

12698490  
01/16/2018 04:35 PM \$0.00  
Book - 10638 Pg - 9008-9022  
ADAM GARDINER  
RECORDER, SALT LAKE COUNTY, UTAH  
MILLCREEK  
3330 S 1300 E  
MILLCREEK UT 84106  
BY: LTP, DEPUTY - WI 15 P.

**When recorded, return to:**

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

**DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is entered this 12th day of September 2017, by and between J.J. Jones Investment and NCA Family Properties, LLC. ("Developer"), for the land to be included in or affected by the project located at approximately 1253-1257 East Elgin Avenue 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 approximately .6326 acres of real property located at 1253 and 1257 East Elgin Ave 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 14-lot PUD townhome 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 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: J.J. Jones Investment, LLC.  
NCA Family Properties, LLC.  
2383 East 900 South  
Salt Lake City, Utah 84108

TO CITY: Millcreek  
Jeff Silvestrini, Mayor  
3932 S 500 E  
Millcreek Utah 84107

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



Jeff Silvestrini, Mayor

ATTEST:



~~Leslie Van Frank, Acting City Recorder~~

Elyse Greiner

DEVELOPER: J.J. Jones Investment, LLC

By:

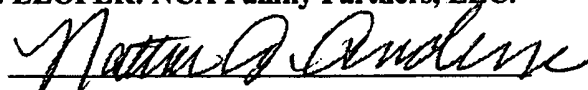


Title:

Managing Partner

DEVELOPER: NCA Family Partners, LLC.

By:

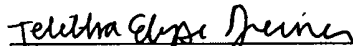


Title:

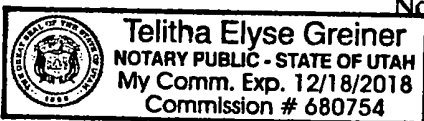
Manager

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

The foregoing instrument was acknowledged before me this 2 day of JANUARY, 2018, by Jeff Silvestrini ~~and Leslie Van Frank~~ as the Mayor and the ~~Acting 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 13 day of Sept. 2017 by Nathan Anderson

Connie Dailey  
Notary Public



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

The foregoing instrument was acknowledged before me this 13 day of September 2017 by Jon Jones

[Signature]  
Notary Public



**Exhibit A**

Legal Description

**Parcel No. 16-29-280-013**  
**1253 East Elgin Avenue**

LOT 8 ELGIN ORCHARD SUB 7049-1913 7049-1916 7482-2105

**Parcel No. 16-29-280-014**  
**1257 East Elgin Avenue**

LOT 7 ELGIN ORCHARD SUB 6935-757 6935-0759 9001-2345 9133-2872 9766-5229 10540-8726 10540-8726

## **Exhibit B**

### Design Narrative

The townhome development described in this development agreement will consist of brick, stucco, cementitious fiber board, and corrugated metal panels. The predominant material on the Elgin Avenue façade will be brick, with cementitious fiberboard and corrugated metal panels serving as secondary material.

The predominant material on all other first floor facades, excepting doors and windows, will be brick. Garage doors will include semitransparent panels consisting of glass or a similar material. The remaining elevations will consist of a combination of stucco, cementitious fiber board, and corrugated metal panels.







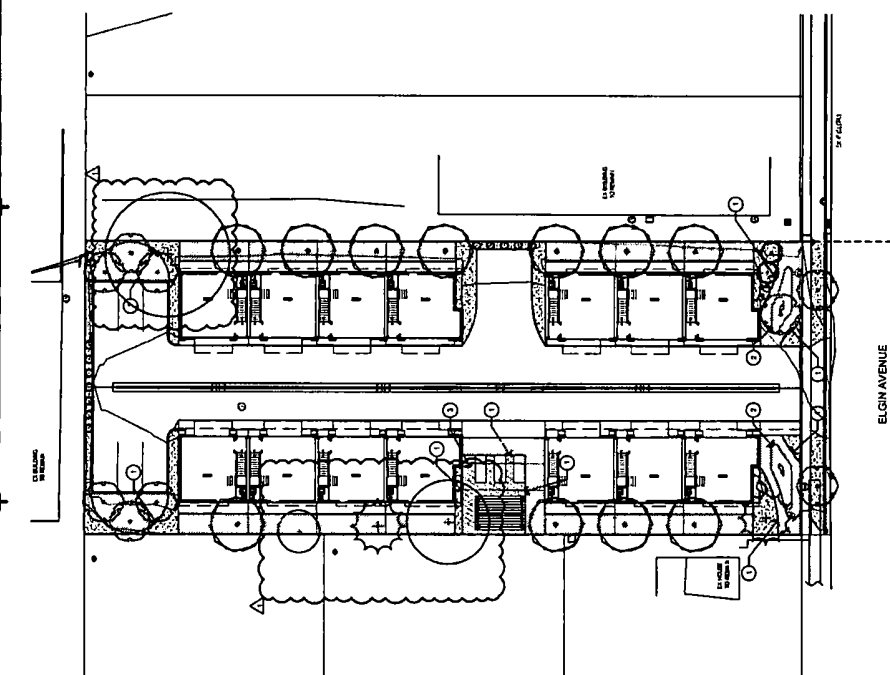
PROJECT NO.	17180A
DATE	08-11-17
DRAWN BY	JM
CHECKED BY	SS
DATE	08-11-17
<b>PRELIMINARY LANDSCAPE PLAN</b>	
<b>L2.01</b>	

### PLANTING LEGEND

SYMBOL	DESCRIPTION	QUANTITY	NOTES
	11' DIAMETER TREE	2 EA	SEE SPECIFICATIONS FOR TREE SPECIFICATIONS
	8' DIAMETER TREE	4 FT	SEE SPECIFICATIONS FOR TREE SPECIFICATIONS
	4' DIAMETER TREE	4 FT	SEE SPECIFICATIONS FOR TREE SPECIFICATIONS
	2' DIAMETER TREE	2 EA	SEE SPECIFICATIONS FOR TREE SPECIFICATIONS

**GENERAL NOTE**  
 1. SEE THE GENERAL NOTES AND SPECIFICATIONS FOR TREE SPECIFICATIONS.

**REFERENCE NOTES**  
 1. LANDSCAPE DESIGN SHALL BE IN ACCORDANCE WITH THE CITY OF SALT LAKE CITY LANDSCAPE DESIGN STANDARDS.



### LANDSCAPE SUMMARY DATA

ITEM	DESCRIPTION	QUANTITY	NOTES
1	11' DIAMETER TREE	2 EA	
2	8' DIAMETER TREE	4 FT	
3	4' DIAMETER TREE	4 FT	
4	2' DIAMETER TREE	2 EA	

**NOTICE:**  
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SALT LAKE CITY AND THE UTAH DEPARTMENT OF HERITAGE AND ARTS.

### DESIGN INTENT

The design intent for this project is to provide a high-quality, sustainable landscape design that complements the architecture and enhances the overall aesthetic of the project. The design shall be in accordance with the City of Salt Lake City Landscape Design Standards and the Utah Department of Heritage and Arts guidelines.

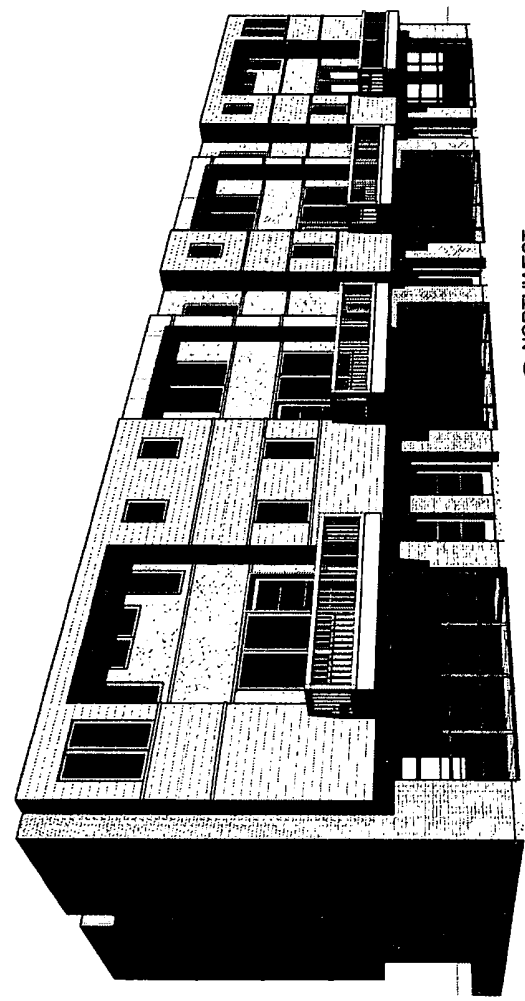
### LANDSCAPE NOTES

- ALL PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF SALT LAKE CITY LANDSCAPE DESIGN STANDARDS.
- ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE UTAH DEPARTMENT OF HERITAGE AND ARTS GUIDELINES.
- ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.
- ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.

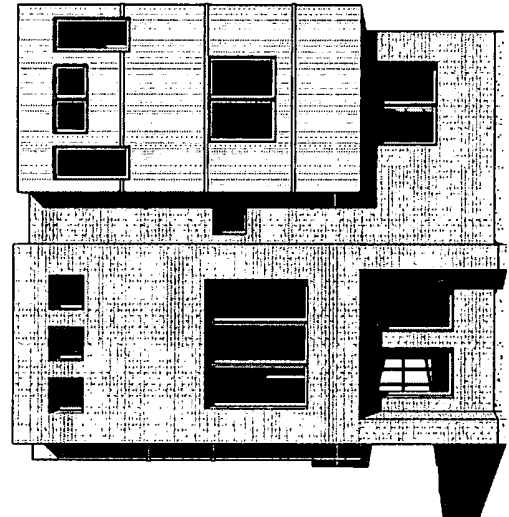
### LANDSCAPE NOTES

- ALL PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF SALT LAKE CITY LANDSCAPE DESIGN STANDARDS.
- ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE UTAH DEPARTMENT OF HERITAGE AND ARTS GUIDELINES.
- ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.
- ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.

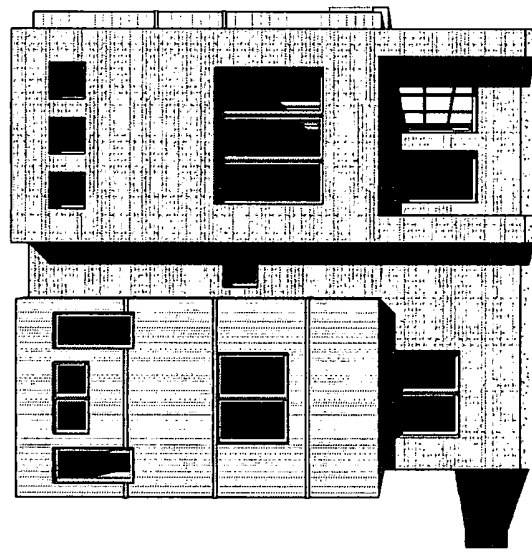




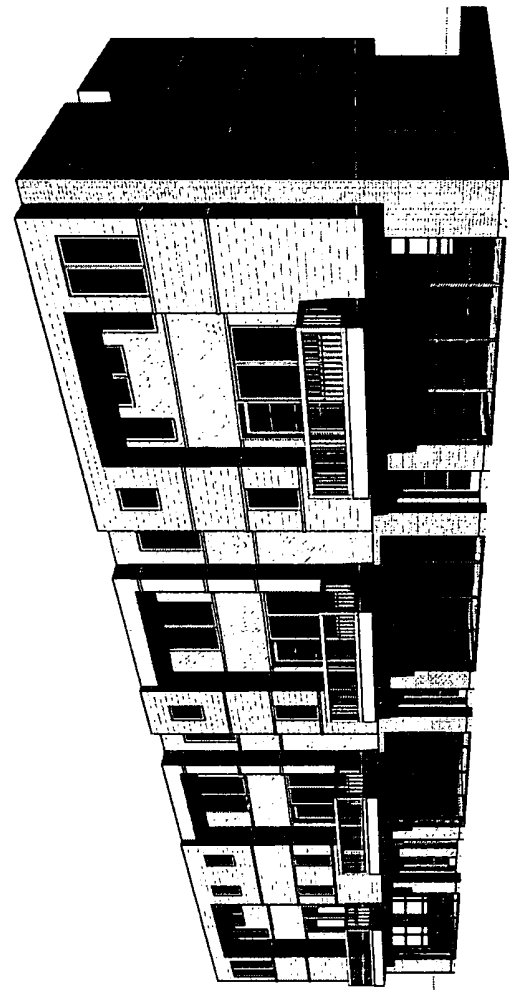
① NORTHWEST



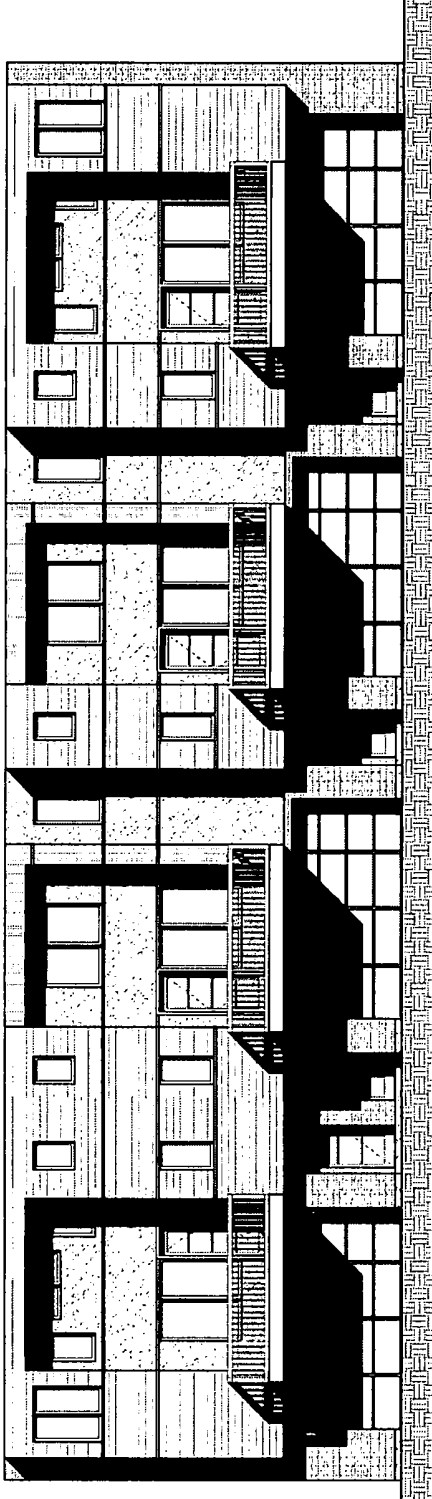
③ SOUTH



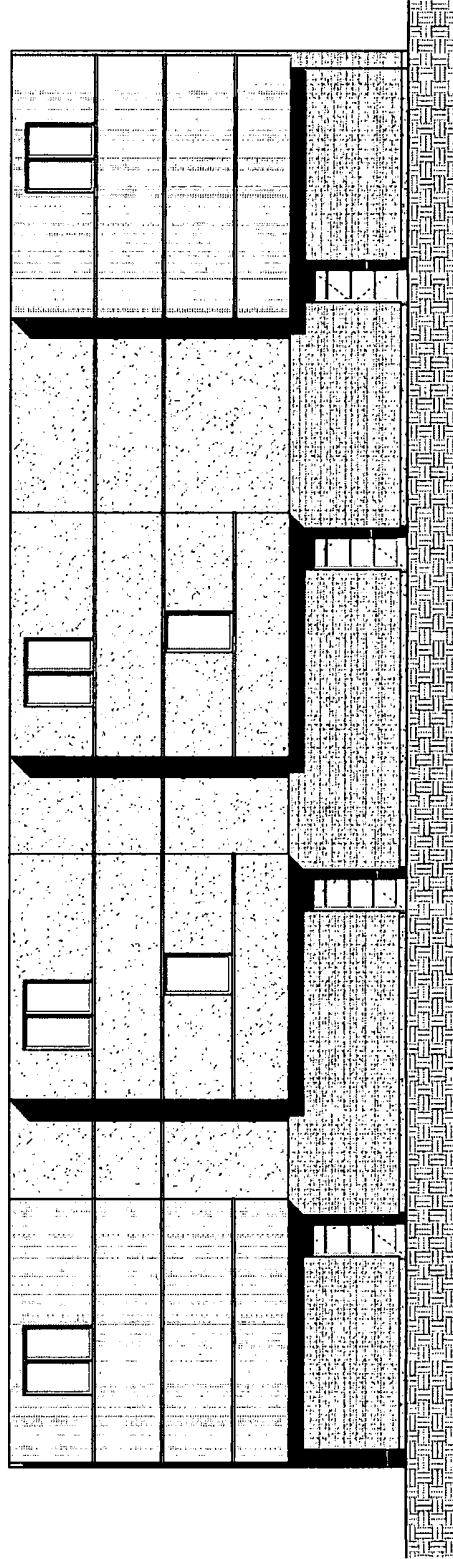
④ NORTH



② SOUTHWEST



② FRONTWEST ELEVATION  
1/4" = 1'-0"



③ REAR EAST ELEVATION  
1/4" = 1'-0"

