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ADAM GARDINER  
RECORDER, SALT LAKE COUNTY, UTAH  
MILLCREEK OFFICES  
3330 S 1300 E  
MILLCREEK UT 84106  
BY: MZA, DEPUTY - WI 13 P.

**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 9<sup>th</sup> day of APRIL, 2018, by and between Kasey Kershaw ("Developer"), for the land to be included in or affected by the project located at approximately 1200 East 4500 South 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 1.63 acres of real property located at approximately 1200 East 4500 South 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 townhome planned-unit 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 Ordinance 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 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: Kasey Kershaw  
4949 South Cottonwood Lane  
Holladay, Utah 84117

TO CITY: Millcreek  
Jeff Silvestrini, Mayor  
3330 South 1300 E  
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.

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, 2028 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**

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

ATTEST:

  
\_\_\_\_\_  
Elyse Greiner, CMC City Recorder

**DEVELOPER**

By:  *KALEB KERSHAW*  
\_\_\_\_\_  
Title: OWNER

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

The foregoing instrument was acknowledged before me this 10 day of April, 2018, by Jeff Silvestrini and ~~Elyse Greiner~~, as the Mayor and the ~~City Recorder~~, respectively, of Millcreek, a Utah municipality.

Telitha Elyse Greiner  
Notary Public



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

The foregoing instrument was acknowledged before me this 9 day of April 2018 by Kasey Kershaw.

Telitha Elyse Greiner  
Notary Public



Exhibit A  
Legal Descriptions

APN: 22-05-428-004  
Address: 1236 East 4500 South

Legal Description

BEG 244.2 FT S & 792 FT W FR E 1/4 COR SEC 5, T 2S, R 1E, S L M; S 330 FT; W 66 FT; N 330 FT; E 66 FT TO BEG. LESS STREET. 0.45 AC. 4753-0176 6105-0432 6144-1979

APN: 22-05-428-003  
Address: 1224 East 4500 South

Legal Description

BEG 244.2 FT S & 792 FT W FR E 1/4 COR SEC 5, T 2S, R 1E, S L M; S 330 FT; W 66 FT; N 330 FT; E 66 FT TO BEG. LESS STREET. 0.45 AC. 4753-0176 6105-0432 6144-1979

APN: 22-05-432-002  
Address: 4529 South 1200 East

Legal Description

LOT 1, RILEY SUBDIVISION. 8930-0001

APN: 22-05-428-024  
Address: 1200 East 4500 South

Legal Description

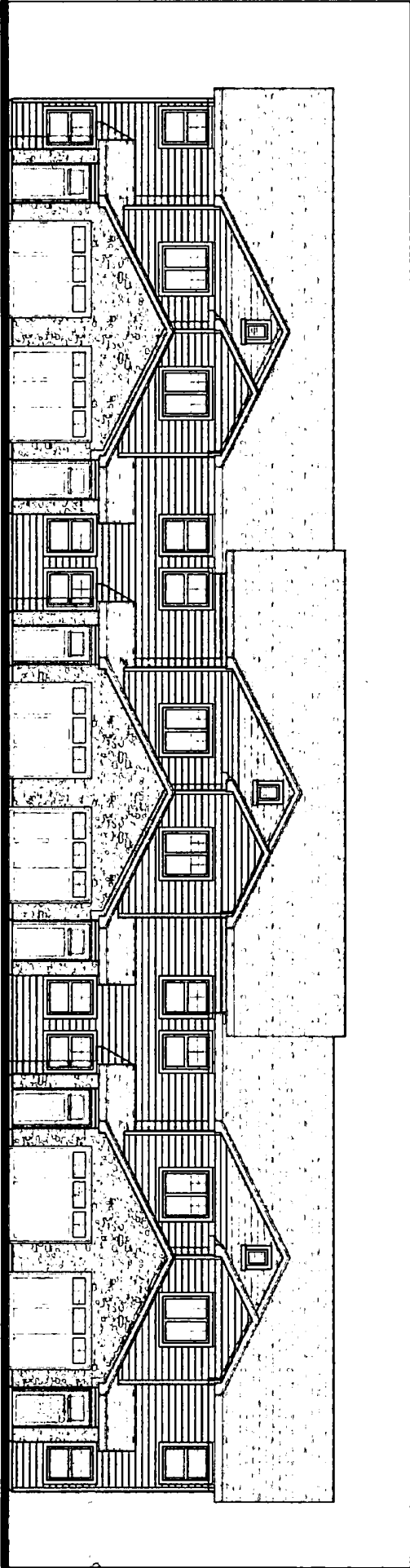
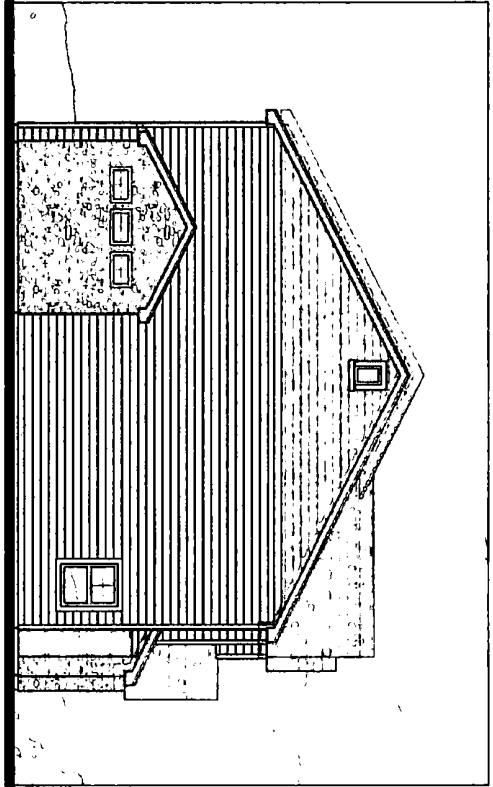
BEG 971 FT W & 3.7 CHNS S FR E 1/4 COR OF SEC 5, T 2S, R 1E, S L M; N 89°54'45" W 75 FT; S 210 FT; S 89°54'45" E 75 FT; N 210 FT TO BEG. .30 AC M OR L. 5341-1083 5558-1727 6013-2680 8716-3758 9596-9853

## Exhibit B

Developer agrees to limit development on the Property as follows:

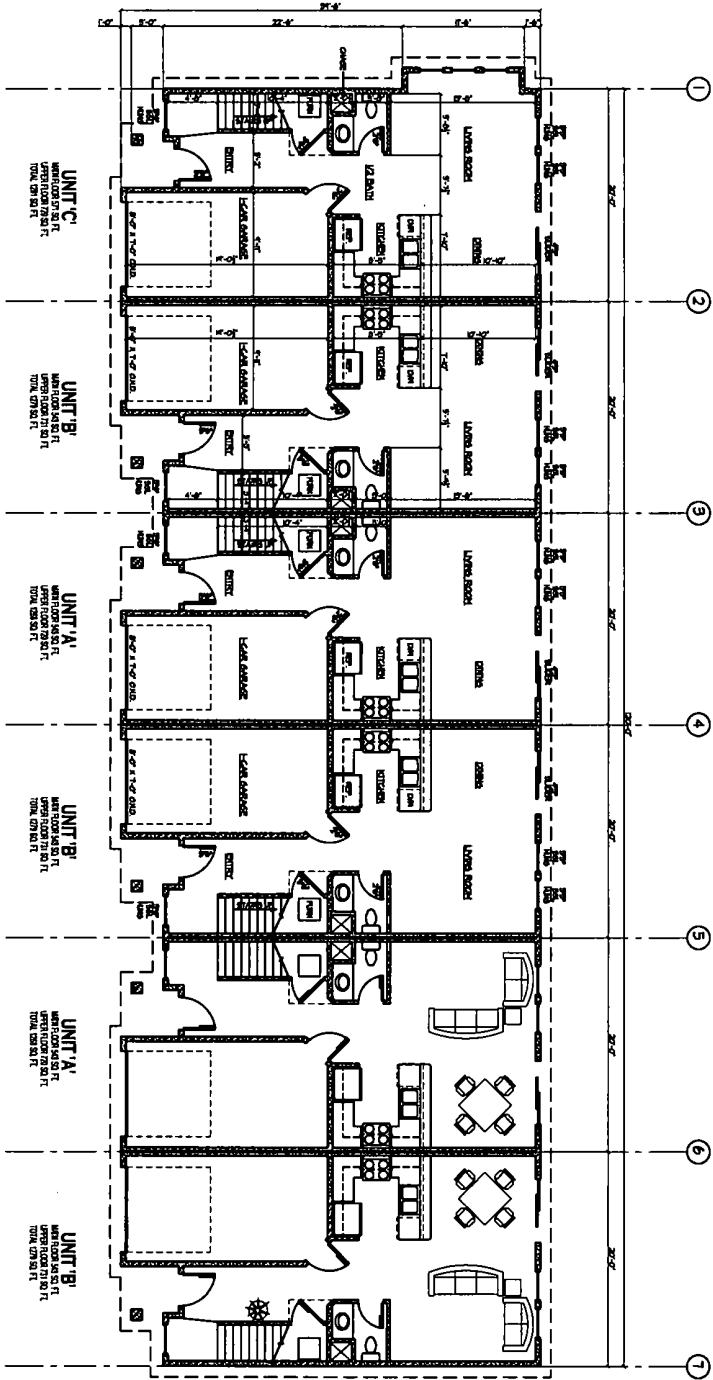
1. The Project will be developed as a Planned Unit Development, limited to 22 two-bedroom townhome units. The Project will be constructed as depicted in Exhibits C, D, and E.
2. No structures in the Project will exceed 31 feet in height as measured from original ground surface, as defined by Section 19.04.095 of the Millcreek Code.
3. All structures in the Project will be designed and constructed as depicted in Exhibit C, and shall incorporate a traditional design featuring gables, a varied roofline, architectural relief and fenestration on the sides of the structures facing 4500 South or 1200 East, and a mix of materials, consisting, at a minimum, of the following:
  - a. Brick or stone veneer shall compose at least 17 percent of front and side elevations of the structures in the Project.
  - b. Gables must incorporate a change of materials, as depicted in Exhibit C.
  - c. No structure in the Project will utilize aluminum or vinyl siding, except for use as soffit or fascia material.
4. The Project shall be subject to recorded codes, covenants, and restrictions that have been approved by the City and all units that are rented shall have a rental agreement that has been approved by the City that among other things limit each unit to two motorized vehicles per unit, with the option of an additional motorized vehicle if an accessory garage is leased.
5. The recorded codes, covenants, and restrictions and rental agreements shall limit the uses in the accessory garages to covered parking or storage for the residents in the Project that prohibits commercial uses, including commercial storage.
6. The recorded codes, covenants, and restrictions and rental agreements shall provide that residents and guests will not park on-street on either side of 1200 East. The recorded codes, covenants, and restrictions and rental agreements shall contain a remedy for violations that is acceptable to the City.
7. Accessory garages will only be leased to homeowners or leaseholders in the Project.





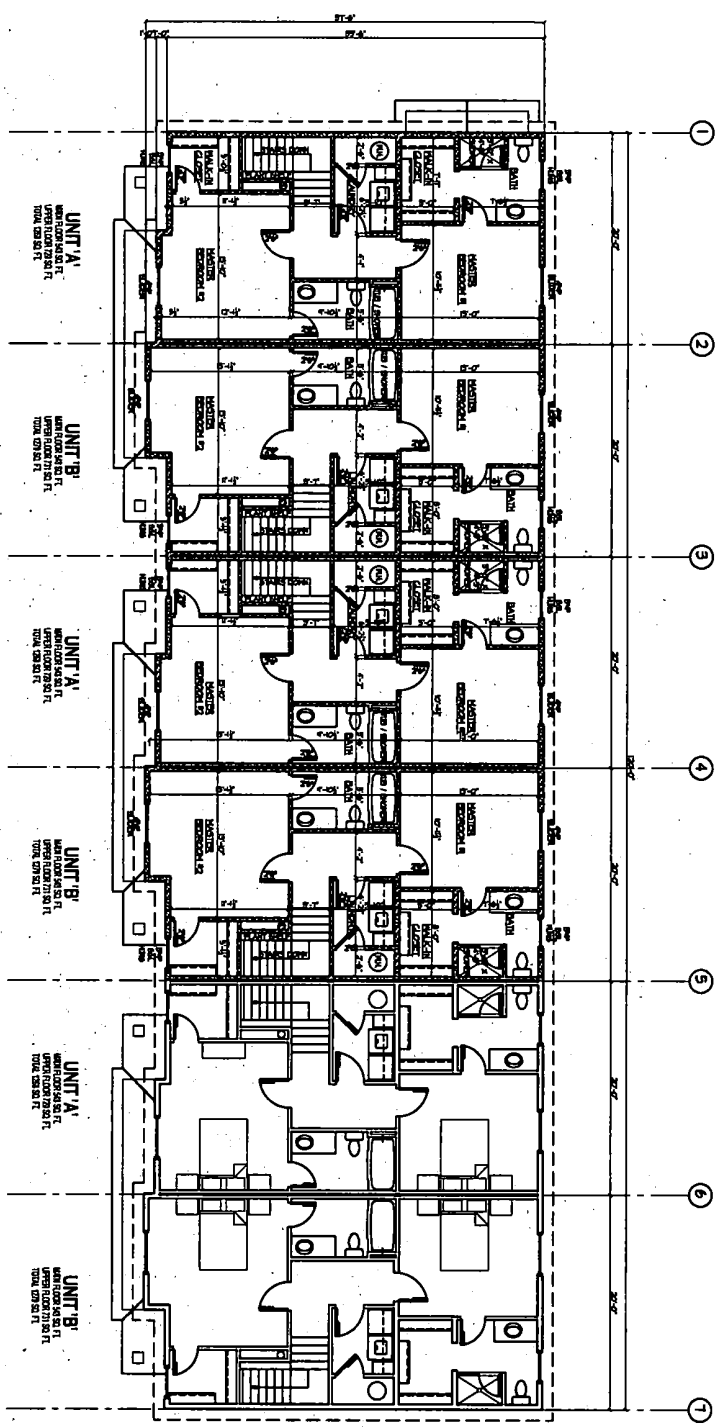
Kershaw Townhomes

Millcreek, Utah



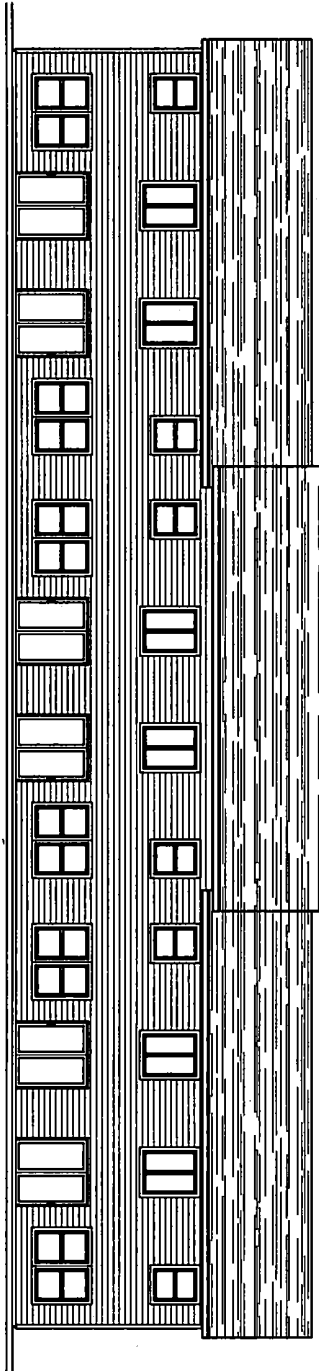
MAIN FLOOR PLAN  
SCALE 3/16"=1'-0"

<b>MAIN FLOOR PLAN</b>	
<b>KIDGBLINE DESIGN</b>	
ARCHITECTS	
7700 E. 4000 S. 620 SOUTH OGDEN, UT 84003	
Phone: 801-223-8888 Fax: 801-221-1444	
DATE: 02-14-18	PROJECT: 1871
<b>KERRAWAY TOWNHOMES</b>	
SHEETS: 17	
1	

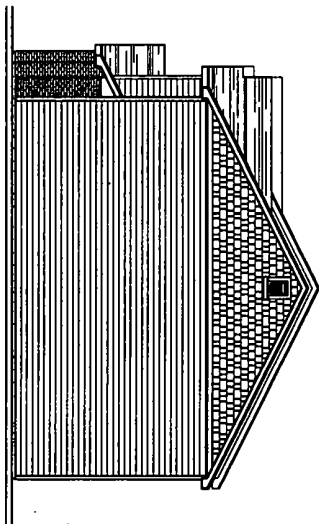


UPPER FLOOR PLAN  
SCALE 3/16"=1'-0"

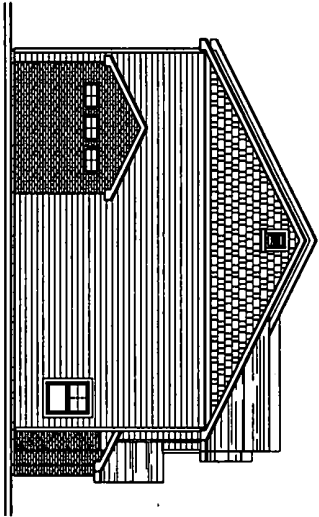
<b>UPPER FLOOR PLAN</b>	
<b>RIDGELINE DESIGN</b>	
ARCHITECTS	
700 S. GARDEN A, 4TH FLOOR, DENVER, CO 80202 Phone: 877-367-8888 Fax: 877-471-1444	
DATE: 02-15-10	AS SHOWN: 02-15-10
PROJECT: <b>KENSINGTON TOWNHOUSES</b>	
SHEET NO. 2	



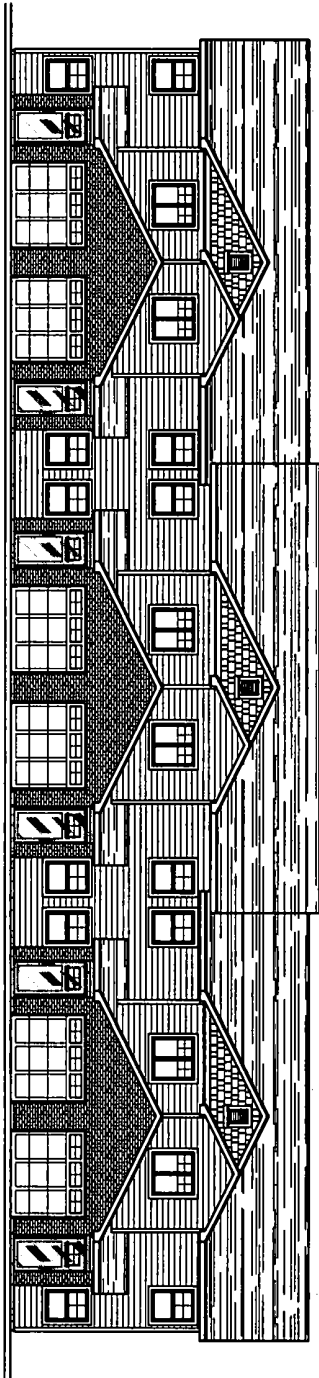
BACK EXTERIOR ELEVATION  
SCALE 3/16"=1'-0"



SIDE EXTERIOR ELEVATION  
SCALE 3/16"=1'-0"



SIDE EXTERIOR ELEVATION  
SCALE 3/16"=1'-0"



FRONT EXTERIOR ELEVATION  
SCALE 3/16"=1'-0"

**EXTERIOR ELEVATIONS**

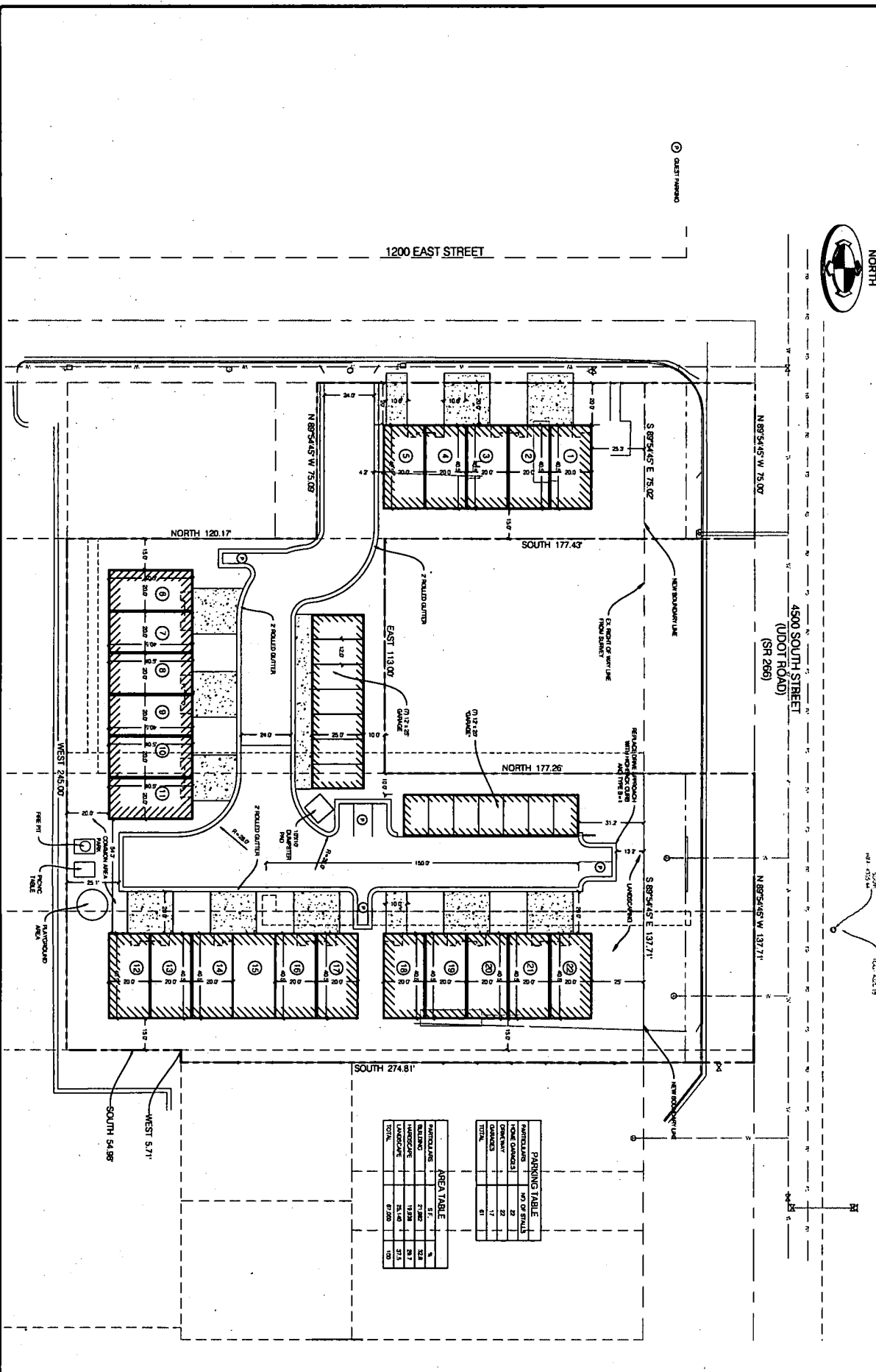
**KINGBORNE DESIGN**  
ARCHITECTS  
1700 S. 2000 E. 2ND SOUTH AVENUE, ST. ALBANS  
UTAH 84052-2000 Phone: 801-225-4883 Fax: 801-225-1188

DATE: 02-14-10 DRAWN BY: KERSHAW TOWNHOMES  
PROJECT: 02-14-10

**3**



**CONCEPT SITE PLAN**  
 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 5,  
 TOWNSHIP 2 SOUTH, RANGE 1 EAST,  
 SALT LAKE BASE AND MERIDIAN  
 SALT LAKE COUNTY, UTAH



MANUFACTURING	NO. OF SPACES
HOME GARAGES	22
DRIVEWAY	22
COURTARDS	17
TOTAL	61

MANUFACTURING	S.F.	%
BUILDING	7,382	32.8
LANDSCAPE	13,238	58.7
LANDSCAPE	52,148	21.5
TOTAL	72,768	100

<p><b>TOWN HOMES</b></p> <p>APPROX. 4500 S 1200 E MILCREEK, UTAH</p>	<p><b>BENCHMARK ENGINEERING &amp; LAND SURVEYING</b></p> <p>630 S. SOUTH STATE STREET SUITE # 100 SALT LAKE CITY, UTAH 84143 www.benchmarkcivil.com</p>	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION										<table border="1"> <tr> <td>PROJECT</td> <td>FBI</td> </tr> <tr> <td>DESIGNED BY</td> <td>DKB</td> </tr> <tr> <td>DRAWN BY</td> <td> </td> </tr> <tr> <td>CHECKED BY</td> <td> </td> </tr> <tr> <td>DATE</td> <td>04/05/2018</td> </tr> <tr> <td>SCALE</td> <td>CONCEPT</td> </tr> </table> <p><small>SCALE INCLUDES SPACES ON FULL SIZE SHEETS SCALE ADJUSTED FOR REDUCED SIZE SHEETS</small></p>	PROJECT	FBI	DESIGNED BY	DKB	DRAWN BY		CHECKED BY		DATE	04/05/2018	SCALE	CONCEPT
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<p>CONCEPT SITE PLAN</p> <p>SHEET 1 OF 1</p>																											