



Millcreek City Planning and Community Development

3330 South 1300 East

Millcreek, Utah 84106

Phone: (801) 214-2750

Inspections: (385) 468-6690

STAFF MEMORANDUM

From: Robert May, Planner
To: Millcreek Community Council
Meeting Date: 5 February 2019

RE: Conditional Use Permit for a 9-unit Planned Unit Development (PUD) located at 3429-3437 South 1300 East in the R-2-8 Zone

Applicant: Brad Reynolds

File No.: CU-19-002 / SD-18-016

Request

Millcreek City Planning and Community Development is seeking your input on a request by Brad Reynolds to develop property at 3429-3437 South 1300 East. Specifically parcels:

16-32-227-007 / .78 acres / 33,976.8 s.f.
16-29-480-018 / .26 acres / 11,325.6 s.f. = *1.24 acres / 54,014 s.f.*
16-29-480-017 / .20 acres / 8,712 s.f.

The subject parcels are located in the R-2-8 Zone and as per [19.32.030 Conditional Uses](#), a 9-unit Planned Unit Development (PUD) requires a conditional use permit and subdivision plat approval from the Millcreek Planning Commission. See site plan for layout of property. The Millcreek Planning Commission will discuss this application on **Wednesday, 20 February at 5:00 pm.**

Existing Zoning, Land Use, and Proposed Change

The existing zoning is R-2-8 and allows the ability for the developer to achieve as high as 10 units per acre for two family dwellings and 6 units per acre for single-family dwellings. The Developer is proposing a mixed composition of single family and twin home development. The 9-unit PUD would include four twin homes and one single-family home. The applicant is proposing a home design that would be similar in height and massing to a typical single-family home.

On December 11, 2017, Millcreek City Council rezoned the subject parcels from R-1-8 to R-2-8 subject to a development agreement that limits the density to 9 units and a specific site plan consisting of 4 twin homes and 1 single-family dwelling. Brad Reynolds proposed development meets all the required criteria of the City Council approved development agreement.

Community Council Action

Staff is asking for the Community Council's input on the conditional use permit; in particular, whether or not the proposed development meets all standards of approval as a conditional use. On November 8th, 2017, the Millcreek Community Council approved the rezone from R-1-8 to R-2-8 subject to a development agreement.



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Attachments

Zoning Map

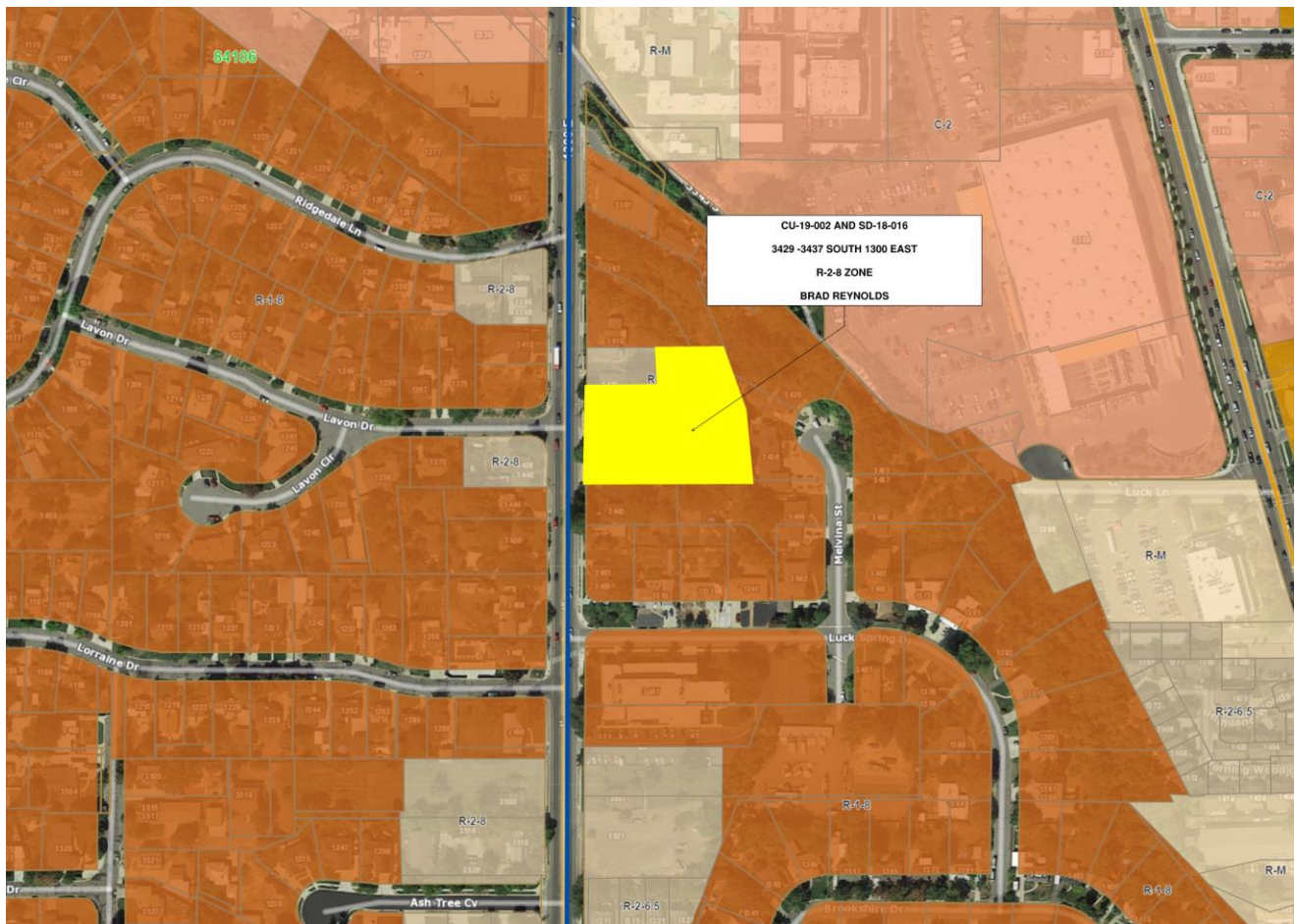
Parcel Map

Proposed Site Plan

Approved Development Agreement

Standards of Approval for Conditional Uses

Zoning Map





Millcreek City Planning and Community Development

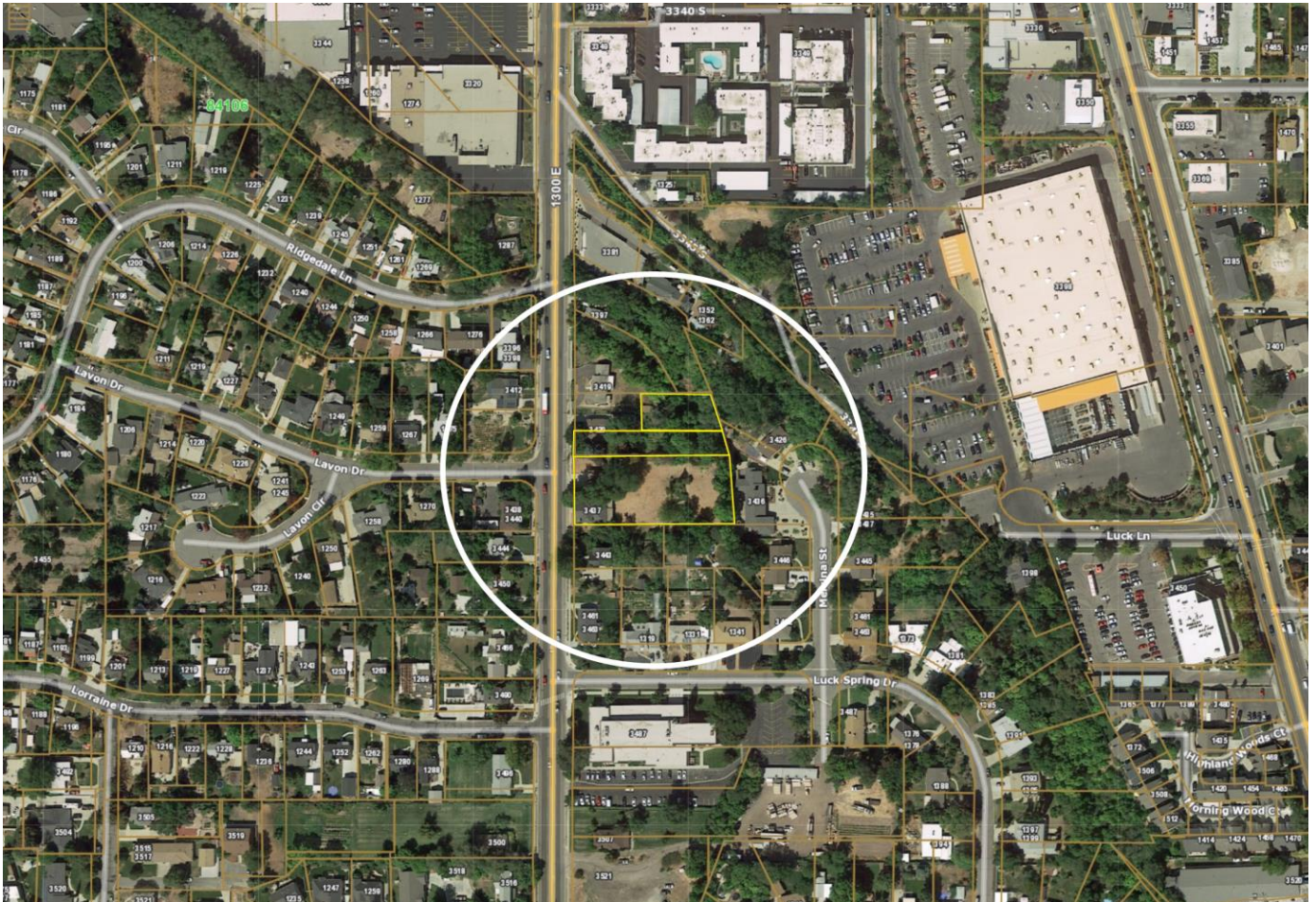
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Parcel Map





Millcreek City Planning and Community Development

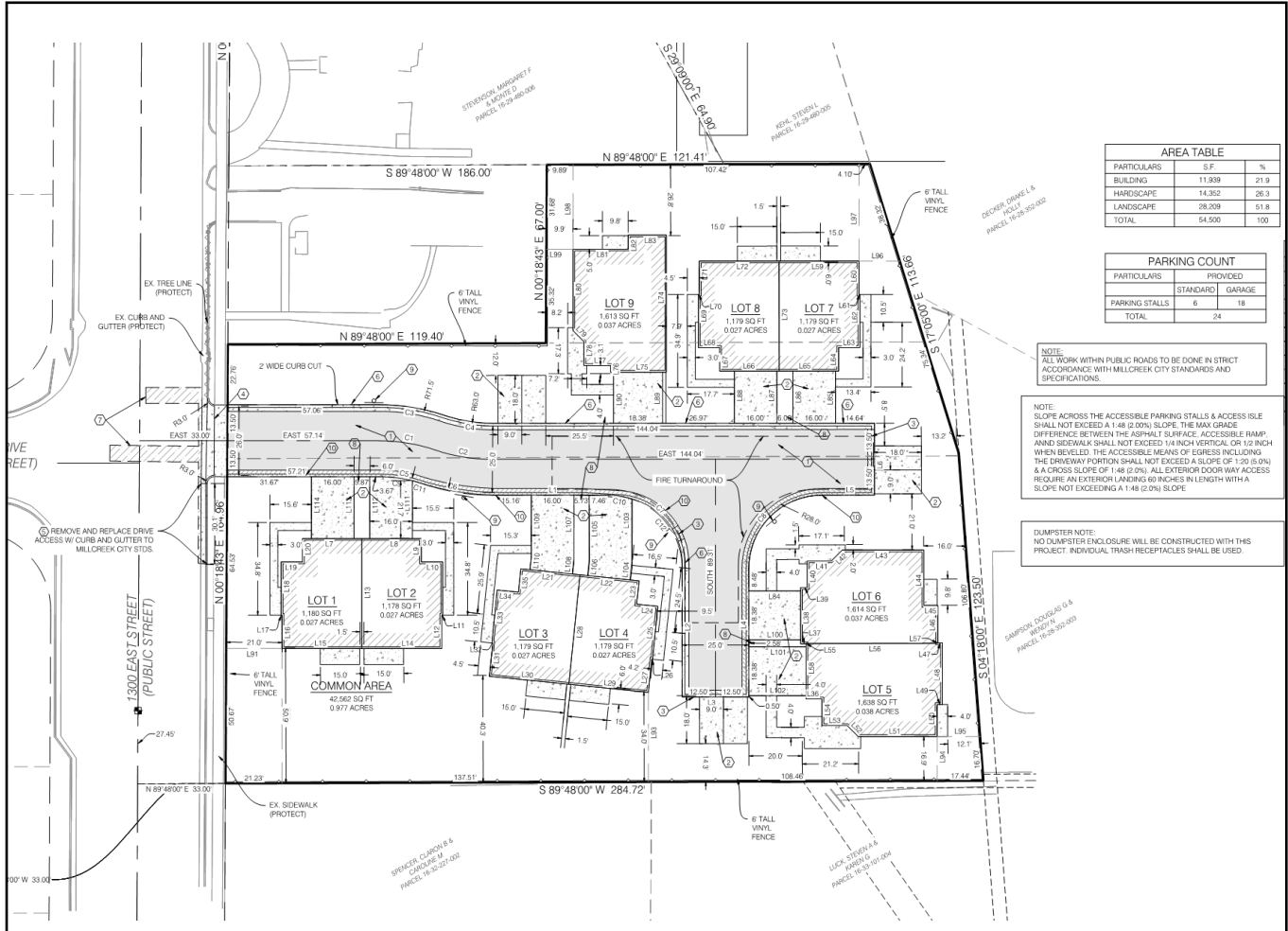
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Proposed Site Plan



When recorded, return to:

Millcreek
Attn: Jeff Silvestrini
3932 South 500 East
Millcreek, UT 84107

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into this 4th day of December, 2017, by and between Matrix Capital Advisors, LC (“Developer”), for the land to be included in or affected by the project located at approximately 3437 South 1300 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, Developer owns, or will own, approximately 1.24 acres of real property located at 3437 South 1300 East in Millcreek, Utah (“Property”) and intends to develop the Property. A legal description of the Property is attached hereto as exhibit “A.” The Parties desire that the Property be developed in a unified and consistent fashion and establish minimum standards for a new Planned Unit Residential Development (the “Project”) on the Property; and

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

WHEREAS, Developer is willing to restrict the Property in a manner that is in harmony with the objectives of the City’s General Plan and long-range development objectives, and which addresses the more specific development issues set forth in this Agreement, and is willing to abide by the terms of this Agreement; and

WHEREAS, the City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, Utah Code Ann. §10-9a-101, *et seq.*, and its ordinances, resolutions, and regulations, and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries is attached as Exhibit “A.” No additional property may be added to or removed from this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City.

2. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land-use plans, policies, ordinances and regulations after the date of this Agreement, provided that the adoption and exercise of such power shall not restrict Developer’s vested rights to develop the Project as provided herein. This Agreement is not intended to and does not bind the Millcreek Council in the independent exercise of its legislative discretion with respect to such zoning regulations.

3. **Compliance with City Ordinances Standards.** Developer acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable ordinances and requirements of the City necessary for development of the Project, including the payment of fees, and compliance with applicable City standards.

4. **Specific Design Conditions.** The Project shall be developed and constructed as set forth in the specific design conditions/criteria set forth generally in Exhibit “B.” The Project shall also comply with all requirements set forth in the minutes of the Millcreek Planning Commission and Millcreek meetings on this matter.

5. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder, shall be deemed to run with the Property, and shall encumber the same; and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property. This Agreement supersedes any and all development agreements that have been executed concerning the Property.

6. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without the consent of the other party. This Agreement shall be binding upon any successors and assigns. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

7. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties, except as expressly provided herein.

8. **Integration, Modification, and Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto. Exhibits A and B are hereby incorporated into this Agreement.

9. **Notices.** Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for whom intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the parties as follows:

TO DEVELOPER:	Christopher J. Clifford Matrix Capital Advisors, LC 2715 Swasont Way Holladay, Utah 84117
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TO CITY:	Millcreek City Jeff Silvestrini, Mayor 3932 S 500 E Millcreek Utah 84107
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Any party may change its address by giving written notice to the other party in accordance with the provisions of this section.

10. **Choice of Law and Venue.** Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah. Any Utah litigation regarding this Agreement shall be filed in the Third District Court in Salt Lake City, Utah. Any federal litigation regarding this Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

11. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

12. **Limitation on Recovery for Default – No Damages.** No party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto. The sole remedy available to Developer or and assignee shall be that of specific performance. Notwithstanding such limitation the City may withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Develop or any assignee.

13. **Term of Agreement.** The term of this Agreement shall be until December 31, 2019 and shall automatically expire on such date.

14. **Force Majeure.** Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

15. **Construction.** The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

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

17. **No Waiver.** The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

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

Millcreek City

Jeff Silvestrini, Mayor

ATTEST:

Leslie Van Frank, Acting City Recorder

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Jeff Silvestrini and Leslie Van Frank as the Mayor and the Acting City Recorder, respectively, of Millcreek, a Utah municipality.

Notary Public

DEVELOPER

By: _____
Christopher J. Clifford

Title: _____
Managing Member

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

On this ____ day of December, 2017, personally appeared before me, Christopher J. Clifford, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who is the Managing Member of Matrix Capital Advisors LC, a Utah Limited Liability Company and that the foregoing instrument was signed by him in behalf of said company by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said Limited Liability Company executed the same.

Notary Public

Exhibit "A"

PARCEL 1: #16-32-227-001

Beginning at a point on the Easterly right of way line of 1300 East Street, said point being North 00°18'43" East 671.17 feet from the Southwest corner of Lot 7, Block 23, 10 Acre Plat "A", Big Field Survey, said point also being South 00°18'43" West along the monument line 1091.44 feet and South 89°41'17" East 33.00 feet from the street monument in the intersection of 3300 South and 1300 East Streets and running thence North 89°48'00" East 274.88 feet to a point on the Westerly boundary line of Luckland Subdivision recorded September 21, 1953 as Entry No. 1344766 in Book N Page 66 at the office of the Salt Lake County Recorder; thence South 04°18'00" East 122.33 feet along said Westerly boundary line; thence South 89°48'00" West 284.72 feet to a point on said Easterly right of way line; thence North 00°18'43" East along said Easterly right of way line 122.03 feet to the point of beginning.

PARCEL 2: #16-29-480-018

Beginning at a point on the Easterly right of way line of 1300 East Street, said point being North 00°18'43" East 671.17 feet from the Southwest corner of Lot 7, Block 23, 10 Acre Plat "A", Big Field Survey, said point also being South 00°18'43" West along the monument line 1091.44 feet and South 89°41'17" East 33.00 feet from the street monument in the intersection of 3300 South and East Streets and running thence North 00°18'43" East along said Easterly right of way line 42.93 feet; thence North 89°48'00" East 261.74 feet to a point on the Westerly boundary line of Luckland Subdivision recorded September 21, 1953 as Entry No. 1344766 in Book N Page 66 at the office of the Salt Lake County Recorder; thence along said Westerly boundary line the following two (2) courses 1) South 17°05'00" East 43.64 feet; 2) South 04°18'00" East 1.17 feet; thence South 89°48'00" West 274.88 feet to the point of beginning.

PARCEL 3: #16-29-480-017

Beginning at a point being North 00°18'43" East 714.09 feet and North 89°48'00" East 119.40 feet from the Southwest corner of Lot 7, Block 23, 10 Acre Plat "A", Big Field Survey, said point also being South 00°18'43" West along the monument line 1048.52 feet and South 89°41'17" East 33.00 feet and North 89°48'00" East 119.40 feet from the street monument in the intersection of 3300 South and 1300 East Streets and running thence North 00°18'43" East 67.00 feet; thence North 89°48'00" East 121.40 feet to a point on the Westerly boundary line of Luckland Subdivision recorded September 21, 1953 as Entry No. 1344766 in Book N Page 66 at the office of the Salt Lake County Recorder; thence South 17°05'00" East 70.02 feet along said Westerly boundary line; thence South 89°48'00" West 142.34 feet to the point of beginning.



Exhibit “B”

The proposed Mulberry Place community is located in an area of Millcreek along the north/south 1300 East corridor which is experiencing moderate transitional uses, both commercially and residentially. The property is presently zoned for one unit per 8,000 square feet of land area. Several moderately dense residential projects between 3300 South and 3900 South along 1300 East have developed with great success. There presently is great demand for residential communities of high quality, safe, low maintenance homes. This community will add significant value to the neighboring properties in the area.

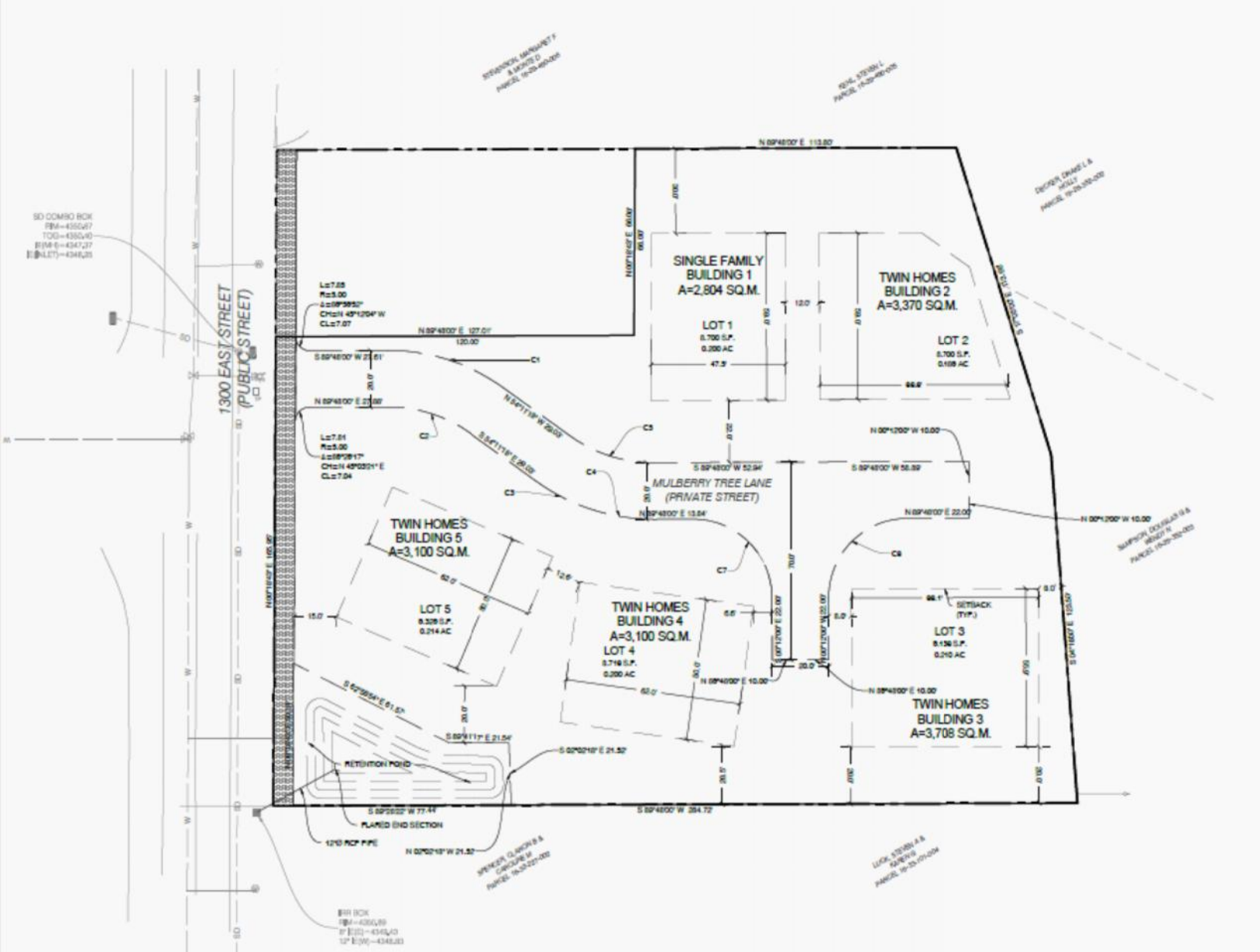
The proposed project will consist of high quality residential units in a safe gate guarded community of 9 dwelling units located on 1.24 acres. The proposed layout will consist of 8 twin-home units with 1 single family unit.

The proposed zoning allows for 2 dwelling units for each 8,000 square foot of land. The density of the proposed layout is 2 dwelling units per 10,800 square feet.

The project will have two areas of common use for homeowners consisting of meeting/gathering areas composed of gazebo/ pergola type structures, together with plantings of native shrubs and grass.

Each unit will have similar appearance, with slight variance of color and material (see illustrations and pictures).

The layout of the project is designed to provide maximum views and sightlines. The units front along a winding road, with each staggered so as to provide front and rear unobstructed views and sightlines. The dwelling units are also positioned so as not to interfere with views and vistas of the neighboring dwellings.







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STANDARDS FOR APPROVAL FOR CONDITIONAL USE APPLICATIONS

Section 19.84.060 of the Millcreek Code provides us with standards of approval for conditional use applications. In making your recommendation to the Planning Commission, please review the following standards to develop the findings you wish to make as part of your recommendation. Conditional uses shall meet the standards that we identify to mitigate (but not eliminate) the reasonably anticipated detrimental effects identified below:

19.84.060 Standards For Approval

All Conditional Use Permits run with the land and may require the applicant to record documents to that effect. The Planning Commission and staff, in their review capacity, may impose site plan modifications and conditions to mitigate the reasonably anticipated detrimental effects of a conditional use. All conditional uses shall meet the following standards:

- A.** The proposed conditional use shall comply with City ordinances, Federal, State Law, as applicable to the use and to the site where the conditional use will be located, and;
- B.** Mitigation is required of reasonably anticipated detrimental effects arising from the conditional use, including:
 - 1.** Detrimental effects of decreased street service levels and/or traffic patterns including the need for street modifications such as dedicated turn lanes, traffic control devices, safety, street widening, curb, gutter and sidewalks, location of ingress/egress, lot surfacing and design of off-street parking and circulation, loading docks, as well as compliance with off-street parking standards, including other reasonable mitigation as determined by a qualified traffic engineer.
 - 2.** Detrimental effects on the adequacy of utility systems, service delivery, and capacities, including the need for such items as relocating, upgrading, providing additional capacity, or preserving existing systems, including other reasonable mitigation as determined by the City's engineering staff, contracted engineers, and utility service providers.
 - 3.** Detrimental effects on connectivity and safety for pedestrians and bicyclists.
 - 4.** Detrimental effects by the use due to its nature, including noise that exceeds sound levels normally found in residential areas, odors beyond what is normally considered acceptable, within a neighborhood including such effects as environmental impacts, dust, fumes, smoke, odor, noise, vibrations; chemicals, toxins, pathogens, gases, heat, light, electromagnetic disturbances, and radiation. Detrimental effects by the use may include hours of operation and the potential to create an attractive nuisance.
 - 5.** Detrimental effects that increase the risk of contamination of or damage to adjacent properties and injury or sickness to people arising from, but not limited to, waste disposal, fire safety, geologic hazards, soil or slope conditions, liquefaction potential, site grading/topography, storm drainage/flood control, high ground water, environmental health hazards, or wetlands, as determined by City Engineer, City geologist and other qualified specialists.



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6. Detrimental effects of modifications to or installation of signs and exterior lighting that conflict with neighborhood compatibility.
7. Detrimental effects arising from incompatible designs in terms of use, scale, intensity, height, mass, setbacks, character, construction, solar access, landscaping, fencing, screening, and architectural design and exterior detailing/finishes and colors within the neighborhood in which the conditional use will be located.
8. Detrimental effects on the tax base and property values.
9. Detrimental effects on the current level of economy in governmental expenditures.
10. Detrimental effects on emergency fire service and emergency vehicle access.
11. Detrimental effects on usable/functional/accessible open space.
12. Inadequate maintenance of the property and structures in perpetuity including performance measures, compliance reviews, and monitoring.
13. Detrimental effects on appearance from graffiti. Applicants shall apply an anti-graffiti material or coating, approved by the City, to building, fence, and other surfaces from ground level to a height of nine feet. The Planning Commission may approve dense planting or appropriate design measures in place of anti-graffiti materials. This requirement may be imposed retroactively where graffiti issues are present.