

**DEVELOPMENT AGREEMENT  
FOR 391 NORTH FLINT STREET**

THIS AGREEMENT is made and entered into this 5th day of January, 2023 by and between Kaysville City, a municipal corporation organized and existing under the laws of the State of Utah (hereinafter the "City"), and Millstream Management, LLC, a Utah limited liability company and its successors and/or assigns (hereinafter collectively referred to as the "Developer").

**RECITALS**

WHEREAS, Developer is desirous of developing a mixed-use development (the "Community") on certain real property located at 391 North Flint Street in the City of Kaysville, County of Davis, State of Utah and more particularly described on the Property Location Map attached hereto as Exhibit A (the "Property") and in the Area Description in Section 1.A of this Agreement; and

WHEREAS, the purpose of this Agreement is to define the development standards, conditions and improvements, schedule for development of the Community and other terms and conditions pursuant to which the Community proposed by Developer is to be developed within the City; and

WHEREAS the City is willing to grant the R-M (Multiple Family Residential District) rezone of the Property with the Mixed-Use Zoning District Overlay to a portion of the Property as further set forth in this Agreement and to generally authorize the development of the Community proposed by Developer in conformance with this Agreement, City Ordinances, and applicable Utah law;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**1. GENERAL DESCRIPTION.**

- A. Area Description. The Property upon which the Community will be constructed is located as shown on the Property Location Map, a copy of which is attached as Exhibit A hereto and incorporated by reference herein. The property is further described as a 6.435 acre parcel of real property identified on the Davis County records as parcel #11-095-0106 and addressed as 391 North Flint Street.
- B. Project Description. The project proposed by Developer is a mixed-use development consisting of rentable commercial space (office/retail) and residential space including single family homes, twin homes, townhomes and/or apartments substantially

conforming to the concept site plan attached hereto as Exhibit B and incorporated by this reference (the "Site Plan").

C. Subdivision for Mixed-Use Overlay. Development of the Community will require a subdivision of the Property once the City Council has approved a rezone of the Property to R-M (Multiple Family Residential District) with the Mixed-Use Zoning District Overlay on the eastern portion of the Property fronting Flint Street. Consequently, within 180 days of the date the City Council approves such rezoning request, Developer shall apply for, and the City shall grant, subdivision of the Property into two separate parcels that substantially complies with the Site Plan and separates the Property into a (a) "Mixed-Use Overlay Parcel" consistent with the legal description of said parcel set forth on Exhibit C attached hereto and incorporated by this reference, and (b) a R-M Parcel, which consists of the remainder of the Property other than the Mixed-Use Overlay Parcel portion (and each referred to in this Agreement as the "Mixed-Use Overlay Parcel" and the "R-M Parcel", respectively). The City hereby acknowledges that Developer would not seek subdivision of the Property prior to receiving City approval of the Community, and as such, approval of the subdivided parcels with approval of the portions of the Community to be built thereon shall be provided in timely manner as a matter of right as long as Developer submits such subdivision request in compliance with the other terms and conditions of this Agreement.

D. Developer agrees to create an Owner's Association for the entire Community which will include maintaining, repairing, replacing, etc. all commonly owned ground, property, and amenities, including the trail, playground area, landscaped areas, parking, driveways, sidewalks, park strips etc. If so desired, Developer may create two separate Owner's Associations, one for the R-M Parcel and one for the Mixed-Use Overlay Parcel. Creation of the Owner's Association(s) shall be recorded for all effected properties and shall follow all laws governing such Associations.

## 2. DEVELOPMENT STANDARDS AND GUIDELINES

A. Adoption of Development Standards. As allowed by Kaysville City Code 17-27-7, the City hereby adopts, as the development standards and guidelines for the Community (the "Development Standards"), the following in addition to all other applicable City Ordinances, standards and guidelines:

(1) Compliance with Approved Plans. Developer shall develop the site in substantial compliance with the Site Plan. This includes:

- a. Approximately 18,000 square feet of rentable commercial space within the Mixed-Use Overlay Parcel;
- b. 36 residential units within the Mixed-Use Overlay Parcel;
- c. 97 parking stalls within the Mixed-Use Overlay Parcel;

- d. 16 single family and/or twin homes on the north side of the Extended Road (as defined below) and along the existing fence on the north side of the Property within the R-M Zone;
- e. No more than 30 townhomes on the south side of the Extended Road and/or along the existing fence bordering the Smith's retail development on the south side of the Property within the R-M Zone;
- f. Approximately 1.8 total acres of open space (including park strips, etc.) shall be provided for the Community with open space to include an area with playground equipment for children and open space shall be counted towards the requirement for both the R-M Parcel and the Mixed-Use Overlay Parcel;
- g. Connectivity between the sidewalks and/or pathways within the Community and the rail trail adjacent to the west border of the Property; and.
- h. Setbacks within the Development shall follow those presented in the site plan attached in Exhibit B in all material respects.

(2) Density. Based on the size of the Property within the R-M Parcel, Developer and City are aware the Developer may construct up to 71 dwelling units within the R-M Parcel. In consideration of this Agreement, Developer agrees, and the City approves, the construction of up to 46 dwelling units within the R-M Parcel. Within the Mixed-Use Overlay Parcel, Developer agrees, and the City approves, 36 residential units. The overall Community unit count shall not exceed 82 units.

(3) Architecture. Developer shall construct the Community in substantial compliance and conformance with the Architecture styles known as Craftsman, Traditional or contemporary Farmhouse, *provided however*, that within the Mixed-Use Overlay Parcel the buildings shall be constructed in a commercially reasonable manner using Architectural styles generally found in other mixed-use developments in Davis County, Utah.

(4) Building Height. In the Mixed-Use Overlay Parcel, no building shall be permitted to exceed thirty-five feet (35') in height as defined by Kaysville City Ordinances. In the R-M Parcel, no building shall be permitted to exceed thirty feet (30') in height as defined by Kaysville City Ordinances.

(5) Fencing. The existing fence along the north side of the Property shall be replaced with a new fence installed along property lines shared with existing residential homes. The new fencing shall be a solid or visual screening structure and shall meet all fence standards as defined by Kaysville City Ordinances.

(6) Commercial Uses. Developer agrees to use the first floor of any building within the Mixed-Use Overlay Parcel as rentable commercial space.

(7) Parking. Developer acknowledges the parking requirements of the Kaysville City Code and shall provide parking as follows:

- a. Within the R-M Parcel, each dwelling unit shall have a dedicated garage, and the number of parking stalls shall meet or exceed requirements set forth in Kaysville City Code 17-32-5-2. There shall also be provided an additional seven parking stalls to be dispersed on the R-M Parcel. Placement of these parking stalls is at the discretion of Developer so long as they are approximately located west of the block of twelve townhomes furthest to the east side of the R-M Parcel.
- b. Within the Mixed-Use Overlay Parcel Developer shall provide 3.5 stalls per 2,000 feet of rentable commercial space and shall comply with Kaysville City Code 17-32-5-2 with respect to any residential units within the Mixed-Use Overlay Parcel; *provided* that Developer may receive duplicative credit of up to two stalls for the rentable commercial space requirement and residential unit requirement (e.g., if 103 spaces are required total per code for both commercial and residential, Developer will be deemed to be in compliance by providing 101 spaces) as allowed by Kaysville City Code 17-27-7-5.

(8) Road Connection. Developer agrees to construct a road built to city standards which will connect Pleasant View Drive with Flint Street in substantially the manner conceived in the Site Plan. Developer agrees to construct the street in accordance with adopted City standards. Any modifications to those standards such as the crosswalk and bulb-outs shown on Exhibit B shall be constructed only with prior approval from the Public Works Department and shall have engineering studies validating the need or desirability of such improvements.

(9) Landscaping. Developer will not install grass or sod in park strip areas but will use water wise vegetation and materials. Developer agrees to use water wise vegetation and materials in other landscaping areas where commercially reasonable. To provide screening and privacy, trees shall be planted between the R-M Parcel and existing housing to the north at a minimum distance of 30'.

(10) Neighbor Concessions. Developer has held several meetings with residents in close proximity to the Property to gather feedback and understand potential neighbor concerns with the Community. Developer desires to develop the Community in a manner that responds to such concerns where commercially reasonable, and as such the site plan includes the following items that are included as a result of the Developer's efforts to incorporate neighbor feedback into the Community:

- a. The northern-most building in the Mixed-Use Overlay Parcel is designed to be two stories instead of three stories in order to provide a more gradual

transition from single-family homes facing Flint Street to the north of the Community.

- b. The improvements on the north side of the Community (north of the new extended Pleasant View Drive) were designed to be single-family homes in order to have “like border like” and act as a more natural transition.
- c. The Community was originally designed to have a cluster of four townhomes in the northwest corner of the Property (to the west of Pleasant View Drive) but that was changed to two connected single-family units in response to concerns from the neighbor immediately to the north (Jake and Sharon Garn).
- d. Installing a walking trail system that connects the Community to the rail trail to the west.
- e. Pending approval from the Utah Transit Authority, connecting the Community trail system to the rail trail system on the side by Smith's as opposed to along the northwest corner of the Community (which adds linear feet and will increase costs to construct the Community) in order to draw foot traffic away from the single-family home that borders the northwest corner of the Community. Should the Utah Transit Authority not approve a formal trail connection, Developer shall create an informal connection to the rail trail by creating an informal pathway to the westernmost boundary of the Community property as long as creation of such informal pathway is not contested by the Utah Transit Authority or does not violate any state or local law, regulation or policy.
- f. Design of walking trail between the fence on the north side of the Community and the patio homes to be developed in order to add further “buffer” between the new Community and the existing single-family homes to the north.
- g. Orientation of the townhome clusters in order to promote view corridors in response to concerns that tight single family, two-story homes or other kinds of commercial development can create a “wall” feel.
- h. Providing a park for new Community residents.
- i. Replacement of the existing chain link fence along the north side of the Property with a more presentable and functional fence (See Section 2.A(5) above).

j. Placement of screening trees along the north side of the Property (See Section 2.A(9) above).

B. Findings of Compatibility. In adopting the Development Standards identified in Section 2.A, the City hereby expressly finds that the development of the Community, in conformance with the Development Standards and this Agreement, promotes the creation of a desirable residential Community in an appropriate location. The City further finds that the development of the Community, in conformance with the Development Standards and this Agreement, will not violate the general purpose, goals and objectives of the City Ordinances and any plans adopted by the Planning Commission and City Council.

Subject to the Developer's performance and compliance with the terms of this Agreement and City Ordinances in effect on the date of this Agreement, Developer's rights to develop the Community in accordance with the approved site plan, construction drawings and building plans is vested.

### **3. ON-SITE PROJECT IMPROVEMENTS**

Developer shall construct and install all site improvements, including utilities, required for the Community, at Developer's sole cost and expense, in compliance with approvals, and all applicable ordinances, regulations, standards and status of the City, the secondary water provider as applicable, The Central Davis Sewer District, and other relevant providers and the State of Utah.

### **4. OFF-SITE PROJECT IMPROVEMENTS**

In accordance with applicable standards and subject to the design approval of the City Engineer, Developer shall construct and install street improvements, sidewalks, utilities, and drainage improvements along the Property frontage with Flint Street with the construction of the on-site improvements.

### **5. REPRESENTATIONS OF DEVELOPER**

A. Authority. Developer hereby represents that it has authority to proceed with the Community.

B. Ability. Developer represents that it has the ability to timely proceed with the development and construction of the Community. Developer agrees to begin construction of the Community as soon as practicable and use commercially reasonable efforts to complete development of units within the R-M Parcel and/or Mixed-Use Overlay Parcel with occupancy approval by December 31, 2024 absent the occurrence of any global pandemic or

systematic supply-chain disruptions, in which case Developer shall be given additional time to complete development as soon as reasonably practicable.

## **6. ASSIGNMENT**

Developer may assign this Agreement to any other third party provided that the City staff consents to such assignment, which consent shall not be unreasonably withheld, conditioned or delayed upon a showing to the satisfaction of the City staff that such third party has the financial ability to perform Developer's obligations hereunder *provided, however that* Developer may assign this Agreement to any other third party in which Developer, or any affiliate of Developer, holds an ownership interest without the consent of the City staff.

## **7. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## **8. ATTORNEY'S FEES**

In the event of any dispute between the parties hereto arising out of or relating to this Agreement or the breach hereof, or the interpretation hereof, or brought to enforce the terms hereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, including, without limitation, reasonable attorneys' fees, and costs incurred herein, or in the enforcement or collection of judgment or award rendered therein.

## **9. SEVERABILITY**

If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

## **10. CAPTIONS**

The section and paragraph headings contained in this Agreement are for the purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

## **11. GOVERNING LAW**

This Agreement and all matters relating hereto, shall be governed by, construed and interpreted in accordance with the laws of the State of Utah without regard to the conflict or choice of law provisions thereof.

## **12. ENTIRE AGREEMENT**

This Agreement, together with the exhibits attached hereto, constitutes the entire understanding and agreement by and among the parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

## **13. CONSTRUCTION**

As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

## **14. AUTHORIZATION OF EXECUTION**

A. City. The execution of this Agreement by the City has been authorized by the City Council of Kaysville City at a regularly scheduled meeting of that body, pursuant to the notice.

B. Developer. The execution of this Agreement has been duly authorized by the Developer.

*(remainder of page intentionally left blank; signature page follows)*

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

Millstream Partners

Authorized Signer

TITLE

By: Greg Nelson

Greg Nelson  
TITLE NAME

On the 15<sup>th</sup> day of March, 2023, personally appeared before me, Greg Nelson, the signer of the foregoing Development Agreement for 391 North Flint Street, who duly acknowledged to me that he executed the same for and on behalf of Millstream Management, LLC, a Utah limited liability company.

Mindi R. Edstrom

NOTARY PUBLIC

(SEAL)

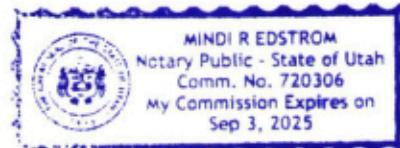
STATE OF UTAH

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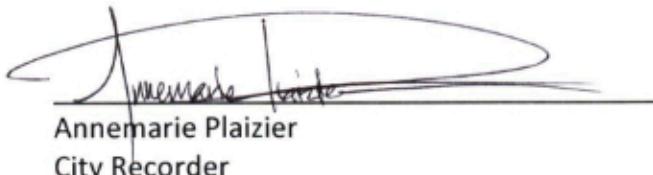
: SS.

COUNTY OF DAVIS

)



ATTEST:



Annemarie Plaizier  
City Recorder

KAYSVILLE CITY

By:



Tamara Tran  
Mayor



STATE OF UTAH )  
: ss.  
COUNTY OF DAVIS )

On the 14 day of March, 2023, personally appeared before me TAMARA TRAN, and ANNEMARIE PLAIZIER, who being by me duly sworn did say, each for herself that she, the said TAMARA TRAN, is the Mayor of Kaysville City, Davis County, State of Utah and that she, the said ANNEMARIE PLAIZIER, is the City Recorder of Kaysville City, and that the within and foregoing instrument was signed on behalf of the said Kaysville City by authority of the City Council of Kaysville City and said TAMARA TRAN and ANNEMARIE PLAIZIER, each duly acknowledged to me that the said Kaysville City executed the same and that the seal affixed is the seal of the said Kaysville City.

  
NOTARY PUBLIC

(SEAL)

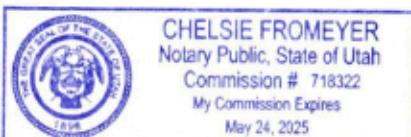


EXHIBIT A

PROPERTY LOCATION MAP & LEGAL DESCRIPTION



LEGAL DESCRIPTION:

BEG AT A PT ON THE E BNDRY LINE OF THE UTAH TRANSIT AUTHORITY PPTY, SD COR BEING S 89<sup>°</sup>31'10" E 181.65 FT ALG THE SEC LINE & N 761.02 FT FR THE W 1/4 COR OF SEC 33-T4N-R1W, SLB&M; TH N 34<sup>°</sup>42'20" W 154.32 FT ALG SD E LINE TO THE SW COR OF FLINT MEADOWS SUB; TH N 49<sup>°</sup>20'55" E 718.30 FT ALG THE S BNDRY LINE OF SD FLINT MEADOW SUB TO THE SW COR OF THE LARRY & CLAIR HARRIS PPTY; TH N 49<sup>°</sup>54'19" E 57.97 FT (N 46<sup>°</sup>13'27" E 37.47 FT BY DEED) ALG THE S BNDRY LINE OF SD HARRIS PPTY TO THE NW COR OF THE LLOYD & JERALDINE COLEMERE PPTY; TH THE FOLLOWING 2 (TWO) COURSES BEING ALG SD COLEMERE PPTY: (1) S 22<sup>°</sup>40'32" E 185.18 FT (S 23<sup>°</sup>25'00" E 188.10 FT BY DEED); (2) N 48<sup>°</sup>00'00" E 155.73 FT (N 45<sup>°</sup>25'00" E BY DEED) TO A PT ON THE W'LY LINE OF FLINT STR, SD PT BEING 39.00 FT PERP'LY DISTANT W'LY FR THE CENTERLINE THEREOF; TH S 22<sup>°</sup>37'45" E 360.56 FT (S 23<sup>°</sup>25'00" BY DEED) TO A PT ON THE N'LY BNDRY LINE OF KAYSVILLE NEIGHBORHOOD CENTER SUB; TH THE FOLLOWING 3 (THREE)

COURSES BEING ALG SD KAYSVILLE NEIGHBORHOOD CENTER SUB: (1) S 67<sup>°</sup>22'15" W 190.00 FT (S 65<sup>°</sup>28'30" W BY DEED); (2) N 22<sup>°</sup>37'45" W 103.54 FT (S 24<sup>°</sup>31'30" E BY DEED); (3) S 67<sup>°</sup>22'15" W 663.14 FT TO THE POB. CONT. 5.77 ACRES. ALSO, BEG ON W LINE OF PPTY CONV IN WARRANTY DEED RECORDED 05/08/2014 AS E# 2802674 BK 6014 PG 62, AT A PT 21.60 CHAINS E & 22.15 CHAINS N 23<sup>°</sup>25' W & S 48<sup>°</sup>17'56" W 6.36 FT FR SW COR OF NW 1/4 OF SEC 33-T4N-R1W, SLM; TH S 45<sup>°</sup>25' W 153.36 FT; TH N 23<sup>°</sup>25' W 2.85 CHAINS TO BNDRY LINE AGMT 2216-1174; TH ALG SD AGMT THE FOLLOWING COURSE: N 48<sup>°</sup>00'00" E 153.15 FT TO W LINE HWY #6; TH S 22<sup>°</sup>19'50" E 184.59 FT ALG SD W LINE TO POB. CONT. 0.665 ACRES. TOTAL ACREAGE 6.435 ACRES. (NOTE: THIS REMAINING LEGAL WAS WRITTEN IN THE DAVIS COUNTY RECORDER'S OFFICE FOR I.D. PURPOSES. IT DOES NOT REFLECT A SURVEY OF THE PROPERTY.)

3588754  
BK 8594 PG 666

**EXHIBIT B**

**SITE PLAN**

(see attached)

3588754  
BK 8594 PG 667

Final Property Site Plan





**EXHIBIT C**

**MIXED-USE OVERLAY PARCEL DESCRIPTION**

A part of the Northwest Quarter of Section 33, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, in Davis County, Utah:

Beginning at the Northeasterly Corner of Lot 1, Kaysville Neighborhood Center Subdivision on the Westerly Line of Flint Street as widened to 39.00 foot half-width located 1000.61 feet South 89°13'14" East along the Section Line; and 1000.63 feet North 0°46'46" East from the West Quarter Corner of said Section 33; and running thence South 67°40'11" West 190.03 feet along the Northerly Line of said Lot 1 to an angle point in said Northerly Line; thence North 22°19'49" West 111.50 feet along the Northerly Line of said Lot 1 and said line extended; thence North 67°40'11" East 40.18 feet; thence North 22°19'49" West 220.48 feet; thence North 10°34'57" West 79.56 feet; thence North 22°19'49" West 88.87 feet; thence North 48°31'15" East 141.48 feet to the Westerly Line of said Flint Street; thence South 22°19'50" E 545.15 feet along said Westerly Line to the point of beginning.

**Contains 80,248 sq ft  
or 1.842 acres**