# MILLCREEK COMMUNITY REINVESTMENT AGENCY
# RESOLUTION NO. 23-06

## A RESOLUTION OF THE MILLCREEK COMMUNITY REINVESTMENT AGENCY APPROVING A PARTICIPATION AGREEMENT BY AND BETWEEN THE MILLCREEK COMMUNITY REINVESTMENT AGENCY AND PRI MILLCREEK, LLC FOR THE WEST MILLCREEK URBAN RENEWAL PROJECT AREA

**WHEREAS,** the Millcreek Community Reinvestment Agency (the "Agency") met in a regular meeting on December 11, 2023, to consider, among other things, approving a Participation Agreement by and between the Millcreek Community Reinvestment Agency and PRI Millcreek, LLC for the West Millcreek Urban Renewal Project Area; and

**WHEREAS,** the Agency was created to transact the business and exercise all of the powers provided for in the Limited Purpose Local Government Entities- Community Reinvestment Agency Act and any subsequent, replacement, or amended law or act (the "Act"); and

**WHEREAS**, pursuant to the Act, the Agency board is duly empowered to authorize and approve participation agreements a copy of which is attached hereto; and

**WHEREAS**, a participation agreement ("Agreement") has been presented to the Board of Directors of the Agency for review and approval; and

**WHEREAS**, the Board of Directors of the Agency has reviewed the Agreement and finds its terms and conditions acceptable.

**NOW THEREFORE BE IT RESOLVED** by the Agency as follows:

Section 1. Approval of Agreement. The Agreement is hereby approved, and the Chair and Recorder are hereby authorized to execute and deliver the Agreement and take all actions necessary, to carry out the purposes of this Resolution.

Section 2. Effective Date. This Resolution shall take effect upon its adoption.

**ADOPTED** by the Agency, this 11th day of December 2023.

**MILLCREEK COMMUNITY REINVESTMENT AGENCY**

______________________________________

**Jeff Silvestrini**, Chair

ATTEST:

________________________________

**Elyse Sullivan**, Recorder

Roll Call Vote:

| | | |
|---|---|---|
| Silvestrini | Yes | No |
| Catten | Yes | No |
| DeSirant | Yes | No |
| Jackson | Yes | No |
| Uipi | Yes | No |

# EXHIBIT A

The Participation Agreement

# PARTICIPATION AGREEMENT BY AND BETWEEN THE MILLCREEK COMMUNITY REINVESTMENT AGENCY AND PRI MILLCREEK, LLC FOR THE WEST MILLCREEK URBAN RENEWAL PROJECT AREA

This Participation Agreement (the "**Agreement**") is made and entered into as of this 11th day of December, 2023 (the "**Effective Date**"), by and between the Millcreek Community Reinvestment Agency (the "**Agency**"), a political subdivision of the State of Utah operating under the Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the "**Act**"; § 17C-1-101 *et seq.*) and PRI Millcreek, LLC ("**Participant**"). Participant and the Agency may from time to time hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**."

## 1. SUBJECT OF AGREEMENT

### 1.1. Purpose of the Agreement

The purpose of this Agreement is to carry out in part the Project Area Plan (the "**Plan**") for the West Millcreek Urban Renewal Project Area (the "**Project Area**") by providing for reimbursement for construction of a public trail, access road, and related amenities and facilities adjacent to the Big Cottonwood Creek and Central Avenue, Howick, and/or Brick Oven Way as shown on the Site Plan attached hereto as Exhibit "A" (the "**Site Plan**"). The Agreement is executed to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such investment by the Participant, which will benefit the Project Area and the City as a whole.

### 1.2. Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of the Millcreek, Utah (the "**City**"), and the health, safety, and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

### 1.3. The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

### 1.4. The Project Area Plan and Budget

This Agreement is subject to the provisions of the Plan, as adopted by Salt Lake County as predecessor to the City in accordance with the Act and is incorporated herein by this reference. This Agreement is also subject to the provisions of the project area budget (the "**Budget**"), as adopted and as amended from time to time by the Agency.

### 1.5. Description of the Improvements/Reimbursement

Pursuant to the terms of this Agreement and the Development Agreement (defined below), Participant will develop and construct a public trail and walkways, roads, bridges, related amenities and facilities adjacent to the Big Cottonwood Creek and Central Avenue, Howick, and/or Brick Oven Way as shown on the Site Plan (the "**Facility**"). The total cost of the Facility is projected to be approximately $3,500,000, and the Agency agrees to reimburse Participant for the actual costs of constriction the Facilities in an amount not to exceed $3,500,000 for the Facility. Prior to any reimbursement payments Participant shall provide to the Agency evidence of the actual costs of constructing the Facility. Such evidence shall include invoices showing actual costs and other supporting documentation as reasonably required and acceptable to the Agency.

### 1.6. Description of the Overall Site

Pursuant to the terms and conditions of that certain development agreement between the City and the Participant dated <u>May 4, 2022</u> (the "**Development Agreement**") the Participants plans to develop and construction a mixed-use development on approximately 7.19 acres more particularly shown on to Exhibit "B" (the "**Site**"). The Development Agreement provides that Participant develop seven thousand square feet of commercial use of which five thousand square fee is expected to be a Neighborhood Grocery Market as part of the mixed-use development consisting of 423 dwelling units.

### 1.7. Parties to the Agreement

#### *1.7.1.* The Agency

The address of the Agency for purposes of this Agreement is:

Millcreek Community Reinvestment Agency
Attn: Executive Director
1330 E Chamber Avenue
Millcreek, UT 84106

With a copy to:

John Brems
1330 E Chambers Avenue
Millcreek, UT 84106

#### *1.7.2.* The Participant

Participant's address for purposes of this Agreement is:

Steve Turley
1480 South State Street

Provo Utah, 84606

### 1.8. Prohibition against Certain Changes

#### *1.8.1.* Acknowledgement by Participant

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the investment within the Project Area possible, that a significant change in the identity of Participant may be considered, for practical purposes, a transfer or disposition of the investment, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

#### *1.8.2.* Representation as to Investment Intent

Participant represents and agrees that its investment in and use of the Site, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of Participant's investment in the Site and not for speculation in land holding or otherwise.

#### *1.8.3.* Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties. The Agency may withhold its consent to such an assignment or transfer if, in the sole discretion of the Agency, such transfer or assignment would result in the economic development goals of the Agency and the Project area not being met.

The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default of this Agreement.

#### *1.8.4.* Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or its successor(s) in interest to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the taxable property within the Site from *ad valorem* property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant or its successors or assigns.

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### 1.9. INTERLOCALS

Subject to the terms of various interlocal agreements with other taxing entities (collectively, the "**Interlocal Agreements**"), the Agency is entitled to receive a portion of the tax increment generated by the development in the Project Area (the "**Agency Share**"). For clarity, the Agency Share consists of only those funds that are generated by taxes paid on development within the Project Area that are received by the Agency pursuant to the Interlocal Agreements; the Agency Share does not include any funds received by the Agency attributable taxes paid for any portion of the Project Area not within the Site.

## 2. OBLIGATIONS OF THE PARTIES

### 2.1. Payment of Reimbursement

#### *2.1.1.* Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement and the Development Agreement, the Agency will pay to Participant the Reimbursement. The Agency expects to receive the full amount of the annual Agency Share approximately 120 days after the end of the calendar year for which property taxes were paid (e.g., the Agency will receive full payment of the Agency Share during the second quarter of 2023 for property taxes paid by Participant during 2022). After the end of the calendar year for which the Agency is collecting the Agency Share, the contemplated payment of the Reimbursement shall be made by the Agency within thirty (30) days after the date on which all of the conditions precedent as set forth in Section 2.2 have been met.

#### 2.1.2 Sole Source of Funding for the Reimbursement

The entirety of the Reimbursement payments to Participant contemplated in this Agreement will be funded solely by the Agency Share payments received by the Agency pursuant to the Interlocal Agreements generated solely by the Site. Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area or any other funds held by the Agency.

### 2.2. Conditions Precedent to the Payment of the Reimbursement to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Reimbursement unless and until all the following conditions precedent, as detailed in the following subsections, are satisfied:

#### *2.2.1.* Agency is Entitled to Receive the Agency Share

The Agency is not obligated to pay to Participant the Reimbursement unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements.

#### *2.2.2.* Agency has Actually Received the Agency Share Payment

The Agency is obligated to pay to Participant the Reimbursement only to the extent the Agency has actually received the Agency Share payment(s) from Salt Lake County for the particular calendar year. The Agency is to reasonably pursue payment of the Agency Share if not received in a particular calendar year.

#### *2.2.3.* Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant that all real and personal property taxes attributable to the Site and Facility have been paid for the particular year of the Reimbursement Term. Documentation contemplated by this Subsection shall include copies of all forms or other documents sent to the Salt Lake County Assessor or the Utah State Tax Commission for the purpose of reporting property owned by Participant within the Site. Such documentation shall be provided to the Agency by March 31 of the year following the year for which the Reimbursement is sought.

#### *2.2.4.* Infrastructure Development Costs

Reimbursement is available to the Participant only upon verification of actual costs incurred by Participant for construction of the improvements which can be verified by invoices include invoices showing actual costs and other supporting documentation as reasonably required and acceptable to the Agency.

### 2.3. Effect of Failure to Meet Conditions Precedent to Payment of Reimbursement

In the event that the conditions precedent as described in Section 2.2 are not met for any given calendar year during the term of this Agreement, and Participant is thus not entitled to receive the Reimbursement attributable to that calendar year, but is otherwise not in default under this Agreement, such failure shall not constitute a Default under this Agreement. Such failure shall result in the forfeiture by Participant of the Reimbursement for that particular calendar year.

### 2.4. Limitations on Reimbursement

The total amount of the Reimbursement paid to Participant pursuant to this Agreement shall be limited to the amount of verified costs incurred by Participant. Participant further acknowledges that the Reimbursement paid by the Agency to Participant under this Agreement is limited by the amount of Agency Share actually received by the Agency attributable to the Site. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount. The amount of Tax Increment generated by the Site is determined by the taxable value of Participant's property within the Site as determined by the Salt Lake County Assessor and/or the Utah State Tax Commission. The Agency does not guarantee a particular taxable value of the Facility and Site nor does the Agency control or influence such values.

The Agency shall not support any modification or amendment to the Interlocal Agreements that would reduce, on a percentage basis, the amount of Reimbursement that Participant is entitled to receive under this Agreement or the term during which Participant is entitled to receive the Reimbursement.

### 2.5. Request for Reimbursement

Participant shall submit in writing a request for payment to the Agency by May 1st of the year following the calendar year for which payment of the Reimbursement is sought (each, a "**Request for Payment**"). The Participant shall include in the Request for Payment for a given year proof of payment of all real and personal property taxes for such year. Participant's Request for Payment also shall include written documentation of actual costs incurred for infrastructure development costs for which the Reimbursement is sought. Unless the Agency sends written notice to Participant of deficiency in the Request for Payment within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period.

Notwithstanding the foregoing, nothing in this Agreement shall require the Agency to pay Reimbursement to Developer for non-qualified costs as determined by the Agency, in its reasonable discretion.

### 2.6. Payment of Taxes

During the term of this Agreement, to the extent applicable, Participant and any of its successors-in-interest in any portion of the Site or Facility agree to pay, prior to delinquency, all undisputed real property and other taxes and assessments assessed against any portion of the Site or Facility or any other taxable property, including personal property, located within the Site to the extent such real or personal property is owned by Participant or any of its successors-in-interest; provided, however, that Participant expressly retains any and all rights to: (a) challenge, object to, or appeal any real property or personal property and other *ad valorem* taxes and assessments; and (b) petition for the reduction thereof.

### 2.7. Reduction or Elimination of Reimbursement

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Reimbursement to the Agency as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Reimbursement to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to pay Participant annually the Reimbursement, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of Reimbursement to the Agency and/or Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Reimbursement to the Agency and/or Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Reimbursement to the Agency and/or Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

### 2.8. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Agency Share to the Agency, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Reimbursement to the Agency. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Reimbursement to the Agency and/or Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Reimbursement to the Agency and/or Participant. In the event that the court declares that the Agency cannot receive the Reimbursement, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Reimbursement paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to annually pay to Participant the Reimbursement in accordance with this Agreement will be reduced or eliminated to the extent that the Agency Share is not received by the Agency.

### 2.9. Dispute over Receipt of Payment of the Reimbursement

If not due to the act, error or omission of the Agency, in the event a dispute arises as to the person or entity entitled to receive the Reimbursement under this Agreement due to a claimed assignment or claimed successor-in-interest to the Reimbursement or otherwise, the Agency may withhold payment of the Reimbursement and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Reimbursement any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute, except in the instance that the dispute arises due to the act, error or omission of the Agency, in which case the Agency shall be responsible for all costs and expenses including reasonable and actual attorney fees. Agency needs to set aside the withheld/suspended Reimbursement Payments until dispute settled then pay it minus the deductions described above.

### 2.10. Nature of Participant's Obligations and Limitation

To qualify to receive the Reimbursement as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement. The failure of Participant to fulfill its obligations may result in a failure to qualify to receive the Reimbursement or termination of this Agreement but shall not give rise to any other right or remedy in favor of the Agency.

### 2.11. Funding Responsibility

The Parties understand and agree that funding for the investment comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

### 2.12. Potential Shortfall

Participant agrees and acknowledges that the only funds available to the Agency for compensation or reimbursements to Participant are those funds received by the Agency under the Interlocal Agreements from tax increment generated by the investment by Participant within the Site and that the amount of Reimbursement paid to Participant under this Agreement is dependent on the taxable value of Participant's taxable property within the Site or the taxes paid thereon.

### 2.13. Audits, Appeals, and Reassessments

As noted above, Participant may object to, challenge, or appeal any *ad valorem* property taxes that may be owed by Participant for property within the Site. However, in the event that such an action is pursued by Participant and is eventually successful in reducing the taxable valuation of Participant's property within the Site, Participant shall immediately repay to the Agency the portion of the Reimbursement for that year proportionate to the reduction in taxable value. In the event that Participant does not timely make such payment to the Agency, the Agency may correspondingly reduce the Reimbursement paid to Participant for the next year of the Reimbursement Term. The Agency, at its sole discretion, may withhold payment of the Reimbursement for the final year of the Reimbursement Term until such date as Participant can no longer appeal or contest the assessed value of Participant's property within the Site.

Likewise, if an audit, reassessment, or similar action by the Salt Lake County Assessor or the Utah State Tax Commission results in an increased valuation of Participant's property within the Site, the Agency shall pay additional Reimbursement for that year in proportion to the increase in taxable value of Participant's personal property within the Site, subject to compliance with the terms of this Agreement.

## 3. ADDITIONAL TERMS

### 3.1. Investment

Participant will at all times be responsible for its investment at the Facility. Recognizing the level of investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Reimbursement to Participant as a Reimbursement to develop the Facility on the Site as contemplated in this Agreement.

### 3.2. Responsibility for Development Plans and Permits

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for Participant's Operation of the Site.

### 3.3. Other Terms

#### *3.3.1.* City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

#### *3.3.2.* Restriction Against Parcel Splitting.

If applicable, during the term of this Agreement, Participant shall not, without the prior written approval of the Agency, (a) convey its interest in the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion of the Facility or structure would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels.

#### *3.3.3.* Deannexation

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Site or any portion thereof from the City during the Reimbursement Term. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Reimbursement for that portion of the Site outside of the City shall immediately cease.

#### *3.3.4.* Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors on the Facility or the Site except for willful misconduct or negligent acts or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors, and consultants. Likewise, the Agency agrees to and shall indemnify, defend, and hold Participant and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors and consultants except for willful misconduct or negligent acts or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors.

### *3.3.5.* Limits on Liability

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

### *3.3.6.* Local, State, and Federal Laws

Participant shall make the investment and utilize the Facility in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

### *3.3.7.* Rights of Access

The Facility is a public trail and open to the public at all times.

### *3.3.8.* Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

### *3.3.9.* Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code 63G-7-101, *et seq*.

### *3.3.10.* Agency and City Publicity

Throughout the term of this Agreement and notwithstanding any agreements to the contrary, the Agency shall have the right to freely use the following facts and information in Agency and City marketing, promotional, and publicity materials (together, "**Promotional Materials**"): (i) the presence of Participant's operations in the City, (ii) the approximate square footage of the Facility, (iii) Participant's approximate total investment relating to the Facility within the City, (iv) timing of Participant's initial and subsequent investments within the City, (v) the details of the Reimbursement and the expected benefits to the City, (vi) the location of the Facility, and (vii) publicly-available information about Participant and its operations and history.

Except as specifically allowed in this Subsection 3.3.10, the Agency shall not disclose any nonpublic information about Participant or Participant's operations within the Project Area as part of any Promotional Materials or press releases.

## 4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest for the benefit of each of the respective Parties, their successors and assigns during the term of this Agreement, which shall terminate upon the later of: (a) the final payment of the Reimbursement during or upon the expiration of the Reimbursement Term (i.e., year 1 through year 10) as set forth in Article 2 of this Agreement; or (b) upon the written agreement signed by the Parties hereto.

## 5. DEFAULTS, REMEDIES, AND TERMINATION

### 5.1. Default

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement ("**Default**"). The Party in default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 5.3 hereof.

### 5.2. Notice

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice (a "**Default Notice**") of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

### 5.3. Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and the non-defaulting Party may pursue such other rights and remedies as it may utilize. Further, in the event of a Default by Participant, past all applicable cure periods, Agency's sole remedy shall be to terminate this Agreement.

#### *5.3.1.* **Rights and Remedies**

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law, whichever is longer), the non-defaulting Party shall have all remedies provided for in this Agreement and shall have the right to obtain specific performance, unless otherwise limited by the express remedies set forth in this Agreement. Such remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting Party.

#### *5.3.2.* **Legal Actions**

##### 5.3.2.1. Venue

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Third District Court for the State of Utah located in Salt Lake County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

##### 5.3.2.2. Service of Process

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law. Service of process on Participant shall be by personal service upon its Registered Agents, or in such other manner as may be provided by law, whether made within or without the State of Utah.

##### 5.3.2.3. Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

## 6. GENERAL PROVISIONS

### 6.1. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

### 6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.8.1 and 1.8.2 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

### 6.3. Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

### 6.4. No Liability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

### 6.5. Enforced Delay, Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's Executive Director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

### 6.6. Approvals

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

### 6.7. Time of the Essence

Time shall be of the essence in the performance of this Agreement.

### 6.8. Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall be construed as creating the relationship of principal and agent, or a partnership, or a joint venture, or an enterprise between the Parties hereto.

### 6.9. No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

### 6.10. Mediation

In the event a dispute arises between the parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the parties, the parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed, or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner.

Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Millcreek, Utah.

### 6.11. Headings

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

### 6.12. Contra Proferentum

This is an arm's-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

### 6.13. Further Assurances

The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

### 6.14. Incorporation of Recitals and Exhibits

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

### 6.16 Governmental Records and Management Act

The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement is protected under the Utah Governmental Records Access and Management Act, § 63G-2-101 *et seq.* ("**GRAMA**") under a claim of "business confidentiality" so long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B).

## 7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

### 7.1. Duplicate Originals

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Electronic pdf signatures shall be considered original signatures and scans of original documents shall be treated as original documents.

### 7.2. Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter thereof.

### 7.3. Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

**MILLCREEK COMMUNITY REINVESTMENT AGENCY**

By: ______________________________
Jeff Silvestrini, Chair

Attest:

By: ___________________________________
Elyse Sullivan, Recorder

**PRI MILLCREEK, LLC**

By:______________________________
Steve Turley, Manager

EXHIBIT A
(Site)

EXHIBIT A

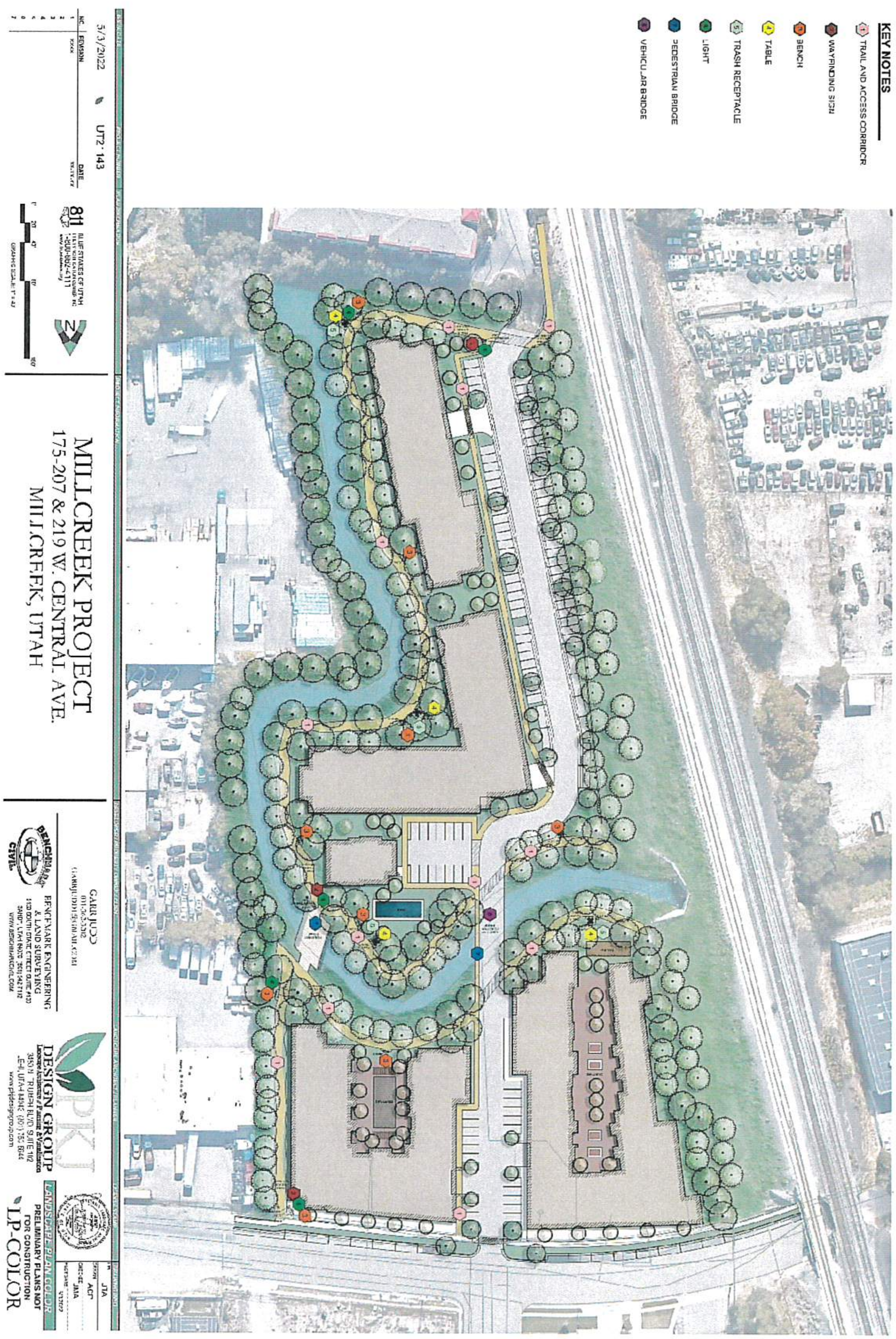
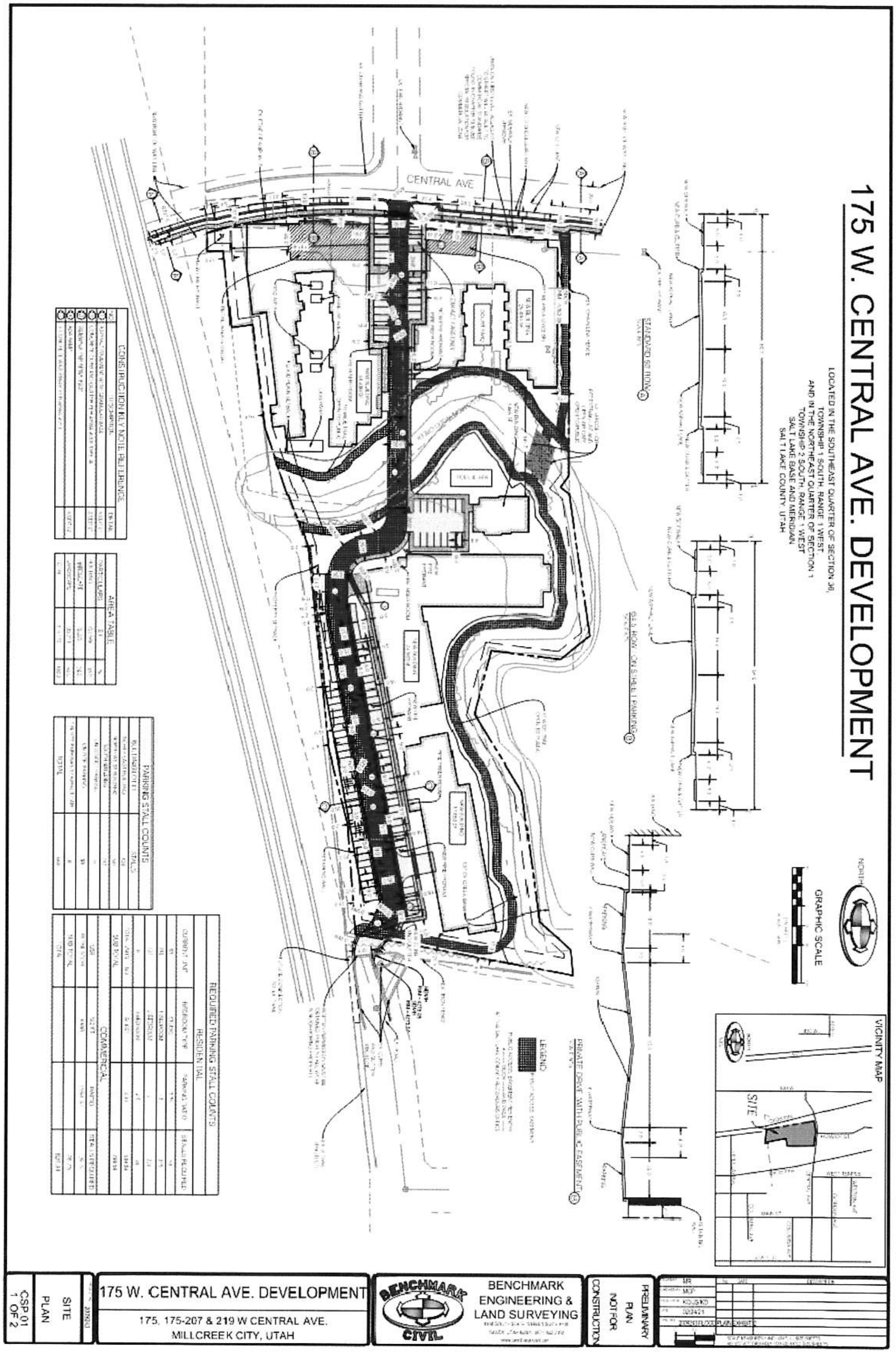

KEY NOTES
TRAIL AND ACCESS CORRIDOR
WAYFINDING SIGN
BENCH
TABLE
TRASH RECEPTACLE
LIGHT
PEDESTRIAN BRIDGE
VEHICULAR BRIDGE
5/3/2022
UT22143
MILLCREEK PROJECT
175-207 & 219 W. CENTRAL AVE.
MILLCREEK, UTAH
DESIGN GROUP
PRELIMINARY PLANS NOT FOR CONSTRUCTION
LP-COLOR

EXHIBIT B
(Site Plan)

EXHIBIT B


175 W. CENTRAL AVE. DEVELOPMENT
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 WEST, AND IN THE NORTHEAST QUARTER OF SECTION 1 TOWNSHIP 2 SOUTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN SALT LAKE COUNTY, UTAH
CENTRAL AVE
NORTH
GRAPHIC SCALE
VICINITY MAP
SITE
LEGEND
PRIVATE DRIVE WITH PUBLIC EASEMENT
CONSTRUCTION KEY NOTE REFERENCE
AREA TABLE
PARKING STALL COUNTS
REQUIRED PARKING STALL COUNTS
RESIDENTIAL
COMMERCIAL
175 W. CENTRAL AVE. DEVELOPMENT
175, 175-207 & 219 W CENTRAL AVE.
MILLCREEK CITY, UTAH
BENCHMARK
CIVIL
BENCHMARK
ENGINEERING &
LAND SURVEYING
PRELIMINARY
PLAN
NOT FOR
CONSTRUCTION
SITE
PLAN
CSP.01
1 OF 2

# Minutes of the
# Millcreek Community Reinvestment Agency
# November 27, 2023
# 7:00 p.m.
# Regular Meeting

The Community Reinvestment Agency of Millcreek, Utah, met in a regular public meeting on November 27, 2023, at City Hall, located at 1330 E. Chambers Avenue, Millcreek, Utah 84106. The meeting was recorded for the City's website and had an option for online public comment.

**PRESENT:**

**Board Members**
Jeff Silvestrini, Chair
Silvia Catten
Thom DeSirant
Cheri Jackson
Bev Uipi (electronic)

**City Staff**
John Brems, City Attorney
Elyse Sullivan, Agency Recorder
Francis Lilly, Assistant City Manager
Kurt Hansen, Facilities Director
Mike Winder, City Manager
Lisa Dudley, HR-Finance Director

**Attendees:** Chief Petty-Brown

**REGULAR MEETING: 7:00 p.m.**
**TIME COMMENCED: 7:40 p.m.**

Chair Silvestrini called the meeting to order.

**1. Discussion and Consideration of Resolution 23-05, Approving an Amendment to Resolution No. 23-04 that Approved the Use of $ 424,727.46 of the Agency's Housing Allocation for the Howick Project, $100,000 of Which will be a Grant and $324,727.46 will be a Loan Repaid on Closing of Permanent Financing with this Amendment Providing that the Loan be an Unsecured Promissory Note Rather than a Secured Note**
Francis Lilly said the Howick, a 140 unit deeply affordable project, would be under construction soon in the west Meadowbrook area. The Agency recently approved a resolution that would offset the cost of their building permit fees in the form of a grant from the Agency's housing allocation and a loan. The developer requested that the loan be approved in the form of an unsecured promissory note rather than a secured note, which was stated in the previous resolution, due to encumbering the land with other affordable housing financing entities. They were asking for trust that they would pay the loan before they got a certificate of occupancy. Chair Silvestrini said CDCU was not a private developer. Lilly said CDCU had a long and good history of building projects in the region as a public nonprofit entity.

**Board Member Jackson moved to adopt Resolution 23-05, approving an amendment to Resolution No. 23-04. Board Member DeSirant seconded.**
Chair Silvestrini noted he executed an amendment to the development agreement (per Council approval) for a name change with the project.
**The Recorder called for the vote. Board Member Catten voted yes, Board Member DeSirant voted yes, Board Member Jackson voted yes, Board Member Uipi voted yes, and Chair Silvestrini voted yes. The motion passed unanimously.**

**2. Approval of August 28, 2023 Meeting Minutes**

**Board Member DeSirant moved to approve the August 28, 2023 meeting minutes. Board Member Catten seconded. Chair Silvestrini called for the vote. Board Member Catten voted yes, Board Member DeSirant voted yes, Board Member Jackson voted yes, Board Member Uipi voted yes, and Chair Silvestrini voted yes. The motion passed unanimously.**

**ADJOURNED: Board Member Catten moved to adjourn the meeting at 7:44 p.m. Board Member DeSirant seconded. Chair Silvestrini called for the vote. Board Member Catten voted yes, Board Member DeSirant voted yes, Board Member Jackson voted yes, Board Member Uipi voted yes, and Chair Silvestrini voted yes. The motion passed unanimously.**

**APPROVED:______________________________ Date**
**Jeff Silvestrini, Chair**

**______________________________**
**Attest: Elyse Sullivan, Recorder**