

MILLCREEK, UTAH
ORDINANCE NO. 23-33

**AN ORDINANCE OF THE MILLCREEK COUNCIL APPROVING A DEVELOPMENT
AGREEMENT FOR A MEDICAL OFFICE BUILDING WITH RESPECT TO
APPROXIMATELY ONE ACRE OF REAL PROPERTY LOCATED AT
APPROXIMATELY 3179 SOUTH HIGHLAND DRIVE**

WHEREAS, the Millcreek Council ("*Council*") met in regular meeting on September 25, 2023, to consider, among other things, an ordinance approving a master development agreement for a Medical Office Building with respect to approximately one acre of real property located at approximately 3179 South Highland Drive; 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 25th day of September, 2023.

MILLCREEK



Jeff Silvestrini, Mayor



ATTEST:



Elyse Sullivan, City Recorder

Roll Call Vote:

Silvestrini	<u>Yes</u>	No
Catten	<u>Yes</u>	No
DeSirant	<u>Yes</u>	No
Jackson	<u>Yes</u>	No
Uipi	<i>excused</i> Yes	No

CERTIFICATE OF POSTING

I, the duly appointed recorder for Millcreek, hereby certify that:
ORDINANCE 23-33: APPROVING A DEVELOPMENT AGREEMENT FOR A MEDICAL
OFFICE BUILDING WITH RESPECT TO APPROXIMATELY ONE ACRE OF REAL
PROPERTY LOCATED AT APPROXIMATELY 3179 SOUTH HIGHLAND DRIVE was
adopted the 25th day of September, 2023 and that a copy of the foregoing Ordinance 23-33 was
posted in accordance with Utah Code 10-3-711 this 26 day of September, 2023.



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 25th day of September, 2023 (the "Effective Date"), by and between Millcreek Medical Holdings, LLC, a Utah limited liability company ("Developer"), and Millcreek, a municipal corporation of the State of Utah ("City"). The Developer and the City are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Developer owns or will own approximately 1 acre of real property located at 3179 South Highland Drive in Millcreek, Utah ("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 commercial development consisting of retail, office, medical/dental uses (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 develop and 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. **Incorporation of Recitals and Exhibits.** The above Recitals and Exhibits attached and referenced herein are hereby incorporated into this Agreement.

2. **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.

3. **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.

4. **Vested Rights .** Except as provided below the Parties intend that this Agreement grants Developer "vested rights" to develop the Project in fulfillment of this Agreement.

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

4.1.1. 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;

4.1.2. 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;

4.1.3. 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;

4.1.4. 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,

4.1.5. 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.

4.1.6. 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).

5. **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. Furthermore, Developer acknowledges and agrees that this Agreement does not restrict Developer's rights under clearly established state law as contemplated in Utah Code Section 10-9a-532(2)(c).

6. **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" and "C".

7. **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.

8. **Assignment.** Except as provide below 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 and shall not be unreasonably withheld, conditioned or delayed. Developer's transfer of all or any part of the Property to any entity controlled by Developer, Developer's entry into a joint venture for the development of the Project, or Developer's pledging of part or all of the Project as security for financing shall not be deemed to be an "assignment" subject to the above-referenced approval. Developer shall give the City notice of any event specified in this sub-section within ten (10) days before the event occurs. Such notice shall include providing the City with all necessary contact information.

9. **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.

10. **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, B and C are hereby incorporated into this Agreement.

11. **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:

Millcreek Medical Holdings, LLC
2221 South 2000 East

Salt Lake City, UT 84106

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.

12. **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.

13. **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.

14. **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.

15. **Term of Agreement.** The term of this Agreement shall be for a period of ten (10) years following the Effective Date. If a building permit for the construction of the Project is not submitted by the Developer within two (2) years following the approval and issuance of a conditional use permit by the City, the City may terminate this Agreement and Developer irrevocably consents that the Property be rezoned to R-1-21 (Residential).

16. **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, inability to obtain any materials or labor, 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.

17. **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.

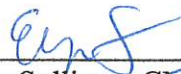
18. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

19. **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.

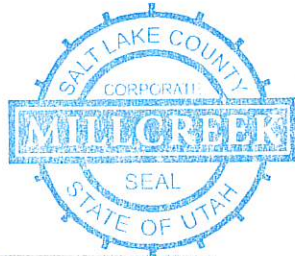
[Signatures on following page]

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

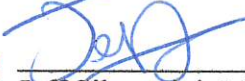
ATTEST:



Elyse Sullivan, CMC, City Recorder

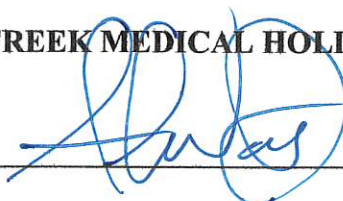


MILLCREEK



Jeff Silvestrini, Mayor

MILLCREEK MEDICAL HOLDINGS, LLC

By: 

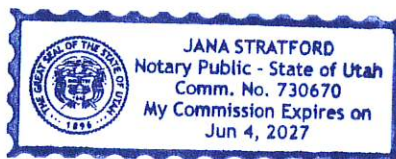
By: Adam J. Watts
Title: Manager

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

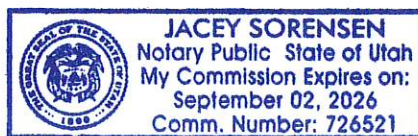
The foregoing instrument was acknowledged before me this 26 day of September, 2023, by Jeff Silvestrini and Elyse Sullivan as the Mayor and the City Recorder, respectively, of Millcreek, a Utah municipality.



Notary Public



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



The foregoing instrument was acknowledged before me this 22 day of September 2023 by Adam J. Watts, Manager of Millcreek Medical Holdings, LLC, a Utah limited liability company.



Notary Public

Exhibit A

Parcel Number:

16-28-309-037-0000

Address:

3179 SOUTH HIGHLAND DRIVE, MILLCREEK, UTAH 84106

Legal Description:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, BEING DESCRIBED AS FOLLOWED:

BEGINNING AT A POINT WHICH IS SOUTH 1018.22 FEET AND EAST 542.91 FEET FROM THE WEST QUARTER CORNER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 15°15'20" WEST 145.11 FEET; THENCE EAST 264.02 FEET; THENCE SOUTH 72°40'00" EAST 75.37 FEET; THENCE SOUTH 117.54 FEET; THENCE WEST 297.78 FEET TO THE POINT OF BEGINNING. CONTAINS 43,554 SQ. FT. OR 1.00 ACRES

Exhibit B
Specific Design Conditions/Criteria

In addition to meeting the minimum requirements of Millcreek Code, Developer agrees that the proposed development will incorporate the following:

1. Uses on Property will be limited to retail, office, and medical/dental only. Design of the building will be substantially the same as depicted in the attached renderings and elevations, in Exhibits B-1, B-2, B-3, and B-4
2. Drive through uses including menu boards, outdoor speakers, and microphones, ordering windows and ordering boxes are prohibited.
3. Setbacks for the building will be substantially the same as depicted on the attached site plan in Exhibit C.
4. Vehicle access entrances will be substantially the same as depicted on the attached site plan in Exhibit C.
5. The project shall include a pre-cast concrete wall along the east property line compliant with City code. The color of the pre-cast concrete wall must be approved by the City.
6. Developer agrees to make best efforts and work with the City to preserve as many existing trees as highlighted in green on Exhibit D for the Property as possible.
7. Developer agrees to enter into a deferral agreement with the City related to required public improvements abutting Woodland Avenue on the north side of the Property on or before certificate of occupancy of the structure to be developed and built on the Property is issued to Developer.





Exhibit B-2

Exhibit B-3



B1 SOUTHWEST ELEVATION
A301 SCALE: 3/16" = 1'-0"



D1 NORTHWEST ELEVATION
A301 SCALE: 3/16" = 1'-0"

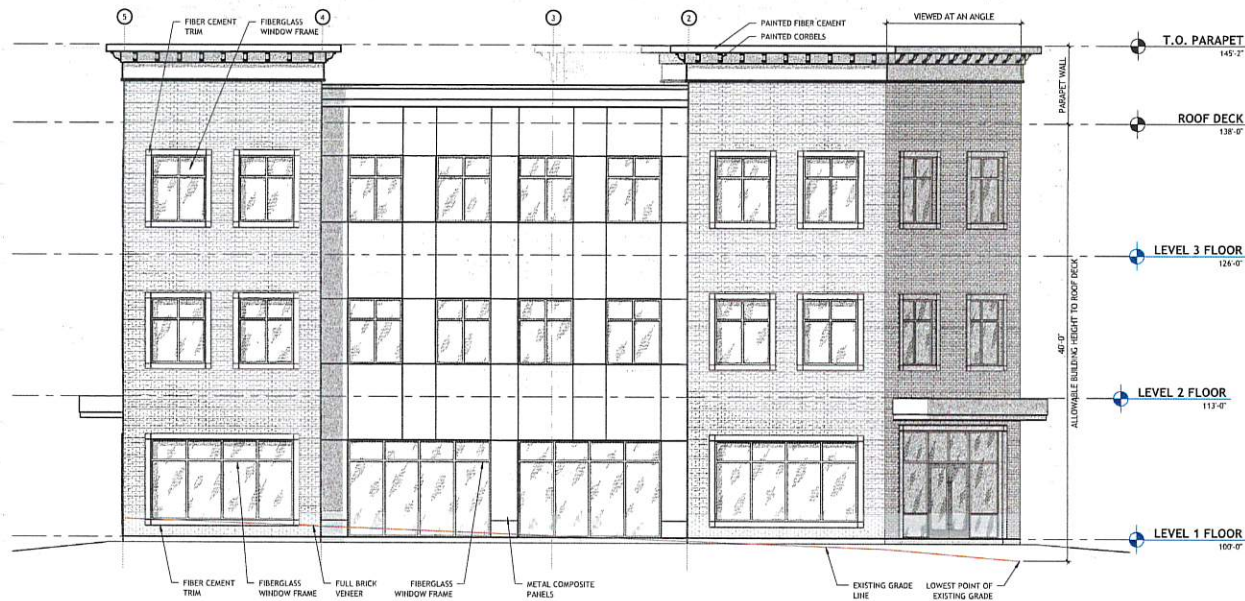
**WILFORD MEDICAL
OFFICE BUILDING**

3197 SOUTH HIGHLAND DRIVE
MILLCREEK CITY, UTAH
10 JULY 2023



233 SOUTH PLEASANT GROVE BLVD.
SUITE #105
PLEASANT GROVE, UTAH 84062
PHONE: (801) 749-3000
COREARCHITECTURE.COM

Exhibit B-4



B1 NORTH ELEVATION
A202 SCALE: 3/16" = 1'-0"



D1 EAST ELEVATION
A202 SCALE: 3/16" = 1'-0"

WILFORD MEDICAL OFFICE BUILDING

3197 SOUTH HIGHLAND DRIVE
MILLCREEK CITY, UTAH
10 JULY 2023



233 SOUTH PLEASANT GROVE BLVD.
SUITE #105
PLEASANT GROVE, UTAH 84042
PHONE: (801) 749-3000
core@coreutah.com

Exhibit C

DRAWN: JH	2023-08-06
APPROVED: TJ	2023-08-06
PROJECT #:	21190001
SET-21190001.dwg	

C400

SITE PLAN

Exhibit D

TREES PRESERVED BY APPLICANT (6)

REMOVED DUE TO OTHER DEVELOPMENT (3)

**TREES REMOVED BY
APPLICANT (2)**

TREES REQUIRED PER LANDSCAPE CODE (12)

**TREES ADDED BY
APPLICANT (9)**

