

MILLCREEK, UTAH
ORDINANCE NO. 20-15

AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR A NEW NORTH TOWER ON THE ST. MARK'S HOSPITAL PROPERTY WITH RESPECT TO APPROXIMATELY 22.707 ACRES OF REAL PROPERTY LOCATED AT APPROXIMATELY 1200 E., 1120 E., 1140 E., 1160 E., 1250 E., & 3900 S.

WHEREAS, the Millcreek Council ("*Council*") met in regular meeting on March 23, 2020, to consider, among other things, an ordinance of the Millcreek Council approving a master development agreement for a new North Tower on the St. Mark's Hospital property with respect to approximately 22.707 acres of real property located at approximately 1200 E., 1120 E., 1140 E., 1160 E., 1250 E., & 3900 S.; 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.

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 23rd day of March 2020.

MILLCREEK

Jeff Silvestrini, Mayor

ATTEST:

Elyse Sullivan, 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 20-15: AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR A NEW NORTH TOWER ON THE ST. MARK'S HOSPITAL PROPERTY WITH RESPECT TO APPROXIMATELY 22.707 ACRES OF REAL PROPERTY LOCATED AT APPROXIMATELY 1200 E., 1120 E., 1140 E., 1160 E., 1250 E., & 3900 S.

was passed and adopted the 23rd day of March, 2020 and certifies that a summary was published in the Deseret News and Salt Lake Tribune the __ day of March, 2020.

Elyse Sullivan, 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 ___ day of _____, 2020, by and between **((Name))** (“Developer”), for the land to be included in or affected by the project located at approximately 1200 E, 1120 E, 1140 E, 1160 E, 1250 E 3900 S 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 22.707 acres of real property located at 1200 E, 1120 E, 1140 E, 1160 E, 1250 E 3900 S 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 medical development consisting of a five story tower addition to St Marks hospital (the “Project”) on the Property; and

WHEREAS, Developer hereby represent 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:	Developer Name
	Developer Address

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 Sullivan, City Recorder

DEVELOPER

By: _____

Title: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, 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 _____ 2020 by _____.

Notary Public

Exhibit A

**Parcel No. 16-32-429-007, 16-32-429-002, 16-32-429-005, 16-32-429-006, 16-32-429-001
1200 E, 1120 E, 1140 E, 1160 E, 1250 E, & 3900 S**

Legal Description

PARCEL 1 (TAX ID NO. 16-32-429-007 & 16-32-429-002) (Record):

Beginning at a point South 00°06'20" West 7.00 feet and South 89°47'30" West 7.00 feet from the Northeast corner of Lot 10, Block 3, Ten Acre Plat "A", Big Field Survey, and running thence South 00°06'20" West 138.20 feet; thence West 7.00 feet; thence South 00°06'20" West 270.00 feet; thence East 7.00 feet; thence South 00°06'20" West 158.58 feet to the North line of Hylai Park Subdivision; thence South 89°49'39" West along said North line 752.14 feet to the Northwest corner of Lot 40 of said subdivision; thence South 00°05'56" West along the West line of said subdivision 200.44 feet to the Northeast corner of Lot 36, The Manor No. 3; thence West along the North line of The Manor No. 3, 208.00 feet; thence North 18.14 feet; thence West 145.00 feet; thence South 18.14 to the North lot line of Lot 49, The Manor No. 4; thence West along the said lot line 101.752 feet; thence North 30.00 feet; thence West 304.39 feet to the West line of Block 3 aforesaid; thence North 00°05'36" East along said West line 488.25 feet; thence North 89°48'20" East 394.58 feet; thence North 00°05'47" East 238.95 feet to a point 14.00 feet South from the North line of Block 3, Ten Acre Plat "A", Big Field Survey; thence North 89°47'20" East 205.00 feet; thence North 7.00 feet; thence North 89°47'20" East 260.00 feet; thence South 7.00 feet; thence North 89°47'20" East 270.00 feet; thence North 7.00 feet; thence North 89°47'20" East 381.77 feet to the Point of Beginning.

PARCEL 2 (TAX ID NO. 16-32-429-005):

Beginning at a point on a building corner, said point being South 55°31'55" West 570.14 feet from the Northeast corner of Lot 10, Block 3, Ten Acre Plat "A", Big Field Survey, and running thence North 00°16'51" West along said building 14.14 feet; thence South 45°16'51" East 37.36 feet; thence North 89°43'09" East 58.58 feet; thence South 00°18'51" East 189.80 feet; thence South 89°51'47" West 120.03 feet; thence North 00°15'19" West 135.96 feet; thence North 24°07'18" West 45.57 feet to an existing 4 story building; thence along said building 5 courses, North 89°43'09" East 14.14 feet; thence North 00°16'51" West 32.15 feet; thence North 89°43'09" East 8.30 feet; thence South 48°09'19" East 11.95 feet; thence North 89°43'11" East 22.00 feet to the Point of Beginning.

PARCEL 3 (TAX ID NO. 16-32-429-006):

Beginning at a point 2.33 feet North of the East face of the West wall of an existing expansion joint on the North side of the existing HCA St. Mark's Hospital, said point being North 89°47'40" East along the South line of 3900 South Street 593.57 feet and South 00°12'20" East 277.75 feet from the Northwest corner of Lot 9, Block 3, Ten Acre Plat "A", Big Field Survey, and running thence South 89°47'40" West 14.30 feet; thence North 45°12'20" West 69.13 feet; thence South 89°47'40" West 105.95 feet; thence North 00°12'20" West 51.04 feet; thence South 89°47'40" West 9.21 feet; thence North 00°12'20" West 77.58 feet; thence North 89°47'40" East 174.46 feet; thence South 00°12'20" East 121.00 feet; thence North 89°47'40" East 4.71 feet; thence South 00°12'20" East 47.50 feet; thence South 89°47'40" West 0.83 feet; thence South 00°12'20" East 9.00 feet to the Point of Beginning.

PARCEL 4 (TAX ID NO. 16-32-429-001):

Commencing at the Northwest corner of Lot 9, Block 3, Ten Acre Plat "A", Big Field Survey, thence South 253.5 feet; thence East 394.5 feet; thence North 253.5 feet; thence West 394.5 feet to Beginning. Less Road.

Exhibit B

1. Removal of all the shrubs to the South side property line. Shrubs must be replaced with some landscaping that can help mitigate noise.
2. Additional screening around accessory utility structures or any generators on the property located within 100 feet of a residence shall be required.
3. For any development on the property that requires a building permit, a parking is required to be provided to the City at the time of building permit application to regulate parking use for employees and patients.
4. Additional trees shall be planted on the South property line where not currently being utilized as screening for the property. Trees, when matured, shall be at 25-30 feet in height and must be compatible with existing landscaping. Minimum distance between trees shall be 20 feet.
5. Wall located on the South property line must be enhanced where deteriorated.
6. No additional parking garage structures may be built within 100 feet of the South property line abutting residential uses.