

MILLCREEK, UTAH
ORDINANCE NO. 22-08

**AN ORDINANCE APPROVING AN ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT AND AMENDMENT TO DEVELOPMENT
AGREEMENT**

WHEREAS, the Millcreek Council (“*Council*”) met in regular meeting on February 14, 2022 to consider, among other things, approving an Assignment and Assumption of Development Agreement and Amendment to Development Agreement for property located at or near 3821 South Parkview Drive; and

WHEREAS, the Council approved a development agreement (“Development Agreement”) for property located at or near 3821 South Parkview Drive (“Property”); and

WHEREAS, the Property has been sold and the new owner has requested an assignment and an amendment to the Development Agreement (“Assignment and Amended Development Agreement”) to correct an elevation that was benchmarked incorrectly; and

WHEREAS, staff has reviewed the request and recommends that an amendment be approved; and

WHEREAS, the Utah Code Ann. § 10-9a-101 et seq. authorizes, among other things, that the City may enter into development agreements; and

WHEREAS, staff has presented to the Council an Assignment and Amended Development Agreement for the Property; and

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

NOW, THEREFORE, BE IT ORDAINED that the Council hereby consents and approves the Assignment and Amended Development Agreement, and the Mayor and Recorder are hereby authorized and directed to execute and deliver the same.

This ordinance assigned no. 22-08, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED by the Council this 14th day of February, 2022.

MILLCREEK COUNCIL

Jeff Silvestrini, Mayor

ATTEST:

Elyse Sullivan, City Recorder

Roll Call Vote:		
Silvestrini	Yes	No
Catten	Yes	No
DeSirant	Yes	No
Jackson	Yes	No
Uipi	Yes	No

CERTIFICATE OF POSTING

I, the duly appointed recorder for Millcreek, hereby certify that:
Ordinance 22-08: AN ORDINANCE OF THE CITY COUNCIL OF MILLCREEK
APPROVING AN ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT
AND AMENDMENT TO DEVELOPMENT AGREEMENT was passed and adopted the 14th
day of February 2022 and certifies that copies of the foregoing Ordinance 22-08 were posted in
the following locations within the municipality this ____ day of February, 2022.

1. Millcreek City Hall, 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 Sullivan, City Recorder

After recording, return to:

MILLCREEK
ATTN: ELYSE SULLIVAN
3330 SOUTH 1300 EAST
MILLCREEK, UTAH 84106

REGARDING PARCEL NO(S): 16-36-327-043-000

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT
AND AMENDMENT TO DEVELOPMENT AGREEMENT**

This Assignment And Assumption Of Development Agreement And Amendment to Development Agreement (this “Assignment/Amendment”) is made this __ day of February, 2022 (the “Effective Date”), by and among Alison M. and Robert A. Renza (“Assignor”), and Brynna Thomas and Miles Maynes (“Assignee”).

RECITALS

A. Assignor is or was the owner of certain real property located at 3817 South Parkview Drive in Millcreek, Utah, as more particularly described on exhibit “A” attached hereto (the “Property”), which Assignor conveyed to Assignee.

B. In connection with the conveyance of the Property to Assignee, Assignor shall assign to Assignee and Assignee has agreed to accept and assume all of Assignor’s right, title and interest in and to that certain Development Agreement by and among Assignor, Assignee, and Millcreek, a Utah municipality (the “City”), dated April 4, 2018, and recorded April 10, 2018 as Entry No. 12750543, in Book 10663, at Pages 6174-6182, of Official Records of Salt Lake County Recorder’s Office, as it relates to the Property (the “Development Agreement”).

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

1. Assignor hereby transfers and assigns to Assignee all right, title and interest of Assignor in and to the Development Agreement as it relates to the Property (to the extent assignable) (the “Development Documents”).

TO HAVE AND TO HOLD all of the foregoing unto Assignee, its successors and assigns, from and after the date hereof, subject to the terms, covenants, conditions and provisions contained herein.

2. Assignee hereby accepts the foregoing assignment of the Development Documents and does hereby assume all the duties and obligations of Assignor with respect to the Development

Documents accruing from and after the Effective Date. Assignee shall indemnify and hold harmless Assignor from and against any and all claims, suits, judgments, costs, expenses or liabilities (including reasonable attorneys' fees) suffered or incurred by Assignor and arising out of Assignee's acts, omissions or failure to perform or fulfill any and all such obligations under the Development Documents first arising or accruing on or after the Effective Date (the "Assignee's Indemnification"); provided, however, that Assignee's Indemnification shall not apply to any negligence or willful misconduct on the part of Assignor either prior to or after the Effective Date. Assignee's Indemnification shall survive completion of the assignment contemplated hereby.

3. Assignor shall indemnify and hold harmless Assignee from and against any and all claims, suits, judgments, costs, expenses or liabilities (including reasonable attorneys' fees) suffered or incurred by Assignee and arising out of Assignor's acts, omissions or failure to perform or fulfill any and all such obligations under the Development Documents first arising or accruing prior to the Effective Date (the "Assignor's Indemnification"). Assignor's Indemnification shall survive completion of the assignment contemplated hereby.

4. Assignor and Assignee jointly and severally shall indemnify and hold harmless Millcreek from and against any and all claims, suits, judgments, costs, expenses or liabilities (including reasonable attorneys' fees) suffered or incurred or alleged to be suffered or incurred by Millcreek arising out of this Assignment. Assignor's and Assignee's indemnification herein shall survive completion of the assignment contemplated hereby.

5. Assignor represents and warrants to Millcreek that no default currently exists under the Development Agreement and no condition exists which, with the passage of time, would constitute an event of default under the Development Agreement.

6. Assignor represents and warrants that: (i) with the consent of the City as set forth herein, it possesses all rights and authority necessary to assign the Development Agreement to Assignee; (ii) the individual executing this Agreement on behalf of Assignor has authority to do so and to bind Assignor; (iii) the Development Agreement has not been amended or modified; (iv) to the best of Assignor's knowledge, having exercised due diligence, no default currently exists under the Development Agreement and no condition exists which, with the passage of time, would constitute an event of default under the Development Agreement.

7. Section 9 of the Development Agreement is hereby revised so that any notices, requests or demands required or desired to be given under the Development Agreement are sent to:

Brynn Thomas
690 East Downing Street
Midvale, Utah 84047

8. Exhibit B Item 3 is deleted in its entirety and the following is hereby inserted in lieu thereof:

3. The maximum height of a single-family dwelling on proposed lot 1 on Exhibit C will not exceed 30 feet above natural grade, not to exceed an elevation of 5,046 feet above sea level.

9. This Assignment shall be binding upon, and inure to the benefit of Assignor, Assignee, and their respective successors and assigns.

10. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Utah.

11. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

Robert A Renza

Alison M. Renza

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

The foregoing instrument was acknowledged before me this ____ day of _____ 2021 by _____.

Notary Public

ASSIGNEE:

Brynn Thomas

Miles Maynes

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

The foregoing instrument was acknowledged before me this ____ day of _____ 2021 by _____.

Notary Public

Millcreek Consent:

Millcreek, a Utah municipality hereby consents to this Assignment, dated as of February____, 2022, by and between Alison M. and Robert A. Renza, as assignors, and Brynn Thomas and Miles Maynes, as assignees, on the terms and conditions set forth therein.

MILLCREEK, a Utah municipality

Jeff Silverstrini, Mayor

Attest:

Elyse Sullivan, MMC, City Recorder

Approved as to form

John Brems, City Attorney

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

On the _____ day of _____, 2022, personally appeared before me Jeff Silvestrini, who, being by me duly sworn, did say that he is the Mayor of Millcreek, a Utah municipal corporation, and that said instrument was signed in behalf of the City by authority of its governing body and said Mayor acknowledged to me that the City executed the same.

Notary Public

Exhibit A

Parcel No. 16-36-327-043
3817 South Parkview Drive

Legal Description:

LOT 2, RENZA SUBDIVISION