

**MILLCREEK, UTAH**  
**ORDINANCE NO. 23-25**

**AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR A 3 LOT SUBDIVISION IN THE R-1-5 ZONE WITH RESPECT TO APPROXIMATELY 0.72 ACRES OF REAL PROPERTY LOCATED AT APPROXIMATELY 3564 S 1100 E**

**WHEREAS**, the Millcreek Council (“*Council*”) met in regular meeting on June 26, 2023, to consider, among other things, an ordinance approving a development agreement regarding a 3-lot subdivision in the R-1-5 zone with respect to approximately 0.72 acres of real property located at approximately 3564 S 1100 E; 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**, the Council has reviewed the Development Agreement and hereby find that it is in the best interests of 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 26<sup>th</sup> day of June, 2023.

**MILLCREEK**

\_\_\_\_\_  
Jeff Silvestrini, Mayor

**ATTEST:**

\_\_\_\_\_  
Elyse Sullivan, City Recorder

Roll Call Vote:

Silvestrini	Yes	No
DeSirant	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 23-25: AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A  
DEVELOPMENT AGREEMENT FOR A 3 LOT SUBDIVISION IN THE R-1-5 ZONE WITH  
RESPECT TO APPROXIMATELY 0.72 ACRES OF REAL PROPERTY LOCATED AT  
APPROXIMATELY 3564 S 1100 E  
was adopted the 26<sup>th</sup> day of June, 2023 and that a copy of the foregoing Ordinance 23-25 was  
posted in accordance with Utah Code 10-3-711 this \_\_\_\_\_ day of June, 2023.

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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 \_\_\_\_\_ 2023, by and between Austin Dent (“Developer”), for the land to be included in or affected by the project located at approximately 3564 South 1100 East 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**, the Developer owns approximately 0.72 acres of real property located at 3564 South 1100 East in Millcreek, Utah (“Property”). A legal description of the Property is attached hereto as Exhibit “A.” The Parties desire that the Property be developed (the “Project”) in a unified and consistent fashion pursuant to the terms and conditions of this Agreement; and

**WHEREAS**, the Property is currently zoned R-1-8 Single Family Residential; and

**WHEREAS**, the Developer desires to rezone the entirety of the Property, from the R-1-8 Zone to the R-1-5 Zone; and

**WHEREAS**, the Developer desires to develop and further subdivide the land into a three lot subdivision, as shown in this agreement and accompanied by a zone condition; and

**WHEREAS**, the Developer intends to develop the Property consistent with the concept plans and terms identified in Exhibit “B”; and

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

**WHEREAS**, the 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 and Developer acknowledge that the terms of this Agreement shall be enforceable and the rights of the Developer relative to the Property shall vest only if the City Council, in its sole legislative discretion, approves to rezone the property to R-1-5 Single Family Residential Zone;

**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**, based on the foregoing recitals and 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. **Vested Rights.** Except as provided below the Parties intend that this Agreement grants Developer the right to develop the Project in fulfillment of this Agreement.

**3.1 Exceptions.** The vesting as specified above is subject to the following exceptions:

3.1.1. City's future laws/ordinances that Developer agrees writing to the application thereof to the Project. If Developer makes the election for the City's future laws to apply to the Project, then such future laws shall apply for the remaining duration of the Project;

3.1.2 State and Federal Compliance. City's future laws 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;

3.1.3 Codes. City development standards, engineering requirements and supplemental specifications for Public Works and any new editions or replacement thereof and any City's future laws 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, AAHSTO 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;

3.1.4 Taxes. 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; or,

3.1.5 Fees. 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) and which are adopted pursuant to State law.

3.1.6 Compelling, Countervailing Interest. 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).

4. **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.

5. **Specific Design Conditions.** The Project shall be developed and constructed substantially as depicted and as set forth in the specific design conditions/criteria and terms set forth in Exhibits "B & C."

6. **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.

7. **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.

8. **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.

9. **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-C** are hereby incorporated into this Agreement.

10. **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: Austin Dent  
4258 S Main Street  
Murray, Utah 84107

TO CITY: Millcreek  
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.

11. **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.

12. **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.

13. **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.

14. **Term of Agreement.** This Agreement shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the Parties mutually agree to extend the term, this Agreement shall not extend further than a period of ten years from its date of recordation in the official records of the Salt Lake County Recorder's Office.

15. **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.



16. **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.

17. **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.

18. **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**

ATTEST:

\_\_\_\_\_  
Jeff Silvestrini, Mayor

\_\_\_\_\_  
Elyse Sullivan, MMC, City Recorder

**CITY ACKNOWLEDGMENT**

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he is the Mayor of Millcreek, a political subdivision of the State of Utah, and that said instrument was signed on behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.

**DEVELOPER**

**DEVELOPER**

By: AK

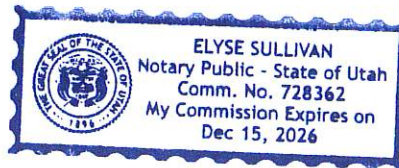
Title: DIRECTOR

**OWNER/DEVELOPER ACKNOWLEDGMENT**

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

On the 21 day of June, 2023, personally appeared before me  
Austin Dent, who being by me duly sworn, did say that he is the developer for  
said project and proved on the basis of satisfactory evidence to be the person whose name is  
subscribed to this instrument, and acknowledged he/they executed the same.

Elyse J  
Notary Public

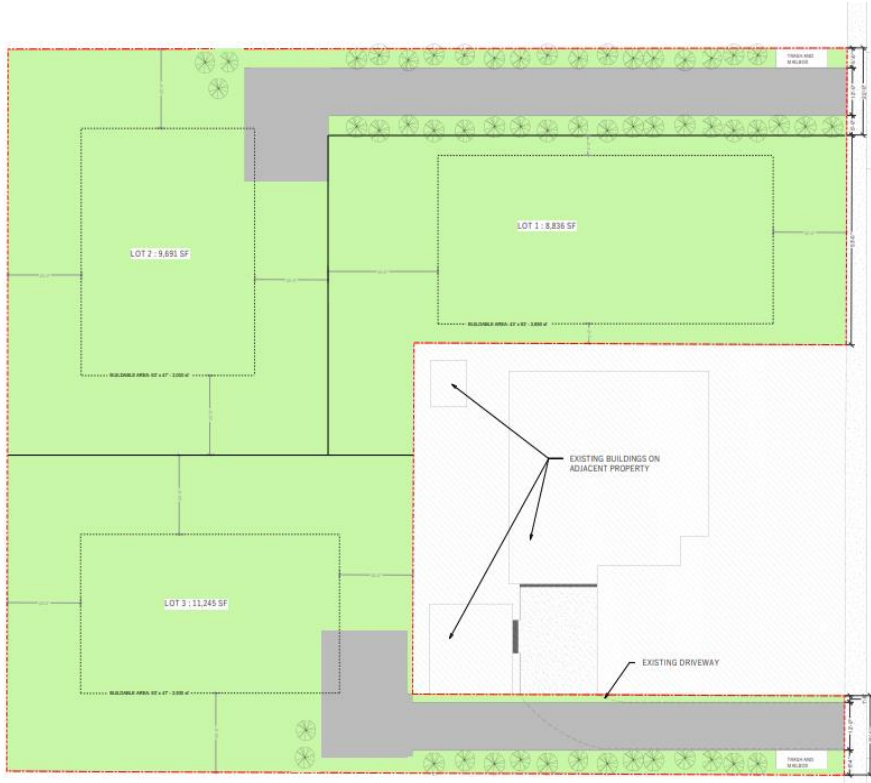


**Exhibit A**  
(Overall Legal Description)

Parcel 16322060400000 Legal description

LOT 2, WESTPHAL SUBDIVISION 10855-5639

# Exhibit B (Concept Plan)



**PROJECT INFORMATION:**

**SITE AREA:** 30.6 ACRES (2,082,971 SQ. FT.)

**ZONING:** R-1 (RESIDENTIAL SINGLE-FAMILY)

**PLANNING COMMISSION DEVELOPMENT PLAN (DCP):** 100 PER 10,000-150

**PERMITTED USES:**

- 1. SINGLE-FAMILY RESIDENCE

**DCP 100 PER 10,000-150:**

100 PER 10,000-150: PROJECT DEVELOPMENTS THE PLANNING COMMISSION MAY APPROVE A DETAILED DEVELOPMENT PLAN FOR THE SITE TO BE SUBMITTED TO THE PLANNING COMMISSION FOR REVIEW AND APPROVAL. THE DETAILED DEVELOPMENT PLAN SHALL BE SUBMITTED TO THE PLANNING COMMISSION FOR REVIEW AND APPROVAL. THE PLANNING COMMISSION SHALL REVIEW THE DETAILED DEVELOPMENT PLAN FOR CONFORMANCE WITH THE PLANNING COMMISSION'S DEVELOPMENT PLAN FOR THE SITE.

**SETBACKS:** (SEE PER 10,000-150)

100 PER 10,000-150:

- FRONT: 30 FT.
- REAR: 10 FT.
- SIDE: 10 FT.

**UTILITIES:** (SEE PER 10,000-150)

100 PER 10,000-150:

- WATER: 10 FT.
- SEWER: 10 FT.
- POWER: 10 FT.
- TELEPHONE: 10 FT.

**ADJACENT PROPERTIES:** (SEE PER 10,000-150)

100 PER 10,000-150:

- 1. 100 PER 10,000-150
- 2. 100 PER 10,000-150
- 3. 100 PER 10,000-150

### VICINITY MAP



**ARCHITECTURAL SITE PLAN**  
 3" = 50'-0" ON 24" x 36" PRINT

65 E. CENTER STREET, SUITE 202, NORTH SALT LAKE, UTAH 84054 | 940 W. HILL FIELD RD. STE. 200 LAYTON, UT 84041 | 150 N. MAIN STREET STE. 101 HEBER CITY, UT 84032

1100 E MILLCREEK NEIGHBORHOOD  
 (801) 536-1343 MARCH 31, 2023

**JZW ARCHITECTS**

**Exhibit C**  
**(Technical Guidelines / Specific Design Criteria)**

1. Screening. The Project shall include privacy fence along abutting residential property lines.
2. Density. The project shall be limited to a maximum of three residential lots, as depicted within the concept plan. Density is also limited by a zone condition attached to the overall property.
3. Accessory Dwelling Units. Detached accessory dwelling units shall not be allowed on the proposed lot 2.
4. Approval. All driveway and access widths and improvements are subject to Fire, Engineering, and Land Use Hearing Officer Approval.