be used for parking only and not for storage.
12. The draft HOA CC&R's need to be reviewed by staff.
13. HOA shall clear snow on pedestrian path from main street to and across the pedestrian bridge, as indicated in Exhibit D.
14. The City reserves the right to establish limits on the parking immediately fronting the park, for the benefit of park patrons and customers for the business, including but not limited to posting parking signs prohibiting overnight parking in the stalls allocated for park and commercial uses.

Exhibit C – 2: Phasing, sequencing, timing of development and public improvements

Phase	Completion Date	Project Amenities
Phase 1	By December 31st, 2022	<ul style="list-style-type: none">-35 or more Residential units including 3-6 live/work units and all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all Horizontal improvements associated with the 35 or more lots, and the vertical completion of the Phase 1 townhomes will be subject to market forces.-Market Deli consisting of at least 2,200 SF to be complete to "greyshell" within 18 months of Millcreek City issuance of first vertical construction permit-Riverfront Park & Bridge amenity comprising of 1.09 acres to be completed and dedicated to the City within 18 months of Millcreek City issuance of first vertical construction permit
Phase 2	By December 31st, 2023	<p>35 or more residential units including all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all horizontal improvements associated with the phase, and the vertical completion of phase 2 townhomes will be subject to market forces.</p>

Phase	Completion Date	Project Amenities
Phase 3	By December 31st, 2024	30 or more residential units including all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all horizontal improvements associated with the phase, and the vertical completion of phase 3 townhomes will be subject to market forces.
Phase 4	By December 31st, 2025	30 or more residential units including all associated rights-of-way, and parking stalls associated with the phase. Developer will complete all horizontal improvements associated with the phase, and the vertical completion of phase 3 townhomes will be subject to market forces.

EXHIBIT D
Secondary Access



DEVELOPMENT DATA

Total Units	136 Units
Parking Provided	353 Stalls
Guest Parking	40 Stalls
River Walk Parking	21 Stalls

Exhibit E
Environmental Covenant

To be recorded with County
Recorder – Utah Code Ann § 57-25-108

When Recorded Return To:
Micah Peters
Millcreek OG, LLC
336 West Broadway, Suite #110
Salt Lake City, Utah 84101

With Copy To:
Douglas J. Hansen, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, UT 84114-4880

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, *et seq.* (the Act). Millcreek OG, LLC, as Owner and Grantor, makes and imposes this Environmental Covenant upon Opus Green Townhomes (the Property) defined herein and more particularly described in Exhibit A attached hereto and incorporated by reference herein.
2. Notice. Notice is hereby given that the Property is or may be contaminated with hazardous waste, hazardous constituents, or solid waste, and therefore this Environmental Covenant is imposed to mitigate the risk to human health, safety and the environment.
3. Property. This Environmental Covenant concerns approximately 7.05 acres of real property, more particularly described in Exhibit A, which is a portion of a single 7.05-acre tax parcel numbered 21-01-228-015-0000 owned by Millcreek OG, LLC, located at 4186 South Main Street in Millcreek, Utah, and depicted on Exhibit B (Figures 1 and 2) attached hereto and hereby incorporated by reference herein.
4. Environmental Response Project. Under the regulatory oversight of the Utah Department of Environmental Quality (the UDEQ), Division of Waste Management and Radiation Control (the DWMRC), an environmental response project, as defined at Section 57-25-102(5) of the Utah Code, and more fully described in a Site Management Plan (SMP) approved by the DWMRC for the Property, has been undertaken to address a release into the soil and shallow groundwater of lead and arsenic that originated from a former nearby Morgan-Hanauer smelter located just south of the Property. Wasatch Environmental, Inc. (Wasatch) completed numerous soil borings and test pits across the Property as depicted on Figure 2 of Exhibit B. Slag material (where the majority of the metals impacts are located) originating from the former smelter has been observed randomly across the Property at depths ranging from 3 to 9 feet below ground surface (bgs). The Owner acquired the Property in 2019 and, in December of 2021, requested

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Rashelle Hobbs, Recorder, Salt Lake County, Utah
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1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84124

regulatory oversight of the DWMRC to conduct a Human Health Risk Assessment (HHRA), Ecological Risk Assessment (ERA), and Background Arsenic Evaluation under Utah Admin. Code R315-101 to address lead and arsenic in soil and groundwater at the Property. These assessments were documented in an HHRA, ERA, and Background Arsenic Evaluation Report (HHRA report) submitted to the DWMRC.

As more fully described in the SMP, the HHRA report concluded that the exposure risk levels were within $10E^{-6}$ to $10E^{-4}$ (or below a hazard index of 1), and/or exposure pathways were incomplete. Additionally, the ecological risk assessment portion of the HHRA report documented that the exposure risk levels for ecological receptors were below levels that would require any remedial actions. Therefore, Wasatch determined that the exposure to metals impacts at the Property could be sufficiently managed through the use of institutional controls.

The Director of the DWMRC (the Director) granted a "Corrective Action Complete with Controls" regulatory closure status for the Property to be implemented through the SMP and this Environmental Covenant, including necessary activity and use limitations to mitigate the risk posed by residual metals contamination at the Property. The Director has determined that the management requirements of the SMP and activity and use limitations of this Environmental Covenant are protective of human health and the environment.

5. Administrative Record. The SMP project administrative records are maintained and managed by the DWMRC.
6. Grantor. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 7.
7. Owner. An Owner is any person who holds any interest in the Property, including, without limitation, the owner of the fee simple estate, any assign, successor in interest, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof. A person who is a Holder under this Environmental Covenant but who holds no other interest in the Property is not an Owner.
8. Transfer of Obligations. Except as provided in this Environmental Covenant, when the Owner of the fee simple estate transfers that estate to a Transferee, the Owner's obligations under this Environmental Covenant transfer to the Transferee, who then becomes an Owner. When the Owner of the fee simple estate transfers a lesser interest, or when an Owner who holds a lesser interest transfers that lesser interest or any portion thereof, the Owner's obligations under this Environmental Covenant continue, and the Transferee acquires the same obligations to the extent of the interest it acquires. Notwithstanding the foregoing, nothing herein shall relieve an Owner of an

interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.

9. Transferee. The Transferee is a person to whom an Owner transfers the Owner's obligations under this Environmental Covenant. A Transferee is any assign, successor in interest, including without limitation a future owner of an interest in fee simple, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof. When a transfer occurs, the Transferee becomes an Owner.

10. Holder. Millcreek OG, LLC, is the Holder of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), and 103(3)(b) of the Utah Code.

11. Rights and Obligations of Holder. The Holder may enforce this Environmental Covenant. The Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, the Holder's rights and obligations survive the transfer of the Property.

12. Agency. The UDEQ is the Agency (as defined in the Act) under this Environmental Covenant. The UDEQ may enforce this Environmental Covenant. The UDEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the DWMRC is the UDEQ representative for this Environmental Covenant.

13. Activity and Use Limitations. As part of the environmental response project described above, Grantor hereby imposes the following activity and use limitations on the Property:

A. **Land Use Limitations**. The Property is suitable for residential, commercial, and industrial use consistent with applicable local zoning laws. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

B. **Groundwater Limitations**. Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, bathing, or other domestic purposes. Other uses of groundwater, if desired, from the shallow unconfined aquifer on the Property shall be subject to review and approval by the Director prior to implementation.

C. **Disturbance Limitations**. Appropriate care shall be exercised during construction, remodeling, and maintenance activities at the Property so as to prevent exposure to heavy metal-impacted soils. If disturbances extend three feet below the ground surface (bgs) or more the following apply:

1. Workers will be required to comply with the Occupational Safety and Health Administration (OSHA) training for hazardous materials.
2. All Workers must wear appropriate personal protective equipment (PPE), while completing the work, which shall be sufficient to prevent exposure to metals-impacted soil.
3. If disturbances require the removal and off-Property disposal of soil from below three feet bgs, the soil that is removed shall be treated/disposed in accordance with applicable law. Additionally, prior to soil removal and disposal, the DWMRC must be notified and approve the proposed removal and disposal activities, which will include the appropriate soil waste sample characterization and proposed disposal facility. Once the excavation and disposal work are completed, disposal documentation must be submitted to the DWMRC.
4. If disturbances require the temporary excavation of soils from below three feet bgs, but do not require off-Property disposal, the soils excavated from below three feet bgs must be segregated, properly stockpiled on plastic, covered with plastic until re-deposition, and redeposited at a depth below three feet bgs and covered with the excavated overburden or clean soil.
5. DWMRC shall be notified if the depth of an excavation exceeds three feet bgs. DWMRC may require sampling of the surface used to store any excavated material.

D. **Construction Dewatering Limitations.** Dewatering conducted to facilitate construction on the Property may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the storm water system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah DEQ, Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving facility.

E. **Vapor Intrusion Limitations.** Given the constituents of concern, vapor intrusion is not of concern. Therefore, no vapor intrusion limitations are required.

F. **Compliance Reporting.** Upon request, Owner shall submit written documentation to the UDEQ verifying that the activities and use limitations remain in place and are being followed.

14. **Notice of Breach.** If any event or action by or on behalf of a person or entity who holds an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, the Owner shall notify the Director within 30 days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within 60 days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner and Director.

15. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code § 57-25-105, subject to amendment or termination as set forth herein.
16. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce correction of any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law.
17. Rights of Access. Grantor hereby grants to the UDEQ and all Holders the right of access to the Property for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant.
18. Compliance Reporting. Upon request from the Director, Owner or any Transferee shall submit to the Director written documentation verifying that the activity and use limitations remain in place and are being complied with. If such limitations do not remain in place, are not being complied with, or both, the Owner or any Transferee shall explain the circumstances.
19. Notice upon Conveyance. Owner shall notify the Agency and Holder within 20 days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agency and Holder shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an un-surveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this Environmental Covenant and shall identify the date, entry number, book, and page number at which this document is recorded in the records of the Salt Lake County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this Environmental Covenant.
20. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:
- A. that the Grantor is the sole owner of the Property;
 - B. that the Grantor holds fee simple title to the Property which is subject to the interests or encumbrances identified in Exhibit C attached hereto and incorporated by reference herein;
 - C. that the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;

D. that the Grantor has identified all other persons who own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor is a party or by which Grantor may be bound or affected.

21. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent or notice of amendment or termination of this Environmental Covenant.

22. Effective Date, Severability, and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

23. Recordation and Distribution of Environmental Covenant. Within 30 days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Director, any lessee, and any other person designated by the Director; see Utah Code §§ 57-25-107.

24. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the Director, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Director:

Douglas J. Hansen, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

If to Millcreek OG, LLC:

Micah Peters
Millcreek OG, LLC
336 West Broadway, Suite #110

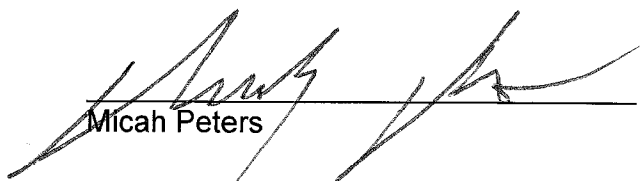
Salt Lake City, Utah 84101

25. Governmental Immunity. In approving this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant not to sue the State of Utah, its agencies, successors, departments, agents, and employees (collectively, the State) from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to Sections 57-25-109 and 57-25-110 of the Utah Code, or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Section 63G-7-101, *et seq.*, or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

26. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the UDEQ for the UDEQ's costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by Agency or on the fee schedule approved by the legislature or both as applicable.

27. The undersigned representative of Grantor represents and certifies that he or she is authorized to execute this Environmental Covenant.

Millcreek OG, LLC
A Utah Limited Liability Company
as Grantor, Owner, and Holder



Micah Peters

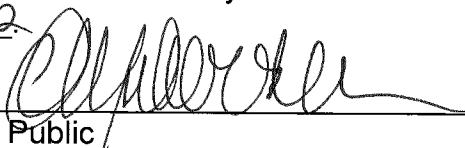
11/14/22
Date

State of Utah)
County of Salt Lake)

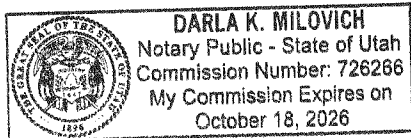
ss:

Before me, a notary public, in and for said county and state, personally appeared Micah Peters, a duly authorized representative of Millcreek OG, LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Millcreek OG, LLC

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 14 day of November 2022



Notary Public



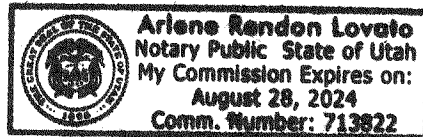
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

On behalf of the Utah Department of Environmental Quality, the Director approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Douglas J. Hansen
Douglas J. Hansen, Director
Division of Waste Management and Radiation Control
Utah Department of Environmental Quality

11/10/2022
Date

State of Utah)
)
County of Salt Lake) ss:



Before me, a notary public, in and for said county and state, personally appeared Douglas J. Hansen, Director of the Utah Division of Waste Management and Radiation Control, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 10th day of November, 2022.

Arlene Rendon Lovato
Notary Public

This instrument prepared by:

Wasatch Environmental, Inc.
2410 West California Avenue,
Salt Lake City, Utah 84104

**SITE MANAGEMENT PLAN
OPUS GREEN TOWNHOMES
4186 SOUTH MAIN STREET
MILLCREEK, UTAH**

Project No. 2242-004D

To:

**Mr. Doug Hansen, Director
Utah Department of Environmental Quality
Division of Waste Management and Radiation Control
195 North 1950 West
P.O. Box 144880
Salt Lake City, Utah 84114-4880**

Prepared for:

**Mr. Micah Peters
Millcreek OG, LLC
336 West Broadway, Suite #110
Salt Lake City, Utah 84101**

Prepared by:

**Wasatch Environmental, Inc.
2410 West California Avenue
Salt Lake City, Utah 84104**

August 5, 2022

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Exhibits

Exhibit A – Property Location Property Use Map and Historical Sample Location Map

**SITE MANAGEMENT PLAN
OPUS GREEN TOWNHOMES
4186 SOUTH MAIN STREET
MILLCREEK, UTAH**

1. INTRODUCTION

Wasatch Environmental, Inc., (Wasatch) has prepared this Site Management Plan (SMP) to present the planned long-term approach for managing residual heavy metal impacts to soil and groundwater at the Opus Green Townhomes property (Property), which exhibits residual lead and arsenic impacts; located at 4186 South Main Street, Millcreek, Utah.

This SMP has been prepared in accordance with the requirements of R315-101 "Cleanup Action and Risk-Based Closure Standards" that establish information requirements to support risk-based cleanup and closure standards at facilities for which remediation or removal of hazardous constituents to background levels is not expected to be achieved. The "Owner" as defined in the Environmental Covenant (EC) shall comply with the SMP, including provisions relating to the Activity and Use Limitations pertaining to land use limitations, groundwater limitations, and disturbance limitations.

1.1 Site Description

The Property is an approximately 7.05-acre tract of real property, further identified as Tax Parcel Number: 21-01-228-015-0000. At the time of this document, the Property is vacant land under residential construction (as shown in Exhibit A). The legal description of the Property is:

Beginning North at 87°01'34" East 16.16 feet and North 0°15'54" East 1741.07 feet and North 76°16'11" West 33.93 feet from East 1/4 Corner of Section 1, Township 2S, Range 1W, S L M; North 76°16'11" West 23.32 feet; North 40°00'30" West 154.8 feet; North 68°26'54" West 290.8 feet; North 76°57'23" West 457 feet; South 29°13'33" West 51.05 feet; North 8°59' West 359.4 feet; South 89°14'45" East 748.55 feet M OR L; South 3°50' West 368.14 feet; North 85°15' East 197.01 feet; South 0°15'54" West 283.64 feet to beginning. Contains 7.05 acre.

1.2 Site Background

The Property is known to be located in an area of former historical ore smelters from approximately 1874 to 1899. Wasatch has direct knowledge of environmental impacts identified on adjacent redeveloped properties. The main environmental impacts identified on the adjacent properties are the heavy metals lead and arsenic.

Phase I and Phase II Environmental Site Assessments

Wasatch completed a Phase I Environmental Site Assessment (ESA) for the Property dated April 5, 2019, on behalf of Clearwater Homes Utah. The Phase I ESA identified the following recognized environmental conditions:

- Between at least the 1970s and 1980s, there were two large aboveground storage tanks (ASTs) on the Property. Given past uses of the Property, there is a potential that these ASTs contained fuel or oil and releases may have impacted the Property.
- The Property was historically a slag dump for a smelter. Analytical results for a soil sample collected from the Property in 1993, and analytical results for a slag sample collected by Wasatch indicate elevated concentrations of lead and arsenic. Additionally, samples of native soil collected from the adjoining east property also indicate elevated concentrations of metals likely attributed to smelter aerial deposition.

- Concentrations of lead in soil samples collected from the fill material on the adjoining east property exceed United States Environmental Protection Agency (U.S. EPA) Regional Screening Levels (RSLs) for Industrial Soil. The on-site fill material originated from the former ore smelters. Therefore, there is a potential for elevated concentrations of lead in the fill material on the Property.

Given the identified recognized environmental conditions, Wasatch directed the completion of seven soil borings at the Property to evaluate the degree of soil and groundwater impacts present at the Property by contaminants previously identified at and near the Property.

On April 6, 2018, Wasatch directed the completion of seven soil borings (GP-1 through GP-7), using direct-push drilling techniques, to evaluate soil and groundwater conditions at the Property. The boring locations are shown in Exhibit A.

One soil and one groundwater sample were collected from each boring and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and Resource Conservation and Recovery Act (RCRA) D-list metals.

Based on the observed lithology of the soil borings, on-site fill material is approximately 9 to 12 feet in thickness and consists mainly of gravelly sand, sand, and some silt with red brick debris, concrete debris, glass debris, slag, plastic debris, tar-like material, and wood debris. Depth to groundwater ranged between approximately 7.5 to 19 feet below ground surface (bgs), with an average depth of 10.79 feet. Slight petroleum odors were observed in soil boring GP-4 at a depth of 9 feet. Photoionization detector (PID) readings ranged from 0.0 to 12.2 parts per million (ppm).

Based on extensive geotechnical soil borings/test pits and Wasatch's soil borings, the observed slag appears to be predominantly located at depths in the fill material between 3 and 10 feet.

The soil sample collected from soil boring GP-4 exhibited detectable concentrations of petroleum hydrocarbon constituents and a slight petroleum odor. The petroleum hydrocarbon concentrations were below the applicable U.S. EPA RSLs for Residential Soil; however, they indicate that a release of petroleum product has occurred. Additionally, this boring was located approximately 40 feet west of where the former ASTs (the suspected release point) were located.

The shallow soil samples (ranging from 1 to 4 feet bgs) collected from each soil boring exhibited arsenic concentrations that exceeded the applicable U.S. EPA RSL for Residential Soil for arsenic of 0.68 milligrams per kilogram (mg/kg). However, a site-specific background arsenic in soil concentrations were developed for the Property, and it was determined that the detected arsenic concentrations are considered to be within the typical background concentration for this area.

Two deep soil samples were collected from the fill/native soil interface where the majority of the slag was observed. These samples (GP-3-9' and GP-4-9.5') exhibited lead and arsenic concentrations in excess of their applicable U.S. EPA RSL for Residential Soil. Soil sample GP-3-9' exhibited arsenic and lead concentrations of 145 mg/kg and 3,850 mg/kg, respectively. Soil sample GP-4-9.5' exhibited arsenic and lead concentrations of 106 mg/kg and 2,160 mg/kg, respectively.

Soil sample GP-7-2' exhibited a benzo(a)pyrene (BAP) concentration of 1,710 micrograms per kilogram ($\mu\text{g}/\text{kg}$). This concentration exceeds the U.S. EPA RSL for Residential Soil of 110 $\mu\text{g}/\text{kg}$. No other SVOCs were detected at concentrations above U.S. EPA RSL for Residential Soil.

No SVOCs, VOCs, RCRA D-list metals (except for arsenic) were detected at concentrations in groundwater that exceed applicable U.S. EPA Maximum Contaminant Levels (MCLs).

All groundwater samples except GP-7 exhibited an arsenic concentrations that exceed the applicable U.S. EPA MCL for arsenic of 0.01 milligrams per liter (mg/L).

Division of Waste Management and Radiation (DWMRC) Oversight

DWMRC oversight was requested in December 2021. At the request of the Utah DWMRC, Wasatch completed a human health risk assessment (HHRA), ecological risk assessment (ERA [which included the northern bank of the adjoining south Big Cottonwood Creek]), and a background arsenic evaluation. The work plan for this effort was approved by DWMRC in a letter dated May 24, 2022. Since August 2019, Wasatch has completed 29 additional test pits across the Property to further evaluate the on-site impacts.

Since the collection of the GP-4-9.5' soil sample, which exhibited petroleum hydrocarbon impacts at concentrations below their applicable U.S. EPA RSLs for Residential Soil, Wasatch has completed six additional test pits in this area and the area of the former AST(s). No SVOCs, VOCs, or lead were detected in the soil samples collected from the step-out test pits at concentrations that exceed their applicable U.S. EPA RSL for Residential Soil.

Since the collection of the GP-7-2' soil sample, which exhibited a BAP concentration that slightly exceeded the applicable U.S. EPA RSL for Residential Soil, Wasatch has completed five additional test pits in this area. No PAHs (including BAP) were detected in the soil samples collected from the step-out test pits at concentrations that exceed their applicable U.S. EPA RSL for Residential Soil.

Based on the calculated site-specific background arsenic evaluation and research of arsenic concentrations in soil for nearby sites, the arsenic impacts to soil at the Property are considered to be within the typical background concentration for this area.

Since the collection of the GP-3-9' soil sample, which exhibited a lead concentration that exceeded the applicable U.S. EPA RSL for Residential Soil, Wasatch has completed four additional Step-out test pits in this area. No lead was detected in the soil samples collected from the step-out test pits at concentrations that exceed the applicable U.S. EPA RSL for Residential Soil.

Since the collection of the GP-4-9.5' soil sample, which exhibited a lead concentration that exceeded the applicable U.S. EPA RSL for Residential Soil, Wasatch has completed four additional step-out test pits in this area. No lead was detected in the soil samples collected from the step-out test pits at concentrations that exceed the applicable U.S. EPA RSL for Residential Soil.

2. RISK ASSESSMENT

A HHRA, ERA, and background arsenic evaluation have been performed for the Property and is documented in detail in the HHRA, ERA, and Background Arsenic Evaluation completed by Wasatch and dated April 19, 2022. DWMRC approved the results documented in this report in a letter dated May 24, 2022. The conclusions of this effort are described below.

Human Health Risk Assessment

Based on the totality of the data and the risk assessments/background evaluation, the fill material at the Property has been sufficiently defined, and the risks associated with this fill material have been accurately calculated.

Based on the lead concentrations in soil for each risk scenario (and their applicable exposure depth ranges) or the calculated UCL, there is no adverse risk due to lead.

Based on the risk assessment for the Property (which included historical soil data), the initial hazard index (HI) for all scenarios is below the R315-101 target level of 1.0.

When the maximum detected concentration was used as the initial exposure point concentration (EPC) for the residential scenario, the resulting cancer risk is 1.78E-05. This cancer risk is above the R315-101 target level of 1E-06, but within the risk range of 1E-06 to 1E-04 for DWMRC to allow the use of

engineering and/or institutional controls at the Property. The cancer risks were then calculated using the refined EPCs. The resulting refined cancer risk is 8.59E-07. The refined cancer risk is below the target level of 1E-06. This risk level is below the target level required under UAC R315-101 required for clean closure.

The results of the HHRA indicate that there is no adverse risk to potential receptors, including future residential, industrial, and recreational scenarios when using the refined EPCs and calculated HIs. Despite the acceptable risks, the localized hotspots were associated with isolated burials of slag-like material. All of the hotspots are below three feet in depth. Given the presence of the localized hotspots and that only the calculated cancer risk using the maximum detected concentration (which is the most conservative assessment) for the residential scenario resulted in a cancer risk of 1.78E-05, Wasatch recommended that these risks be managed by implementation of a SMP and EC (institutional land use controls) to mitigate these risks at the Property.

Ecological Risk Assessment

Based on the HHRA which included an ERA, the Main Site (defined in the April 19, 2022, report) area meets the exclusion criteria as defined by the U.S. EPA, and therefore, no ecological risk is applicable to this area. The exclusion criteria consists of the following: the affected property does not include viable ecological habitat, the affected property is not utilized by potential receptors, and complete or potentially complete exposure pathways do not exist due to affected property setting or conditions of affected property media.

Based on the HHRA which included an ERA, the Slope Area (defined in the April 19, 2022, report) is less than 0.5 acres. Therefore, this area is not large enough to impact an ecological population. The ERA concluded that, based on the fact that the slope is extremely steep, the exposure area is very small in size, and the Property is in a highly developed area, the slightly elevated HQs for the deer mouse and horned lark (reproductive endpoints below an HI of 10) do not indicate an adverse risk to localized ecological receptors or impact to the deer mouse and horned lark populations.

Conclusions of the HHRA, ERA, and Background Arsenic Evaluation

As approved by the Utah DWMRC, residual exposure risks that exist can be adequately managed through land use controls.

3. SITE MANAGEMENT

3.1 Activity and Use Limitations

The EC to be recorded against the Property imposes the following activity and use limitations on the Property:

3.1.1 Site Management Plan

The Owner shall comply with this SMP.

3.1.2 Land Use Limitations

The Property is suitable for residential, commercial, and industrial use consistent with applicable local zoning laws. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

3.1.3 Groundwater Limitations

Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, or bathing purposes. Other uses of groundwater from the shallow unconfined aquifer on the Property shall be subject to review and approval by the Director prior to implementation.

3.1.4 Disturbance Limitations

Appropriate care shall be exercised during construction, remodeling, and maintenance activities at the Property so as to prevent exposure to heavy metal-impacted soils. If disturbances extend three feet below the ground surface (bgs) or more the following apply:

1. Workers shall be required to comply with the Occupational Safety and Health Administration (OSHA) training for hazardous materials
2. Appropriate personal protective equipment (PPE) must be donned by all workers completing the work, and be sufficient to prevent exposure to metals-impacted soil.
3. If disturbances require the removal and off-Property disposal of soil below three feet bgs, the soil that is removed shall be treated/disposed in accordance with applicable law. Additionally, prior to soil removal and disposal the Utah DWMRC must be notified and approve of the proposed removal and disposal activities, which will include the appropriate soil waste sample characterization and proposed disposal Property. Once the excavation and disposal work are completed, disposal documentation must be submitted to the Utah DWMRC.
4. If disturbances require the temporary excavation of soils below three feet bgs, but do not require off-Property disposal. Then the soils excavated below three feet bgs must be segregated, properly stockpiled on plastic and covered with plastic until redeposition, and redeposited at a depth below three feet bgs and covered with the excavated overburden or clean soil.
5. DWMRC shall be notified if the depth of an excavation exceeds three feet bgs. DWMRC may require sampling of the surface used to store any excavated material.

3.1.5 Construction Dewatering Limitation

Dewatering conducted to facilitate construction on the Property may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the stormwater system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving Property.

3.1.6 Vapor Intrusion Limitations

There are no vapor intrusion limitations.

3.1.7 Compliance Reporting

Upon request, Owner shall submit written documentation to the UDEQ verifying that the activities and use limitations remain in place and are being followed.

3.1.8 Residential Notification and Limitations

All new residents of the Property shall be notified of the contamination located at the Property. Additionally, residents are not allowed to excavate below three feet bgs without complying with all limitations described in Section 3.1.4.

3.2 Maintenance, Access, and Inspections

Under the EC, the Owner of any portion of the Property, shall be responsible for compliance with the SMP and EC.

The Holder under the EC and the Director and their respective authorized agents, employees, and contractors shall have rights of reasonable access to the Property at any time after the effective date of the EC for inspections and monitoring of the compliance with the EC, and for complying with the terms and conditions of the EC and this SMP. Nothing in this SMP shall be construed as expanding or limiting any access and inspection authorities of the Holder or Director under the law.

3.2.1 Notice

Any party or person desiring to access the Property under authority of the EC shall provide notice to the then current Owner of the affected portion of the Property not less than 48 hours in advance of accessing the Property, except in the event of an emergency condition which reasonably requires immediate access. In the event of any such emergency condition, the party exercising this access right will provide notice to the then current owner of the affected portion of the Property requiring access as soon thereafter as is reasonably possible.

3.2.2 Disruption

To the extent that the Holder, the Director or their authorized representatives, conduct any activities on or within any portion of the Property, they will use reasonable efforts to comply with the then current Owner's business operation and security needs and requirements, and will conduct such activities so as to cause the least amount of disruption to the use of the affected portion of the Property as may be reasonably possible. Any person who conducts any activities shall repair or replace any improvements or landscaping damaged on the affected portion of the Property by such activities. The Director will determine what needs, requirements, and activities are reasonable. Should the Director's activities cause damage to the affected portion of the Property improvements or landscaping that are not repaired or replaced, the injured party may present a claim against the State of Utah in accordance with Utah law.

3.3 Environmental Covenant

An EC containing the above referenced activity and use limitations will be recorded with the Office of the County Recorder of Salt Lake County, Utah.

3.4 Monitoring Requirements

The Owner shall comply with the activity and use limitation stated in Section 3.1, and through the use of a homeowner association (or other similar governing body for the Property) monitor the Property to verify that all residents have been notified of the residual heavy metal impacts to soil and monitor excavations at the Property that exceed 3 feet bgs. Cessation of excavation monitoring is subject to review and approval by the Director.

3.5 Site Management Contacts

Inquiries concerning the SMP should be directed to the following:

Millcreek OG, LLC

336 West Broadway, Suite #110

Salt Lake City, Utah 84101

(801) 599-1839

and

Utah Department of Environmental Quality

Division of Waste Management and Radiation Control

Director

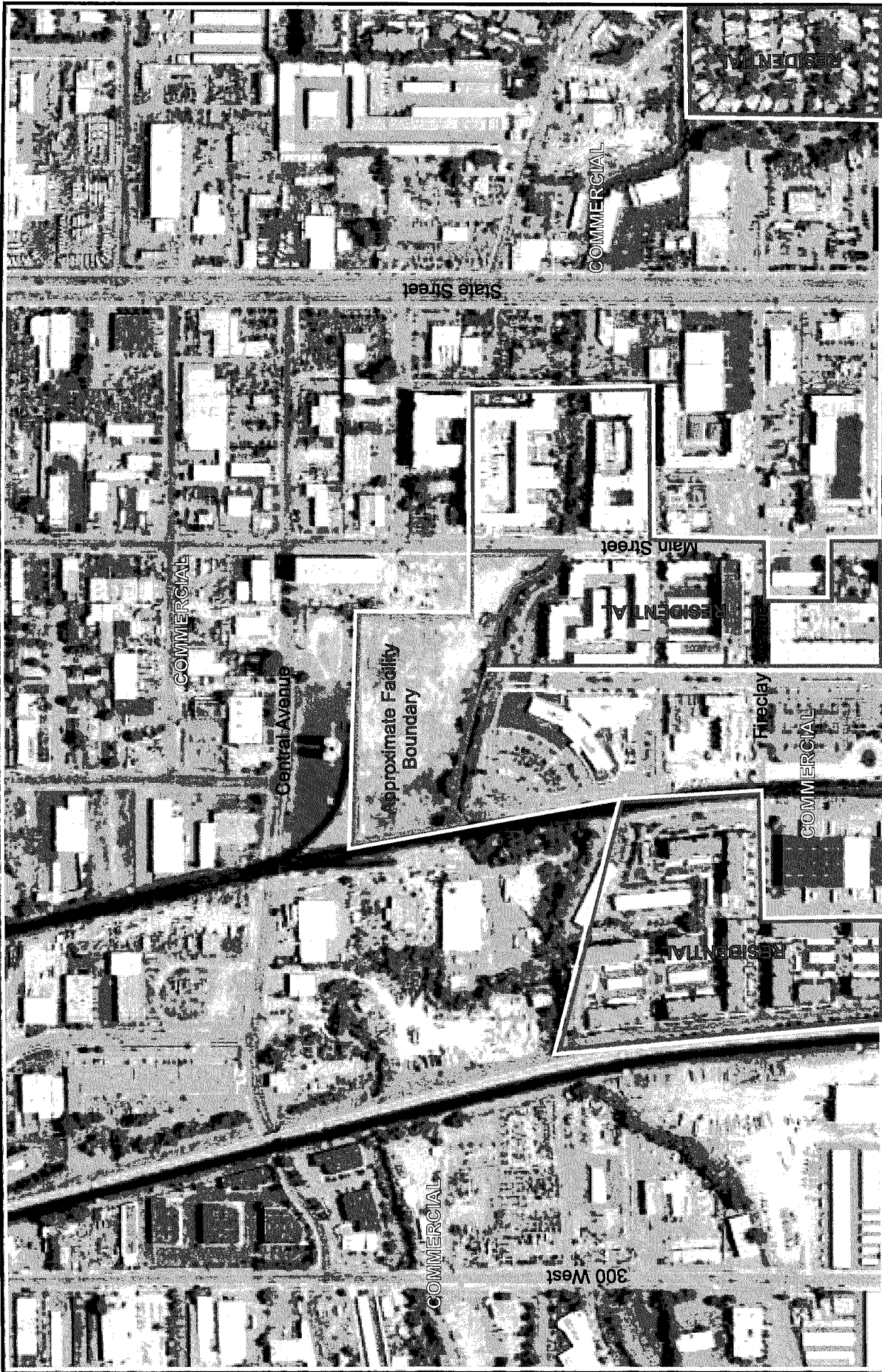
P.O. Box 144880

Salt Lake City, Utah 84114-4880

(801) 536-0200

EXHIBIT A

**Facility Location and Property Use Map
Historical Sample Location Map**
(2 pages)



Facility Location and Property Use Map

Opus Green Townhomes
 4186 South Main Street
 Millcreek, Utah

PROJECT NO.: 2242-004D

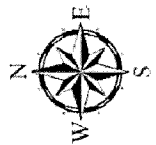
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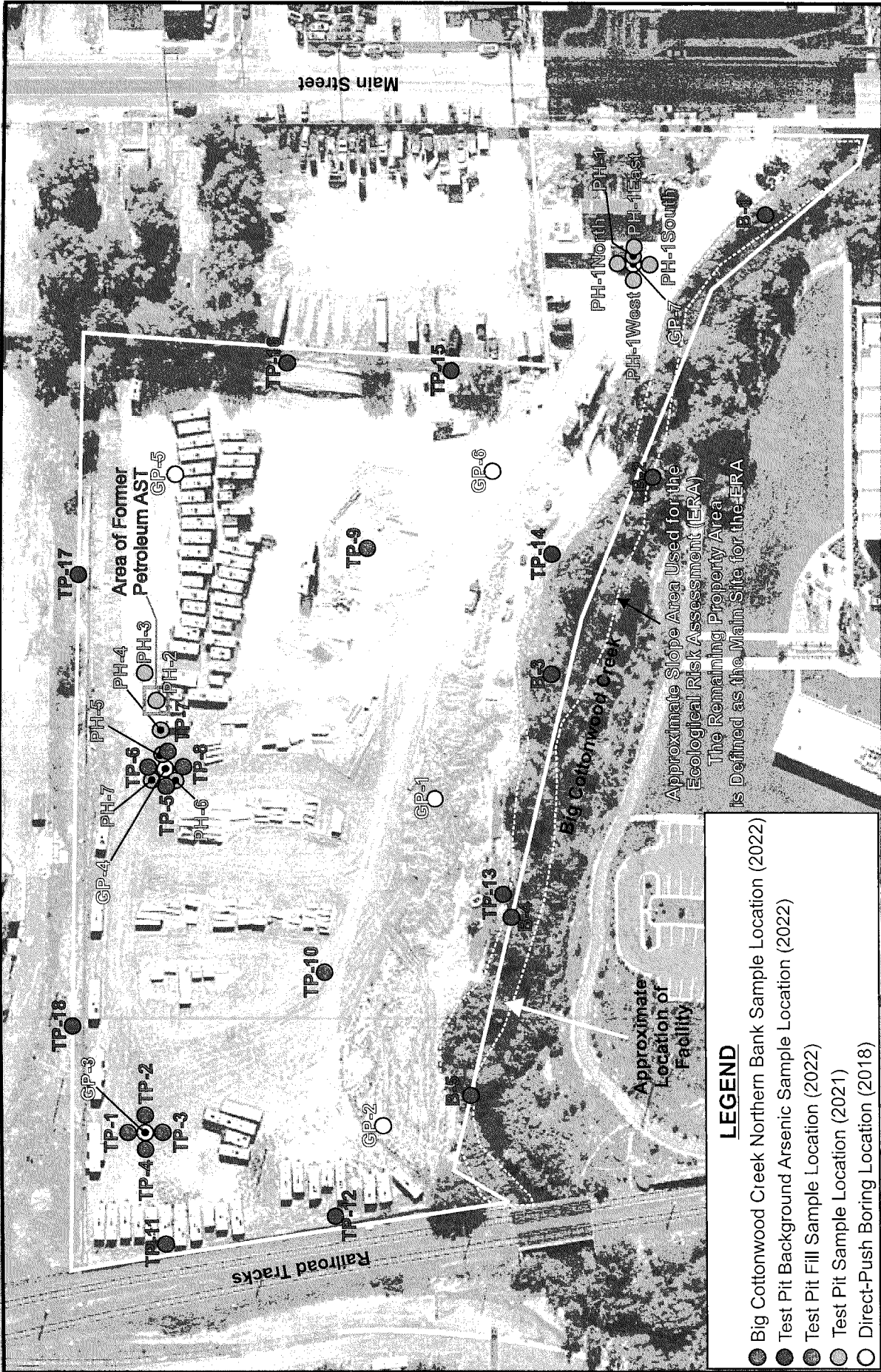
FIGURE 1



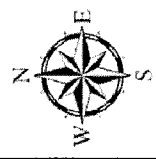
Environmental Science and Engineering

Scale: 1-inch equals
 approximately 434'





- LEGEND**
- Big Cottonwood Creek Northern Bank Sample Location (2022)
 - Test Pit Background Arsenic Sample Location (2022)
 - Test Pit Fill Sample Location (2022)
 - Test Pit Sample Location (2021)
 - Direct-Push Boring Location (2018)



Scale: 1-inch equals approximately 110'

WASATCH
ENVIRONMENTAL
Environmental Science and Engineering

Historical Sample Location Map

Opus Green Townhomes
4186 South Main Street
Millcreek, Utah

PROJECT NO.: 2242-004D

DATE: 6-13-22

FIGURE 2

EXHIBIT A

Legal Description
(1 page)

EXHIBIT A

Legal Description

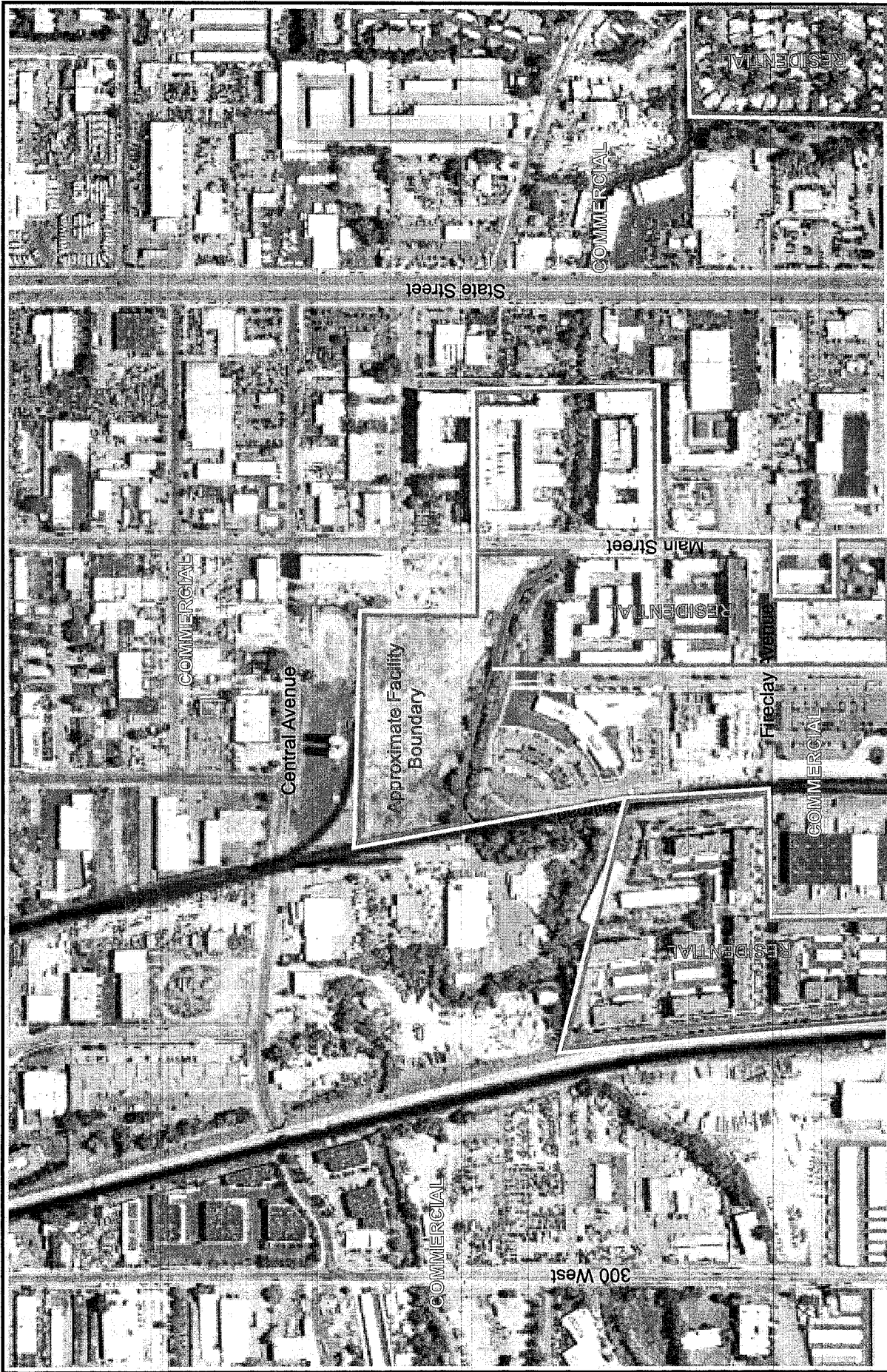
Parcel Number: 21-01-228-015-0000

Beginning North at 87°01'34" East 16.16 feet and North 0°15'54" East 1741.07 feet and North 76°16'11" West 33.93 feet from East 1/4 Corner of Section 1, Township 2S, Range 1W, S L M; North 76°16'11" West 23.32 feet; North 40°00'30" West 154.8 feet; North 68°26'54" West 290.8 feet; North 76°57'23" West 457 feet; South 29°13'33" West 51.05 feet; North 8°59' West 359.4 feet; South 89°14'45" East 748.55 feet M OR L; South 3°50' West 368.14 feet; North 85°15' East 197.01 feet; South 0°15'54" West 283.64 feet to beginning.

Contains 7.05 acres.

EXHIBIT B

**Facility Location and Property Use Map
Historical Sample Location Map**
(2 pages)



Facility Location and Property Use Map

Opus Green Townhomes
 4186 South Main Street
 Millcreek, Utah

FIGURE 1

DATE: 6-13-22

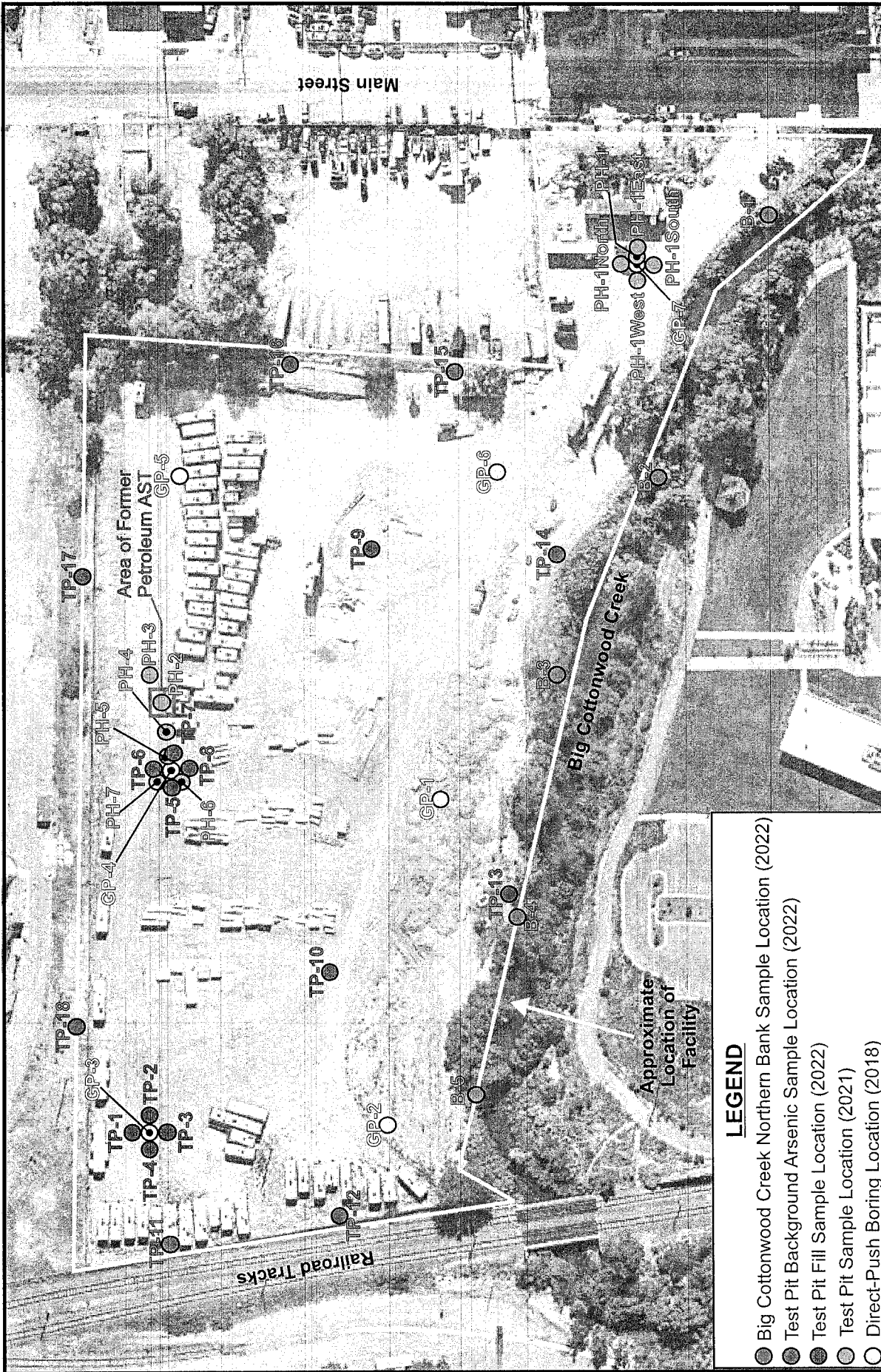
PROJECT NO.: 2242-004D



Environmental Science and Engineering

Scale: 1-inch equals
 approximately 434'





LEGEND

- Big Cottonwood Creek Northern Bank Sample Location (2022)
- Test Pit Background Arsenic Sample Location (2022)
- Test Pit Fill Sample Location (2021)
- Test Pit Sample Location (2021)
- Direct-Push Boring Location (2018)



Scale: 1-inch equals approximately 110'



Environmental Science and Engineering

Historical Sample Location Map

Opus Green Townhomes
4186 South Main Street
Millcreek, Utah

PROJECT NO.: 2242-004D

DATE: 6-13-22

FIGURE 2

EXHIBIT C

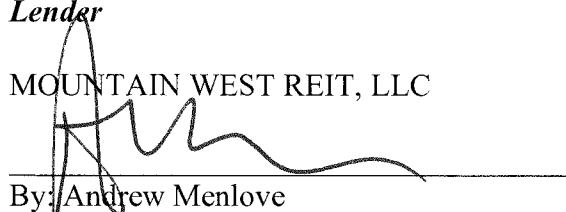
Consent and Subordination Documents
(1 page)

CONSENT AND SUBORDINATION

MOUNTAIN WEST REIT, LLC, a Delaware limited liability company (“Lender”), is beneficiary under that certain Trust Deed (“Trust Deed”) dated April 30, 2021 executed by MILLCREEK OG, LLC, a Utah limited liability company (“Trustor”) and recorded against the property described in **Exhibit A** hereto (“Real Property”) on May 5th, 2021, as Entry No. 1365444 in Book 11169 at Pages 7221-7259 in the Official Records of Salt Lake County, Utah which secures certain indebtedness of the Trustor as specified therein (“Indebtedness”). Lender hereby expressly consents to the execution of the Environmental Covenant and the recordation of the Environmental Covenant against the Real Property and hereby agrees that it or any other person that acquires the Real Property by foreclosure of either of the Trust Deed or by other means shall be bound by the provisions of the Environmental Covenant.


Lender

MOUNTAIN WEST REIT, LLC


By: Andrew Menlove
Its: Authorized Agent
Date: June 8, 2022

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

On the 8th day of June, 2022, personally appeared before me Andrew Menlove, the Authorized Agent of MOUNTAIN WEST REIT, LLC who duly acknowledged to me that he executed the same.



NOTARY PUBLIC

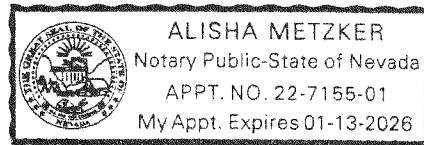
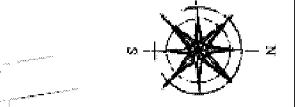
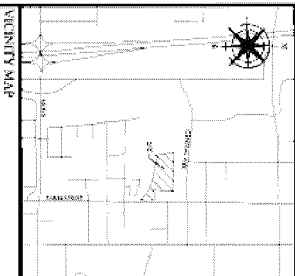


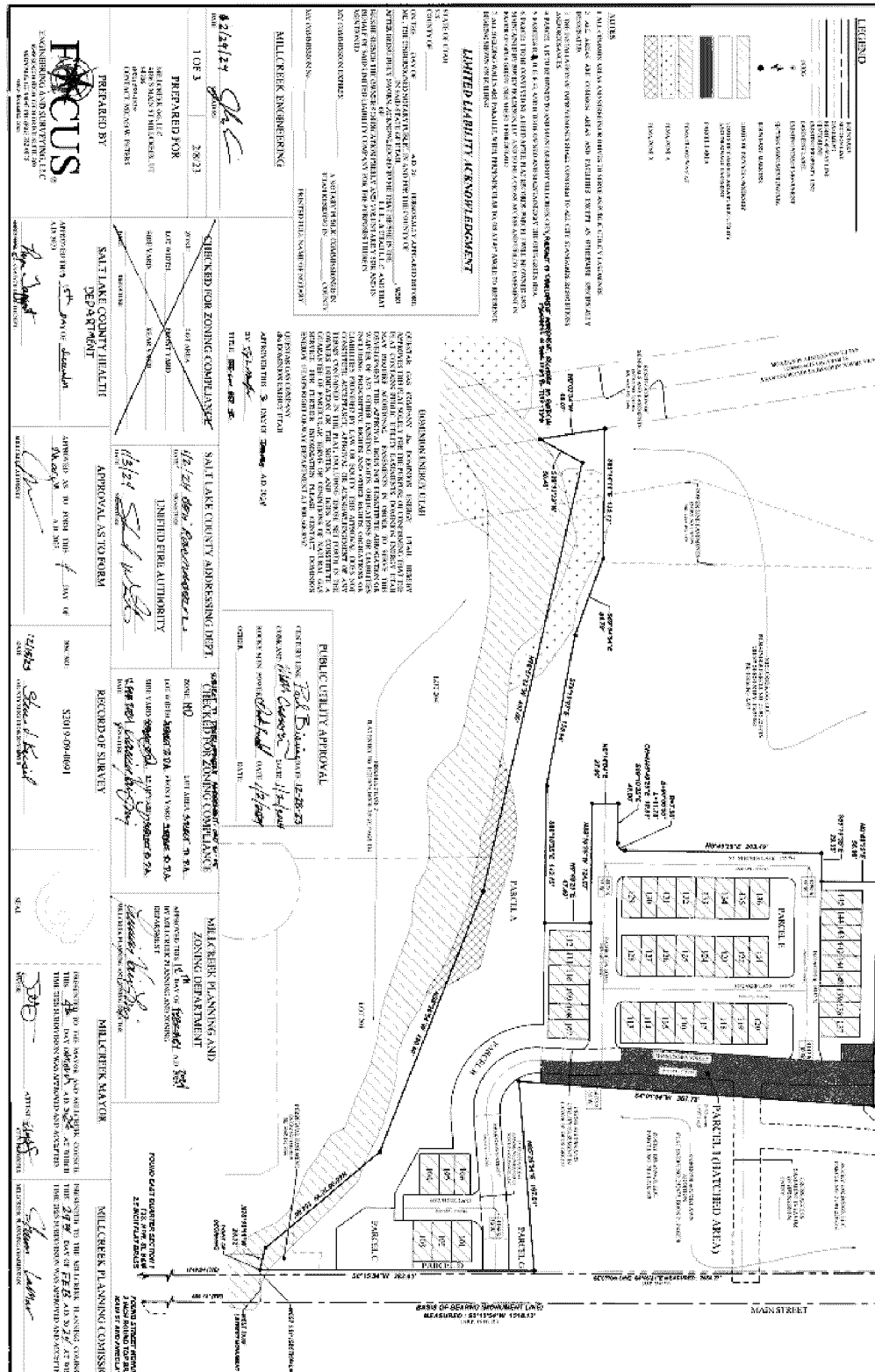
Exhibit F
Plats



OPUS GREEN
PLANNED UNIT DEVELOPMENT
 PHASE I
 LOCATED IN THE NE 1/4 OF SECTION 1, T2S, R1W,
 SALT LAKE BASIN & MERIDIAN
 MILL CREEK, SALT LAKE COUNTY, UTAH

CONTRACT NUMBER: C-2017-00001
OWNER: Opus Green LLC
DESIGNER: Miller Creek Engineering
DATE: 11/13/2017

REVISIONS:
 1. 11/13/2017: Initial Design
 2. 11/13/2017: Final Design
 3. 11/13/2017: Final Design

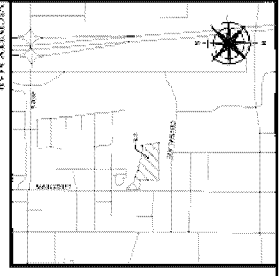


OWNER'S DECLARATION:
 I, the undersigned, being the owner of the above described property, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and that the same has been prepared by a duly licensed professional engineer or architect, and that the same is in accordance with the applicable laws and ordinances of the State of Utah and the County of Salt Lake County, Utah.

DESIGNER'S DECLARATION:
 I, the undersigned, being a duly licensed professional engineer or architect, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and that the same has been prepared by me or under my direct supervision and control, and that the same is in accordance with the applicable laws and ordinances of the State of Utah and the County of Salt Lake County, Utah.

LIMITED LIABILITY ACKNOWLEDGMENT:
 The undersigned hereby acknowledge that the information furnished herein is true and correct to the best of our knowledge and belief, and that the same has been prepared by us or under our direct supervision and control, and that the same is in accordance with the applicable laws and ordinances of the State of Utah and the County of Salt Lake County, Utah.

APPROVED BY:
 MILL CREEK ENGINEERING
 REGISTERED PROFESSIONAL ENGINEER
 STATE OF UTAH
 LICENSE NO. 118292



Lot	Area (sq. ft.)	Notes
101	10,000	...
102	10,000	...
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200	10,000	...

PREPARED BY
FOCUS
 ENGINEERING AND SURVEYING, LLC
 1121 17th St, Suite 100
 Salt Lake City, UT 84143
 (801) 466-1111

207 3
 PREPARED FOR
 MILITARY UNIT DEVELOPMENT
 2000 W. 1000 S.
 SALT LAKE CITY, UT 84143
 (801) 466-1111

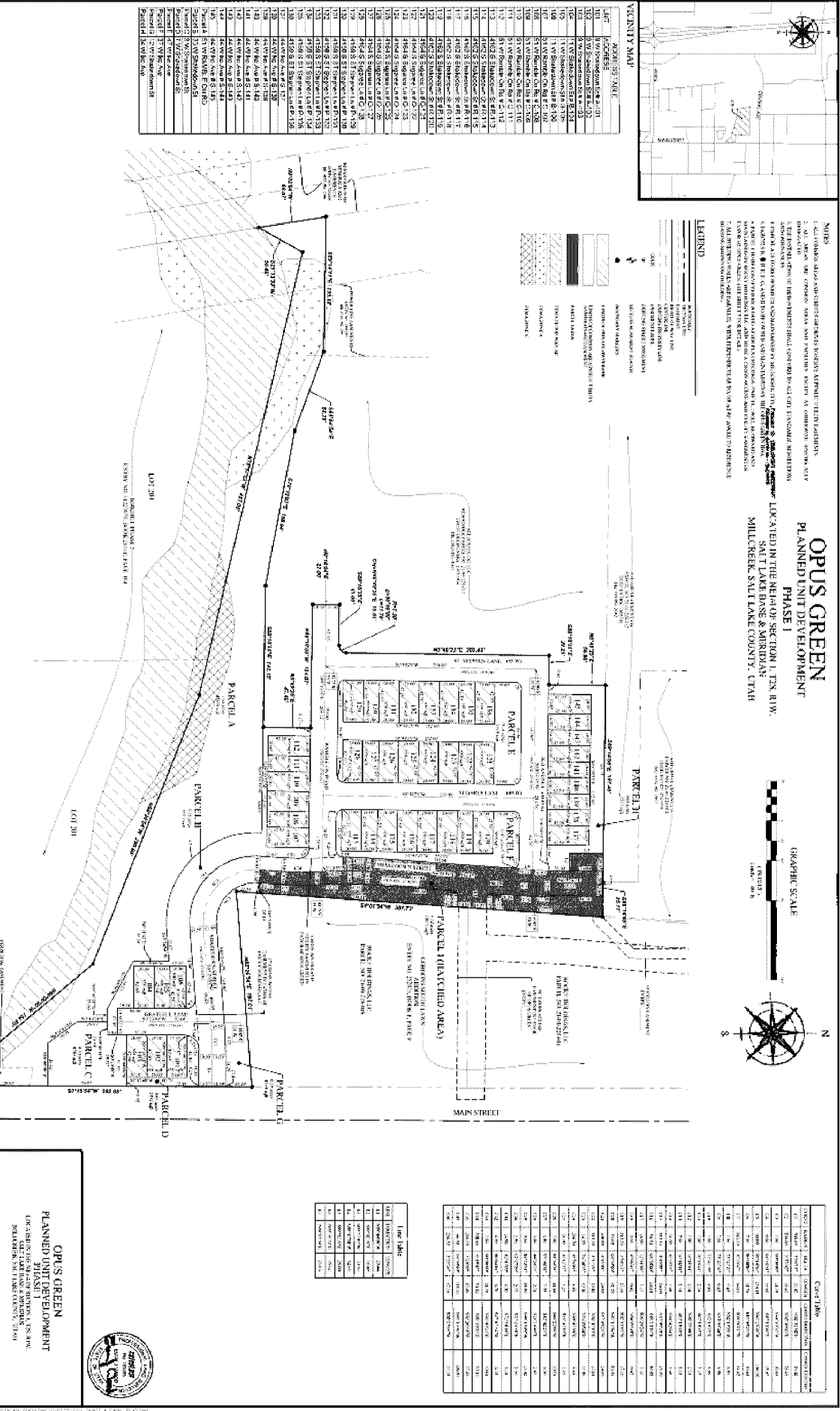
DATE: 11/21/22
 SHEET NO. 103 OF 103

GRAPHIC SCALE
 1" = 200'

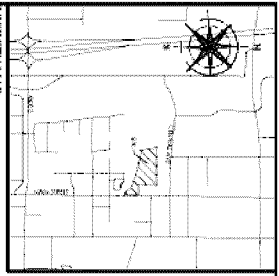


OPUS GREEN
 PLANNED UNIT DEVELOPMENT
 PHASE I
 SALT LAKE COUNTY RECORDERS
 OFFICE
 1121 17th St, Suite 100
 Salt Lake City, UT 84143
 (801) 466-1111

RECORDED BY
 DATE: _____ TIME: _____



Lot	Area (sq. ft.)	Notes
101	10,000	...
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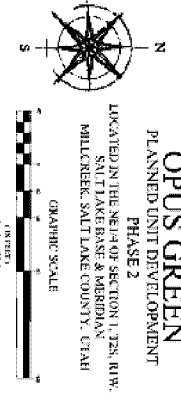


LEGEND

[Symbol]	EXISTING LOT
[Symbol]	EXISTING BUILDING
[Symbol]	EXISTING DRIVE
[Symbol]	EXISTING SIDEWALK
[Symbol]	EXISTING UTILITY
[Symbol]	EXISTING FENCE
[Symbol]	EXISTING CURB
[Symbol]	EXISTING DRIVE
[Symbol]	EXISTING SIDEWALK
[Symbol]	EXISTING UTILITY
[Symbol]	EXISTING FENCE
[Symbol]	EXISTING CURB
[Symbol]	EXISTING DRIVE
[Symbol]	EXISTING SIDEWALK
[Symbol]	EXISTING UTILITY
[Symbol]	EXISTING FENCE
[Symbol]	EXISTING CURB

EXHIBIT TABLE

NO.	DESCRIPTION	DATE
1	EXISTING LOT	1/1/20
2	EXISTING BUILDING	1/1/20
3	EXISTING DRIVE	1/1/20
4	EXISTING SIDEWALK	1/1/20
5	EXISTING UTILITY	1/1/20
6	EXISTING FENCE	1/1/20
7	EXISTING CURB	1/1/20
8	EXISTING DRIVE	1/1/20
9	EXISTING SIDEWALK	1/1/20
10	EXISTING UTILITY	1/1/20
11	EXISTING FENCE	1/1/20
12	EXISTING CURB	1/1/20



OPUS GREEN
PLANNED UNIT DEVELOPMENT
PHASE 2
 LOCATED IN THE NE 1/4 OF SECTION 1, T2N, R1W,
 MILLCREEK, SALT LAKE COUNTY, UTAH

SUBMITTING CERTIFICATE

I, the undersigned, being duly qualified and sworn, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the applicant, and that the same has been compared with the original and found to be a true and correct copy thereof.

[Signature]
 City Clerk

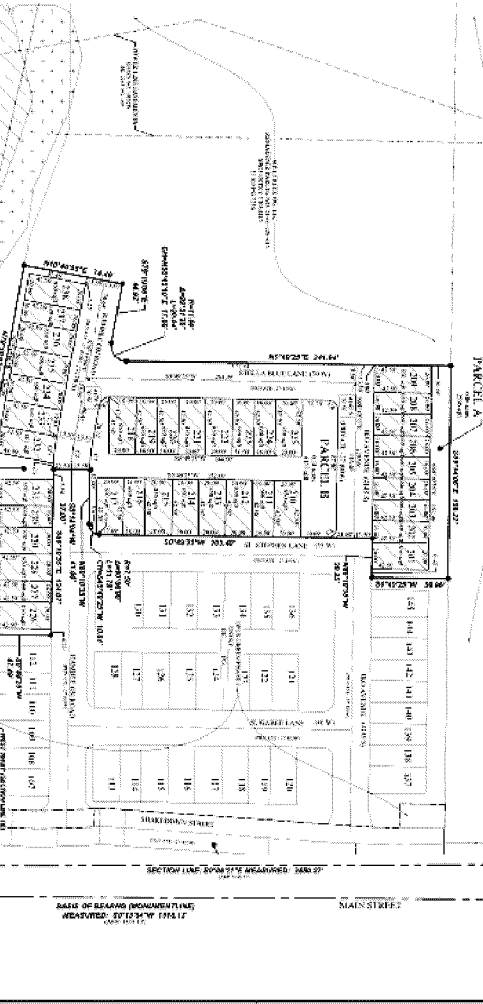
VICINITY MAP

SHOWS THE LOCATION OF THE PROPERTY IN RELATION TO THE SURROUNDING STREETS AND LANDMARKS.

CONSENT TO DEVELOP

I, the undersigned, do hereby consent to the proposed development of the property as shown on the attached plans, and I agree to hold the property subject to the terms and conditions of the proposed development.

[Signature]
 Date: 1/1/20



OPUS GREEN PUD PHASE 2

FOR THE PURPOSE OF THE PROPOSED DEVELOPMENT OF THE PROPERTY AS SHOWN ON THE ATTACHED PLANS, THE UNDERSIGNED HEREBY CERTIFY THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING ORDINANCES OF THE CITY OF MILLCREEK, UTAH.

[Signature]
 Date: 1/1/20

PUBLIC UTILITY APPROVAL

UTILITY LINE: *[Signature]*

DEPARTMENTAL APPROVAL

DEPARTMENT: *[Signature]*

APPROVED FOR RECORDING

DATE: 1/1/20

DEPARTMENTAL APPROVAL

DEPARTMENT: *[Signature]*

APPROVED FOR RECORDING

DATE: 1/1/20

RECORD OF SURVEY

DATE: 1/1/20

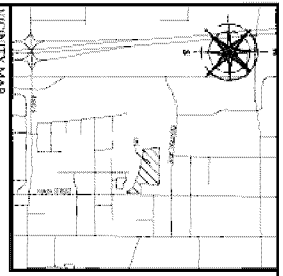
MILLCREEK PLANNING COMMISSION

DATE: 1/1/20

UNITED LIABILITY ACKNOWLEDGMENT

I, the undersigned, do hereby acknowledge that the proposed development is in accordance with the zoning ordinances of the City of Millcreek, Utah.

[Signature]
 Date: 1/1/20



LEGEND

BOUNDARY
 EXISTING LOT LINES
 PROPOSED LOT LINES
 EXISTING DRIVEWAYS
 PROPOSED DRIVEWAYS
 EXISTING SIDEWALKS
 PROPOSED SIDEWALKS
 EXISTING UTILITIES
 PROPOSED UTILITIES
 EXISTING SURFACES
 PROPOSED SURFACES
 EXISTING UTILITIES

OPUS GREEN
 PLANNED UNIT DEVELOPMENT
 PHASE 4
 LOCATED IN THE NE1/4 OF SECTION 1, T2S, R1W,
 SALT LAKE BASE & MERIDIAN,
 MULLIGRUBER, SALT LAKE COUNTY, UTAH

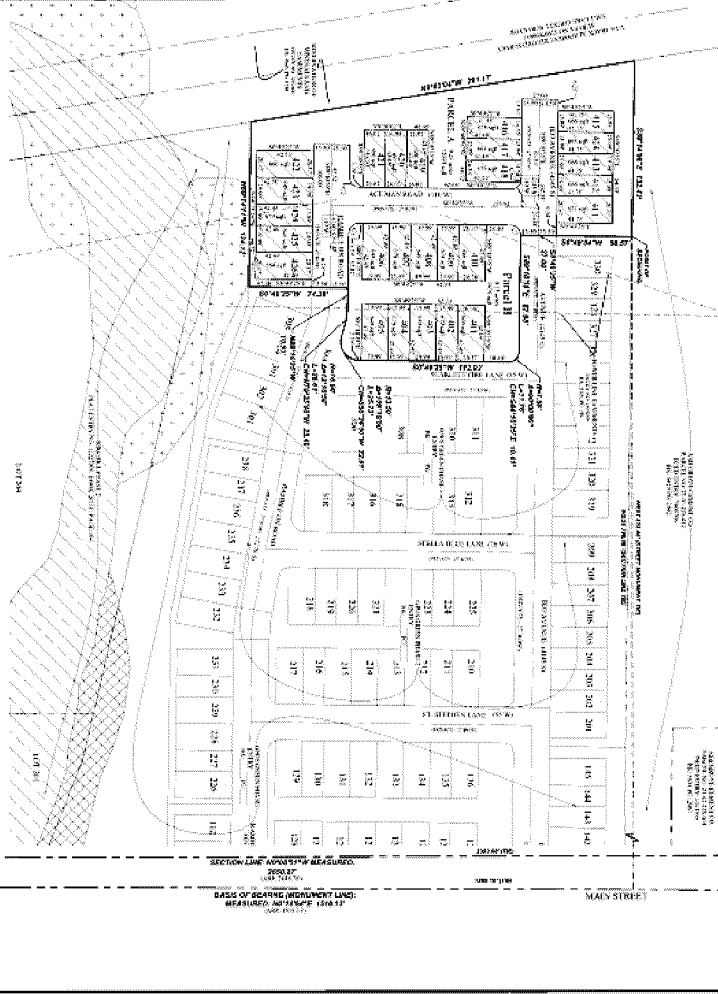
GRAPHIC SCALE
 1" = 40' (AS SHOWN)

CREAT TABLE

NO.	AREA	DATE	ISSUED FOR REVISION	DESCRIPTION
1	100	10/20/2023	100	INITIAL PLAN
2	100	10/20/2023	100	INITIAL PLAN
3	100	10/20/2023	100	INITIAL PLAN
4	100	10/20/2023	100	INITIAL PLAN
5	100	10/20/2023	100	INITIAL PLAN
6	100	10/20/2023	100	INITIAL PLAN
7	100	10/20/2023	100	INITIAL PLAN
8	100	10/20/2023	100	INITIAL PLAN
9	100	10/20/2023	100	INITIAL PLAN
10	100	10/20/2023	100	INITIAL PLAN

ADDRESS TABLE

LOT	ADDRESS
100	412 S SECOND STREET
101	412 S SECOND STREET
102	412 S SECOND STREET
103	412 S SECOND STREET
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106	412 S SECOND STREET
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200	412 S SECOND STREET



PUBLIC UTILITY APPROVAL
 CENTERLINE: *David Stovall* DATE: *11/2/2023*
 CONTRACT: *11/2/2023*
 PROJECT: *Opus Green*

MULLIGRUBER ENGINEERING

DESIGNER: *David Stovall* DATE: *11/2/2023*
CHECKER: *David Stovall* DATE: *11/2/2023*

DATE: *11/2/2023*
PROJECT: *Opus Green*

PREPARED BY: *David Stovall*
DATE: *11/2/2023*
PROJECT: *Opus Green*

APPROVED FOR: *David Stovall*
DATE: *11/2/2023*
PROJECT: *Opus Green*

PREPARED BY: *David Stovall*
DATE: *11/2/2023*
PROJECT: *Opus Green*

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PROJECT: *Opus Green*

PREPARED BY: *David Stovall*
DATE: *11/2/2023*
PROJECT: *Opus Green*

APPROVED FOR: *David Stovall*
DATE: *11/2/2023*
PROJECT: *Opus Green*

OWNER'S DECLARATION
 I, the undersigned, being the owner of the above described property, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

PLANNED UNIT DEVELOPMENT
 PHASE 4
 MULLIGRUBER, SALT LAKE COUNTY, UTAH

RECORDED: *11/2/2023*
RECORDED BY: *David Stovall*
PROJECT: *Opus Green*

RECORDED: *11/2/2023*
RECORDED BY: *David Stovall*
PROJECT: *Opus Green*

RECORDED: *11/2/2023*
RECORDED BY: *David Stovall*
PROJECT: *Opus Green*

LIMITED LIABILITY ACKNOWLEDGMENT
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RECORDED: *11/2/2023*
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PROJECT: *Opus Green*

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RECORDED BY: *David Stovall*
PROJECT: *Opus Green*

RECORDED: *11/2/2023*
RECORDED BY: *David Stovall*
PROJECT: *Opus Green*