

MILLCREEK, UTAH
ORDINANCE NO. 19-30

AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR A MIXED USE PROJECT WITH RESPECT TO APPROXIMATELY 1.92 ACRES OF REAL PROPERTY LOCATED AT APPROXIMATELY 3975 AND 3999 SOUTH MAIN STREET

WHEREAS, the Millcreek Council (“*Council*”) met in regular meeting on June 24, 2019, to consider, among other things, an ordinance of the Millcreek Council approving a master development agreement for a mixed-use project with respect to approximately 1.92 acres of real property located at approximately 3975 and 3999 South Main Street; and

WHEREAS, the Utah Code Ann. § 10-9a-102 authorizes, among other things, that the City may enter into development agreements; and

WHEREAS, staff has presented to the Council a Development Agreement for the referenced property (“Development Agreement”); and

WHEREAS, Council has reviewed the Development Agreement and hereby find that it is in the best interests of the both parties to enter into the Development Agreement; and

NOW, THEREFORE, BE IT ORDAINED that the Development Agreement is approved, and the Mayor and Recorder are hereby authorized and directed to execute and deliver the same.

PASSED AND APPROVED by the Council this 24th day of June, 2019.

MILLCREEK

Jeff Silvestrini, Mayor

ATTEST:

Elyse Greiner, City Recorder

Roll Call Vote:

Silvestrini	Yes	No
Marchant	Yes	No
Jackson	Yes	No
Catten	Yes	No
Uipi	Yes	No

CERTIFICATE OF POSTING

I, the duly appointed recorder for Millcreek, hereby certify that:
ORDINANCE 19-31: AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A
DEVELOPMENT AGREEMENT FOR A MIXED USE PROJECT WITH RESPECT TO
APPROXIMATELY 1.92 ACRES OF REAL PROPERTY LOCATED AT APPROXIMATELY
3975 AND 3999 SOUTH MAIN STREET
was passed and adopted the 24th day of June, 2019 and certifies that copies of the foregoing
Ordinance 19-31 were posted in the following locations within the municipality this ____ day of
_____, 2019.

1. Millcreek City Office, 3330 S. 1300 E., Millcreek, UT 84106
2. Millcreek Community Center, 2266 E. Evergreen Ave., Millcreek, UT 84109
3. Calvin S. Smith Library, 810 E. 3300 S., Millcreek, UT 84106

Elyse Greiner, City Recorder

When recorded, return to:

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

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into this 24th day of June, 2019, by and between JF Glenwood LLC (“Developer”), for the land to be included in or affected by the project located at approximately 3975 to 3999 S. Main in Millcreek Utah, a municipal corporation of the State of Utah (“City”). The Developer and the City are sometimes referred to as the “Parties.”

RECITALS

WHEREAS, Developer owns approximately 1.89 acres of real property located at 3975 to 3999 S. Main in Millcreek, Utah (“Property”) and intends to develop the Property. A legal description of the Property is attached hereto as exhibit “A.” The Parties desire that the Property be developed in a unified and consistent fashion and establish minimum standards for a new mixed-use development consisting of apartments and commercial space (the “Project”) on the Property; and

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

WHEREAS, Developer is willing to restrict the Property in a manner that is in harmony with the objectives of the City’s General Plan and long-range development objectives, and which addresses the more specific development issues set forth in this Agreement, and is willing to abide by the terms of this Agreement; and

WHEREAS, the City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, Utah Code Ann. §10-9a-101, *et seq.*, and its ordinances, resolutions, and regulations, and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries is attached as exhibit “A.” No additional property may be added to or removed from this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City.

2. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land-use plans, policies, ordinances and regulations after the date of this Agreement, provided that the adoption and exercise of such power shall not restrict Developer’s vested rights to develop the Project as provided herein. This Agreement is not intended to and does not bind the Millcreek Council in the independent exercise of its legislative discretion with respect to such zoning regulations.

3. **Compliance with City Ordinances and Standards.** Developer acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable ordinances and requirements of the City necessary for development of the Project, including the payment of fees, and compliance with applicable City standards.

4. **Specific Design Conditions.** The Project shall be developed and constructed as set forth in the specific design conditions/criteria set forth in exhibit “B. The Project shall also comply with all requirements set forth in the minutes of the Millcreek Planning Commission and Millcreek meetings on this matter.

5. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder, shall be deemed to run with the Property, and shall encumber the same; and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property. This Agreement supersedes any and all development agreements that have been executed concerning the Property.

6. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without the consent of the other party. This Agreement shall be binding upon any successors and assigns. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

7. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties, except as expressly provided herein.

8. **Integration, Modification, and Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto. Exhibits A and B are hereby incorporated into this Agreement.

9. **Notices.** Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for whom intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the parties as follows:

TO DEVELOPER: JF Glenwood LLC
1148 W. Legacy Crossing Blvd.
Centerville, UT 84014

TO CITY: Millcreek
Jeff Silvestrini, Mayor
3330 South 1300 East
Millcreek, Utah 84106

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

10. **Choice of Law and Venue.** Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah. Any Utah litigation regarding this Agreement shall be filed in the Third District Court in Salt Lake City, Utah. Any federal litigation regarding this Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

11. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

12. **Limitation on Recovery for Default – No Damages.** No party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto. The sole remedy available to Developer or and assignee shall be that of specific performance. Notwithstanding such limitation the City may withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Develop or any assignee.

13. **Term of Agreement.** The term of this Agreement shall be until **December 31, 2028** and shall automatically expire on such date.

14. **Force Majeure.** Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

15. **Construction.** The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

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

17. **No Waiver.** The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

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

Millcreek

Jeff Silvestrini, Mayor

ATTEST:

Elyse Greiner, City Recorder

DEVELOPER

By: _____

Title: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Jeff Silvestrini as the Mayor, respectively, of Millcreek, a Utah municipality.

Notary Public

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

The foregoing instrument was acknowledged before me this ___ day of _____ 2019 by _____.

Notary Public

Exhibit A

Parcel No. 16-31-351-005
3975 S. Main

Legal Description

COM 688 FT S & 359.1 FT E FR NW COR LOT 10 BLK 9 10 AC PLAT A BIG FIELD SUR
N 60 FT W 338.68 FT M OR L TO E LINE OF ST S1°16' W 60.01 FT E 340 FT M OR L TO
BEG 0.47 AC.

Parcel No. 16-31-351-006
3999 S. Main

COM 748 FT S & 359.1 FT E FR NW COR LOT 10 BLK 9 10 AC PLAT A BIG FIELD SUR
N 60 FT W 340 FT M OR L TO E LINE OF ST S 0°16' W 60.01 FT E 342.65 FT M OR L TO
BEG 0.47 AC.

Parcel No. 16-31-351-007
3999 S. Main

COM 868 FT S & 359.1 FT E FR NW COR LOT 10 BLK 9 10 AC PLAT A BIG FIELD SUR
N 120 FT W 342.65 FT TO STREET S 1°16' W 120.03 FT E 345.3 FT TO BEG 0.95 AC.

Exhibit B

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

1. **Height.** The height of the building will not exceed 66ft. 6 inches in height as measured from original ground surface, as defined by section 19.04.095 of the Millcreek Code.
2. **Setbacks.** The setbacks for the building will be as established on the attached site plan, Exhibit C.
3. **Parking.** The project will include 303 parking stalls for the development for a ratio of 1.72 stalls per unit.
4. **Commercial Space.** The project will consist of 3,800 square feet of commercial space covering at least 50% percent of the project frontage.
5. **Amenities.** The following amenities, which would typically be found in an upscale development, will be provided for the development:
 - Clubhouse with kitchen and lounge area (700–1,000 square feet)
 - Gym with fitness equipment and weights (700–1,000 square feet)
 - Game room area with TVs and seating/game areas (300-400 square feet)
 - Outdoor patio area with landscaping and seating (300-500 square feet)
 - 2 outdoor elevated plaza areas with seating/firepits/game area (approximately 1,100 square feet total)
 - Co-working space with desks/conference rooms (800-1,200 square feet)
 - On-site secure covered parking (approximately 108,000 square feet)
 - In unit laundry, a small room/closet in each apartment
6. **Units.** The project will consist of 117 two-bedroom units and 59 one-bedroom units.
7. **Landscaping.** Provide landscaping per Chapter 19.77 of the Millcreek Zoning Ordinance to include suitable street trees, street furniture and lighting along the frontage. Street trees, lights and furniture will be installed subject to the approval of the Millcreek Community Development and Engineering Departments.
8. **Materials.** The project will consist of the materials as shown in Exhibit D.
9. Arrangement of the materials, windows and the structure will be as indicated in Exhibit D.
10. Install street improvements to Main Street per Millcreek Engineering design.
11. Design to LEED, Enterprise Green Community, or similar standards; and incorporate best practices and low-impact designs for storm water management.

Exhibit C

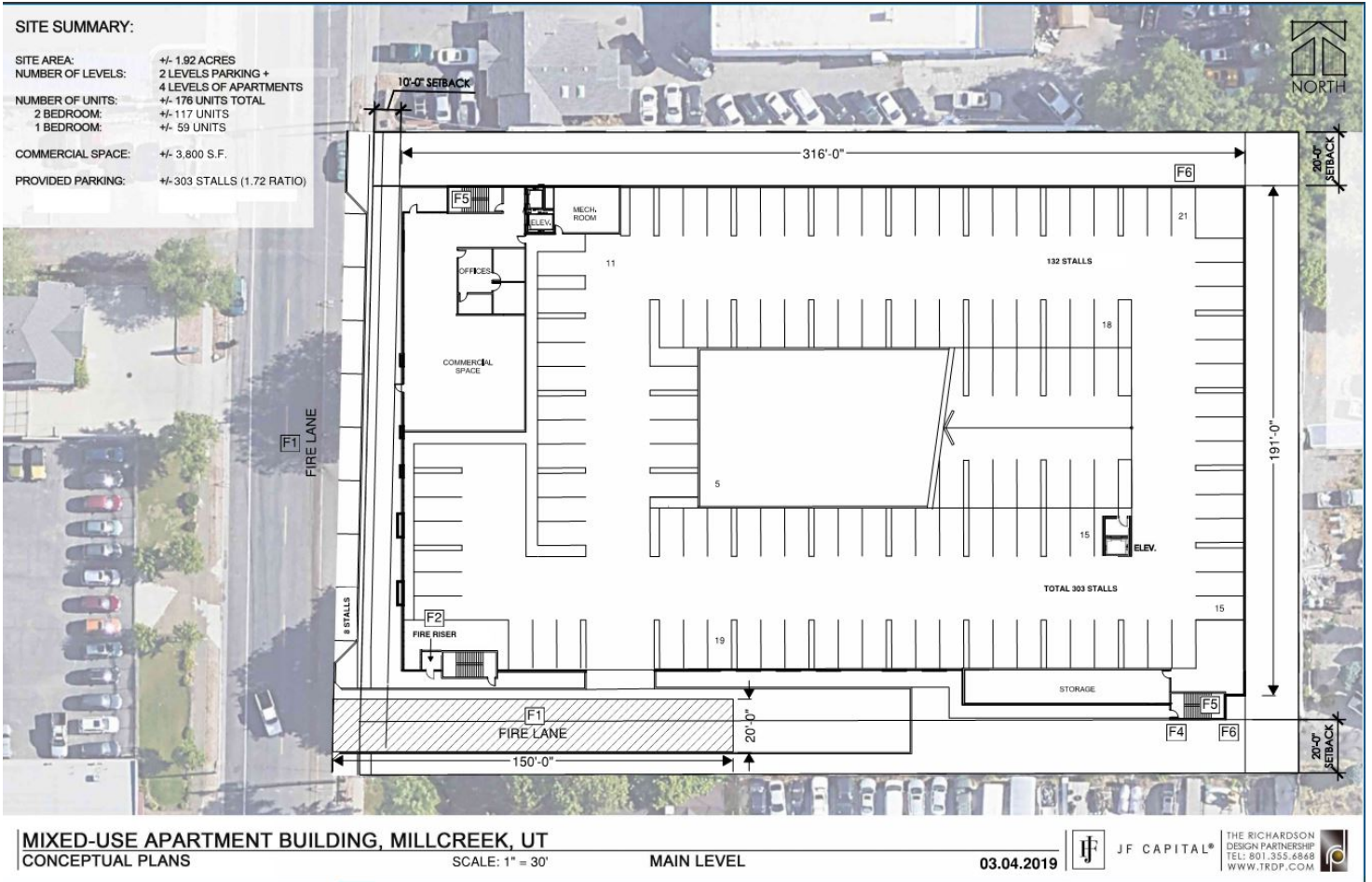


Exhibit D



MIXED-USE APARTMENT BUILDING, MILLCREEK, UT
CONCEPTUAL EXTERIOR DESIGN

05.08.2019



JF CAPITAL®

THE RICHARDSON
DESIGN PARTNERSHIP
TEL: 801.355.8888
WWW.TRDP.COM



- | | |
|---|--|
|  (WD-1)
Longboard Light Cherry
6" groove plank |  (ST-2)
Chelsea Grey Stucco |
|  (BR-1) Brick |  (ST-3)
Urbane Bronze Stucco |
|  (ST-1)
Amber Wave Stucco |  (ST-4)
Ivory Lace Stucco |

Exhibit D (cont.)



	(WD-1) Longboard Light Cherry 6" groove plank		(ST-2) Chelsea Grey Stucco
	(BR-1) Brick		(ST-3) Urbane Bronze Stucco
	(ST-1) Amber Wave Stucco		(ST-4) Ivory Lace Stucco