

When recorded, return to:

Millcreek
Attn: Jeff Silvestrini
1330 E Chambers Ave
Millcreek, UT 84106

14316038 B: 11533 P: 8008 Total Pages: 19
11/20/2024 01:08 PM By: EMehanovic Fees: \$0.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: MILLCREEK
ATTN: JEFF SILVESTRINI 1330 E CHAMBERS AVE MILLCREEK, UT 84106



DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into this 13th day of August, 2024, by and between CW Urban, LLC and its assigns ("Developer"), for the land to be included in or affected by the property located at approximately 950 East Grape Ivy Way, 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 1.44 acres of real property located at 950 East Grape Ivy Way, Utah ("Property"). A legal description of the Property is attached hereto as Exhibit "A." The Parties desire that the Property be developed (the "Project") in a unified and consistent fashion pursuant to the terms of this Agreement; and

WHEREAS, the Property is currently zoned Medium Density Residential R-2-8; and

WHEREAS, the Developer desires a zone change of the Property, as described in Exhibit "A" from the R-2-8 Medium Density Residential Zone to the R-M Multifamily Residential Zone; and

WHEREAS, the Developer consents to develop the Property consistent with the certain development and design criteria as identified in Exhibit "B" and according to the concept plans as shown in Exhibit "C"; and

WHEREAS, Developer hereby represents 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 and Developer acknowledge that the terms of this Agreement shall be enforceable and the rights and responsibilities of the Developer relative to the Property shall vest only if the City Council, in its sole legislative discretion, approves the rezone and this Agreement; and

WHEREAS, the City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, and specifically Utah Code Ann. §10-9a-523, and associated 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 Powers**. Nothing in this Agreement shall limit the City municipality's authority to enact land use regulations, including but not limited to zoning, subdivision, development, transportation, environmental, open space, and related land-use plans, policies, ordinances, and regulations after the date of this Agreement, take any action allowed by Utah Code

section 10-8-84, or require the City to change the zoning designation of an area of land within the City in the future.

3. Vested Rights. Notwithstanding, the Parties intend that that Agreement grant Developer the right to develop the Project in fulfillment of this Agreement.

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

3.1.1. City's future laws/ordinances that Developer agrees, in writing, will apply to the Project. If Developer makes the election for the City's future laws to apply to the Project, then such future laws shall apply for the remaining duration of the Project;

3.1.2 **State and Federal Compliance.** City's future laws which are generally applicable to all properties in the City, and which are required to comply with State and Federal laws and regulations affecting the Project;

3.1.3 **Codes.** Any of the following which uniformly apply to all properties, applications, persons, and entities similarly situated with/to Developer: City development standards, engineering requirements and supplemental specifications for Public Works and any new editions or replacement thereof and any City's future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

3.1.4 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons, and entities similarly situated;

3.1.5 Fees. Changes to the amounts of fees for the processing of development applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

3.1.6 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted and imposed by the City and which uniformly apply to all properties, applications, person, and entities similar situated; or

3.1.7 Compelling, Countervailing Interest. If, when reviewing Developer's land use application, the City on the record, formally finds a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2019).

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

5. **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 the Millcreek City Council meetings on this matter. In the event of a conflict between the requirements set forth in the minutes of the Millcreek Planning Commission and the Millcreek City Council, the requirements set forth in the minutes of the Millcreek City Council shall control.

6. **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.

7. **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. Notwithstanding the foregoing, Developer shall have the right to assign this Development Agreement to (i) a parent or subsidiary entity under common control, (ii) a successor entity resulting from (a) a transaction or series of related transactions in which an individual or entity, or group of related individuals or entities (other than an affiliate of Developer), directly or indirectly acquires more than fifty percent (50%) of the outstanding ownership interests in Developer, or (b) a sale of (1) all or substantially all of the assets of Developer and/or (2) at least fifty percent (50%) of the direct and indirect subsidiaries of Developer, provided that Developer provides the City with prior written notice of such assignment, the name and address of the applicable parent, subsidiary or affiliate of Developer, and a copy of the assignment.

8. **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.

9. **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 through C are hereby incorporated into this Agreement.

10. **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: CW Urban LLC
Colin Wright
610 North 800 West
Centerville Ut 84014

TO CITY: Millcreek
Jeff Silvestrini, Mayor
330 East Chambers Avenue
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.

11. **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.

12. **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.

13. **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.

14. **Term of Agreement.** This Agreement shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the Parties mutually agree to extend the

term, this Agreement shall not extend further than a period of ten years from its date of recordation in the official records of the Salt Lake County Recorder's Office.

15. **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.

16. **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.

17. **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.

18. **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.

19. **Default.** Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure, thereafter, shall be deemed to be a cure within such 30-day period. Subject to paragraph 13 upon

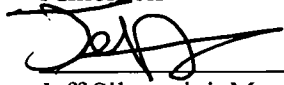
the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to pursue a remedy and the City shall have a unilateral right to withhold all further reviews, approvals, licenses, building permits, certificates of occupancy and/or other permits for development of the Project in the case of a default by Owner.

20. **Emergency Defaults.** Anything in this Agreement notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 19 without the requirements of notice of Sections 19. The City shall give Notice to Owner 24 hours prior notice of any public meeting at which an emergency default is to be considered.

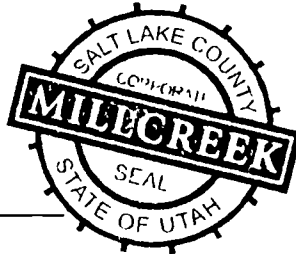
21. **Special Disclosure.** Developer acknowledges that its representative has read and understands all of the covenants, terms and conditions contained in this Agreement and that such covenants, terms and conditions are reasonable, fair and enforceable. Developer acknowledges that it has signed this Agreement as its own free and voluntary act; that this is an important and binding legal contract which has been reviewed by Developer's attorney; and that if Developer has not reviewed this Agreement with its attorney, it is because Developer has knowingly, intelligently, and voluntarily waived consultation with its attorney contrary to the City's recommendation that the covenants, promises and obligations contained herein shall be and remain effective.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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

Millcreek


Jeff Silvestrini, Mayor



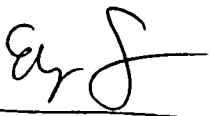
ATTEST:


Elyse Sullivan, MMC, City Recorder

CITY ACKNOWLEDGMENT

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

On the 13 day of August, 2024, personally appeared before me Jeff Silvestrini, who being by me duly sworn, did say that he is the Mayor of Millcreek, a political subdivision of the State of Utah, and that said instrument was signed on behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.



Notary

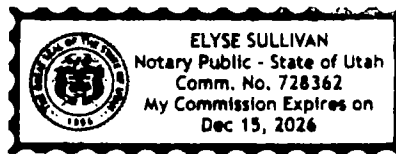


Exhibit A

OVERALL BOUNDARY DESCRIPTION:

A PARCEL OF LAND BEING PART OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT N00°11'03"E 608.67 FEET AND S89°58'36"E 314.00 FEET FROM THE CENTERLINE STREET MONUMENT AT 900 EAST & 3900 SOUTH; SAID POINT OF BEGINNING ALSO BEING S89°58'36"E 281.00 FEET FROM THE SOUTHWEST CORNER OF LOT 3, BLOCK 21, TEN ACRE PLAT "A", BIG FIELD SURVEY, AND RUNNING THENCE N00°01'24"E 199.50 FEET; THENCE S89°58'36"E 317.14 FEET; THENCE S00°01'24"W 124.70 FEET; THENCE N89°58'36"W 9.00 FEET; THENCE S00°01'24"W 74.80 FEET; THENCE N89°58'36"W 308.14 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.44 ACRES IN AREA

Exhibit B
Development and Design Criteria

Developer shall develop the Project consistent with the certain design criteria as identified below:

1. **Uses.** The property shall be limited to no more than twenty (20) townhouse style residential units, comprised within four buildings substantially as depicted in Exhibit C.
2. **Ownership.** Prior to applying for a building permit, the Developer shall record a subdivision plat consistent of twenty (20) individual platted lots, with adequate ingress and egress so that each lot may be sold separately.
3. **Parking.** Each unit shall have a minimum of a two-car garage. Additionally, the Project shall contain and maintain an additional eight (8) surface parking spaces for guests, substantially as depicted within Exhibit C.
4. **Access.** The Project shall have secondary emergency vehicular access as shown on the concept plan and as recommended by the Fire Department. The Developer shall provide engineered plan and profile drawings of Grape Ivy Way consistent with City standards and shall built/rebuild Grape Ivy Way according to applicable City standards that includes an acceptable access to 900 East, determined by the City Engineer.
5. **Landscaping and Open Space.** The Project shall provide the open space along with the tree species, location, and size as substantially depicted within Exhibit C.
6. **Setback.** The setback between the building foundation and west property line shall be a minimum 15 feet. All other setbacks shall be compliant with the minimum setback standards listed within the R-M Zone.

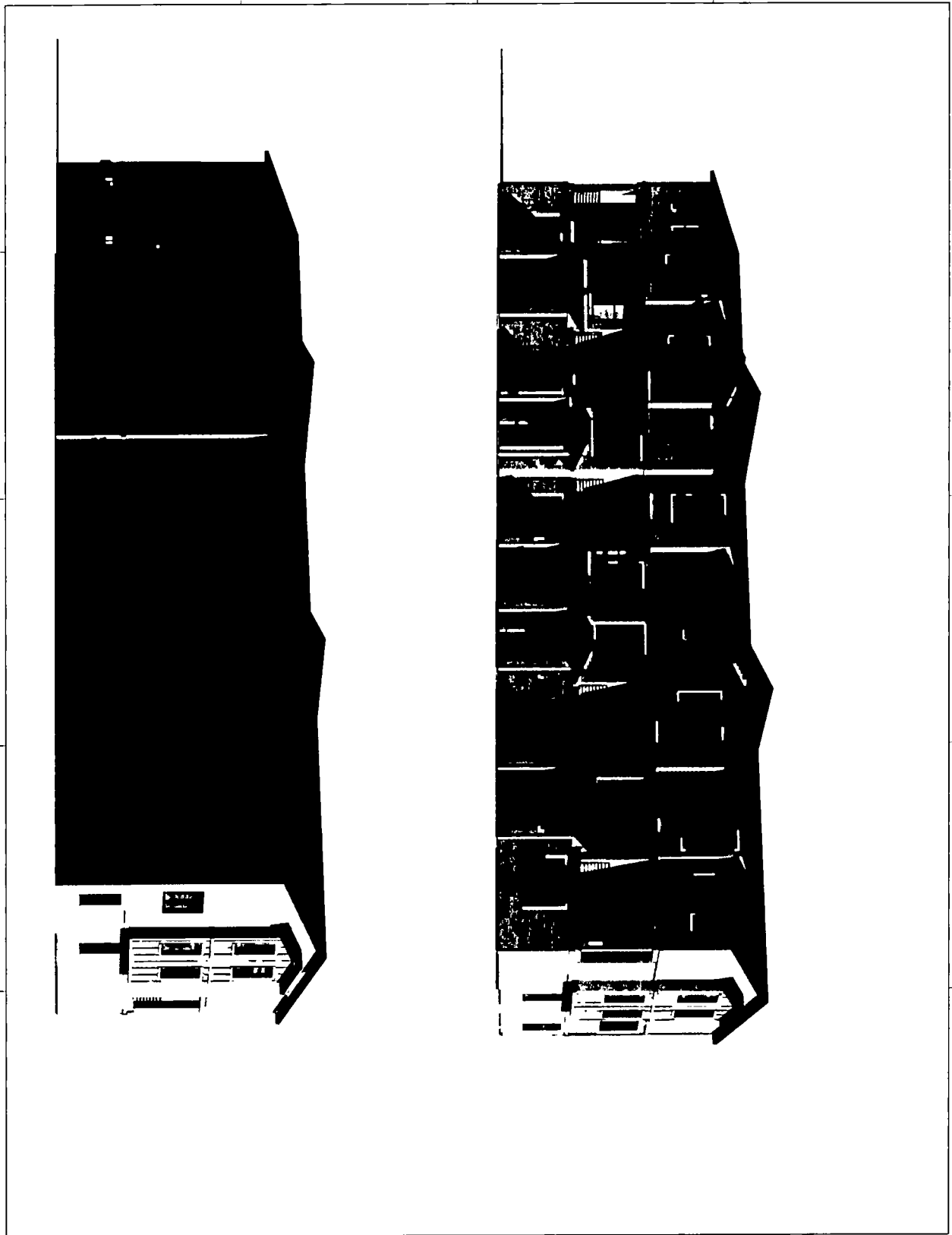
7. **Fencing.** A minimum six-foot (6') tall solid decorative masonry fence shall be installed along the south, east, and west property lines. The fence height shall be reduced to three feet (3') tall when located within clear vision site areas, as determined by the City Engineer.

8. **Architecture.** Each building shall be as substantially depicted within Exhibit C and shall incorporate the following design elements.
 - a. **Materials.** Building facades shall consist of high quality, durable, low maintenance materials (i.e., composite siding and trellises, brick, stone, glass.). Each outward facing building façade shall receive equal treatment and distribution of materials.
 - b. **Building Height.** Building shall not exceed thirty-six (36') as measured from original grade. The Developer shall submit a topographical survey of the property that is acceptable to the City prior to building demolition to establish the "original grade".
 - c. **Doors and windows.** Garage doors, if used, shall be located to the side or rear of the building. Buildings shall include one primary pedestrian door oriented towards the street or common area.
 - d. **Porches.** Each unit shall include at least a forty (40) square foot covered front porch, which shall be oriented toward the public right of way. Porches may encroach up to five feet (5') into the front yard setbacks.
 - e. **Exterior Lighting.** All exterior light fixtures (excluding public streetlights) shall be shielded and directed downward to prevent outward glare.

9. **Street Lighting.** The developer shall install standard streetlights as part of the development, the quantity and location shall be as determined by the City Engineer.

10. **Utilities.** All utilities, including open ditches as part of a private irrigation system, shall be placed underground or piped, with the appropriate access and maintenance easements, (subject to utility providers approval).

Exhibit C
(See following pages)



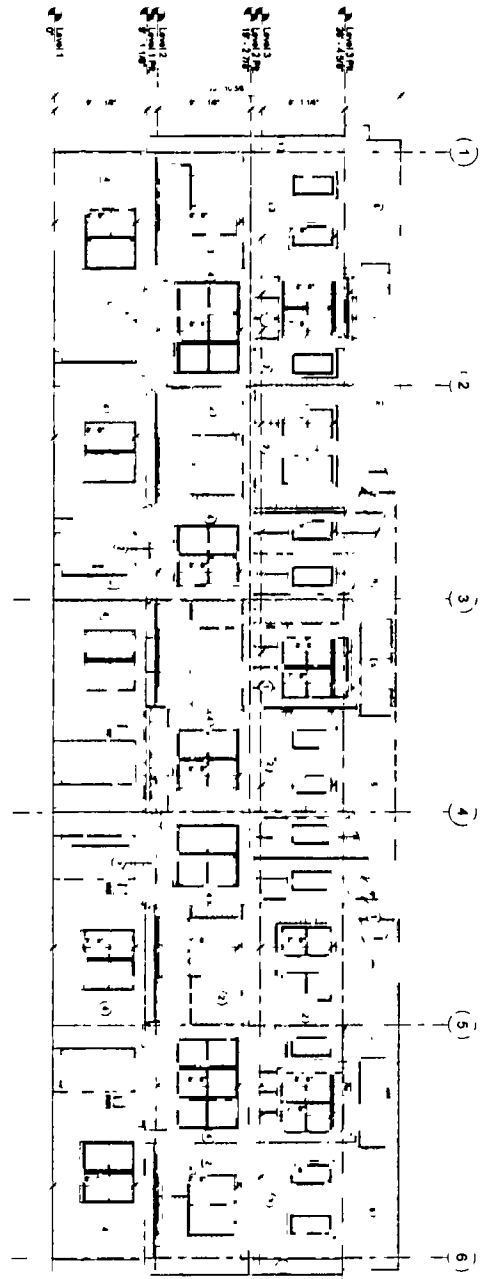
TITLE
 EXTERIOR
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G002
 DATE: 7/26/24 11:08:52 AM

PROJECT
 theIVY
 REVISIONS
 MILLCREEK, UTAH

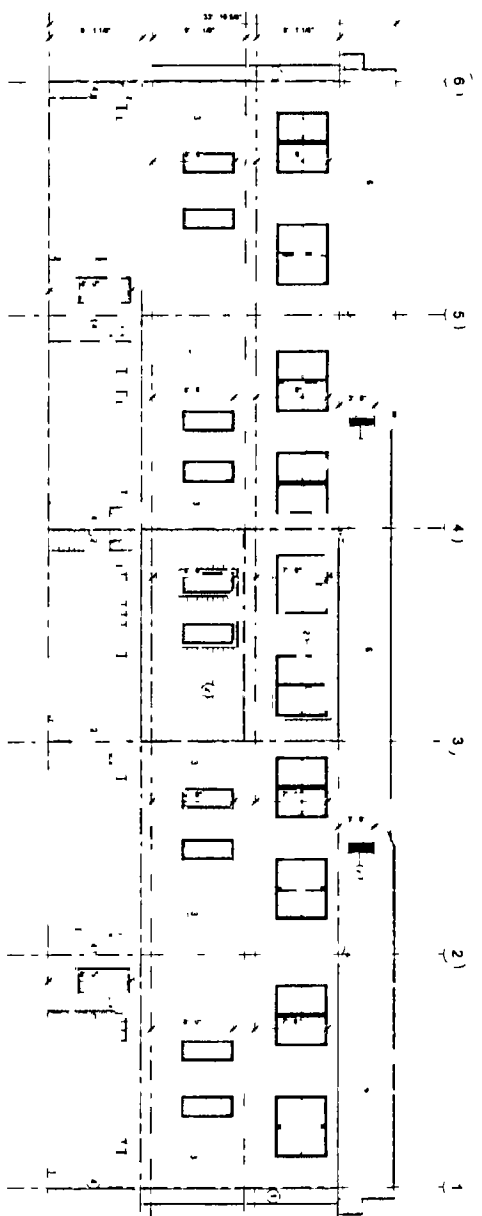
THESE DRAWINGS ARE THE PROPERTY OF C.W. URBAN ARCHITECTS, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF C.W. URBAN ARCHITECTS, INC.

C.W.
URBAN

THESE DRAWINGS ARE THE PROPERTY OF C.W. URBAN ARCHITECTS, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF C.W. URBAN ARCHITECTS, INC.



1 FRONT ELEVATION



2 REAR ELEVATION

NO.	DATE	BY	DESCRIPTION
1			Issue for Review
2			Issue for Construction
3			Issue for Construction
4			Issue for Construction
5			Issue for Construction
6			Issue for Construction

Level 1: 10'-0" to 10'-0"
 Level 2: 10'-0" to 10'-0"
 Level 3: 10'-0" to 10'-0"
 Level 4: 10'-0" to 10'-0"
 Level 5: 10'-0" to 10'-0"
 Level 6: 10'-0" to 10'-0"

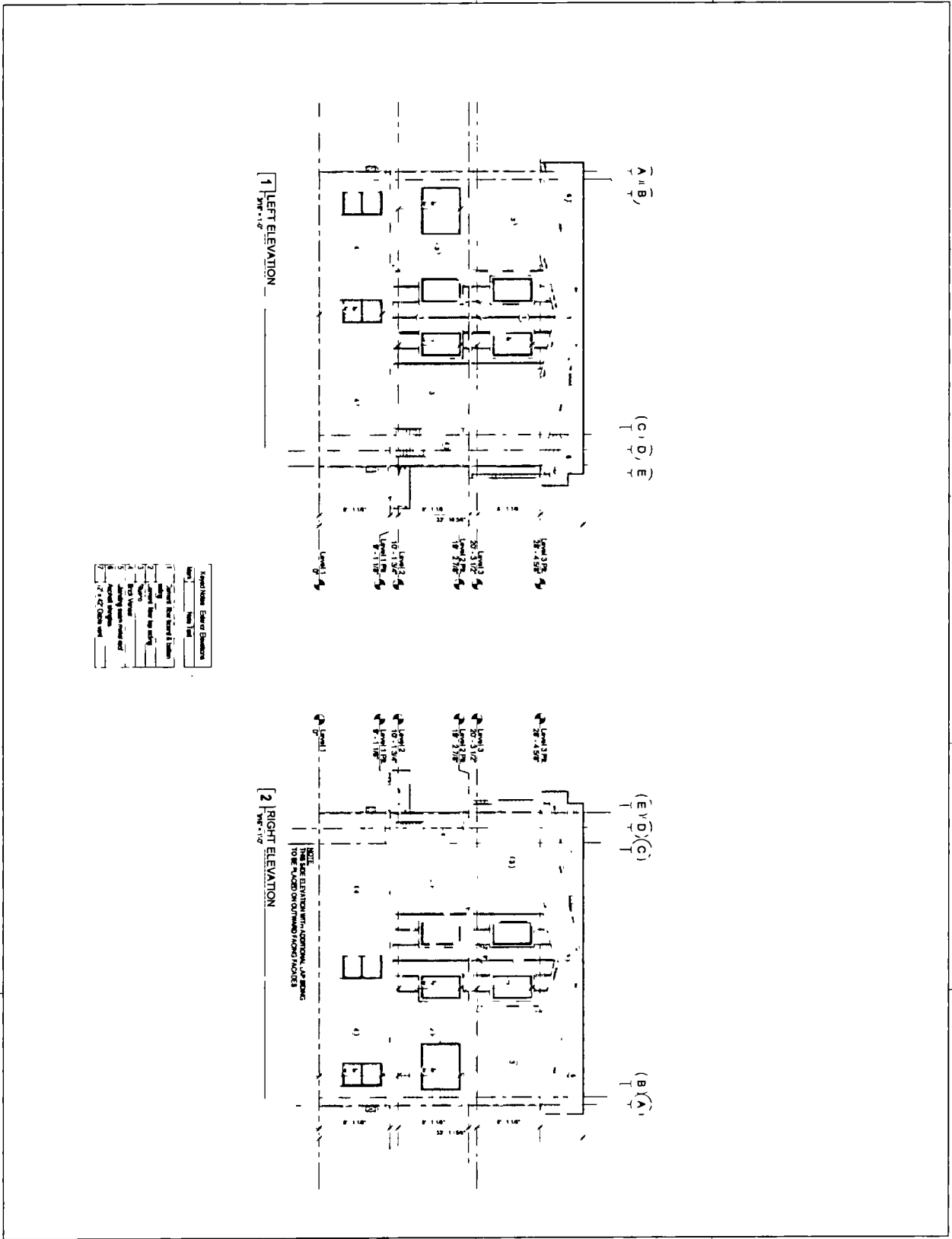
C.W.
URBAN

14316038 B: 11533 P: 8023

PROJECT
 theIVY
 MILLCREEK, UTAH

TITLE
 FRONT / REAR
 ELEVATIONS

SHEET
A300
 DATE: 7/20/2011 10:34 AM



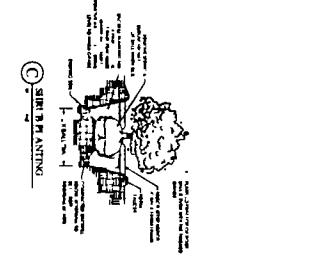
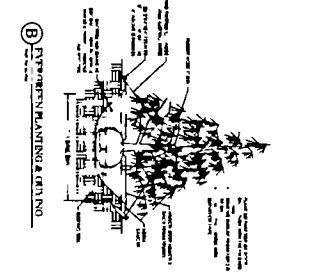
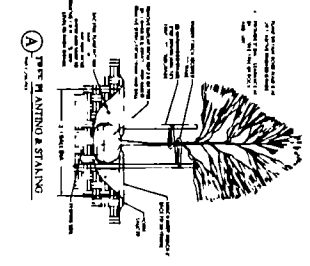
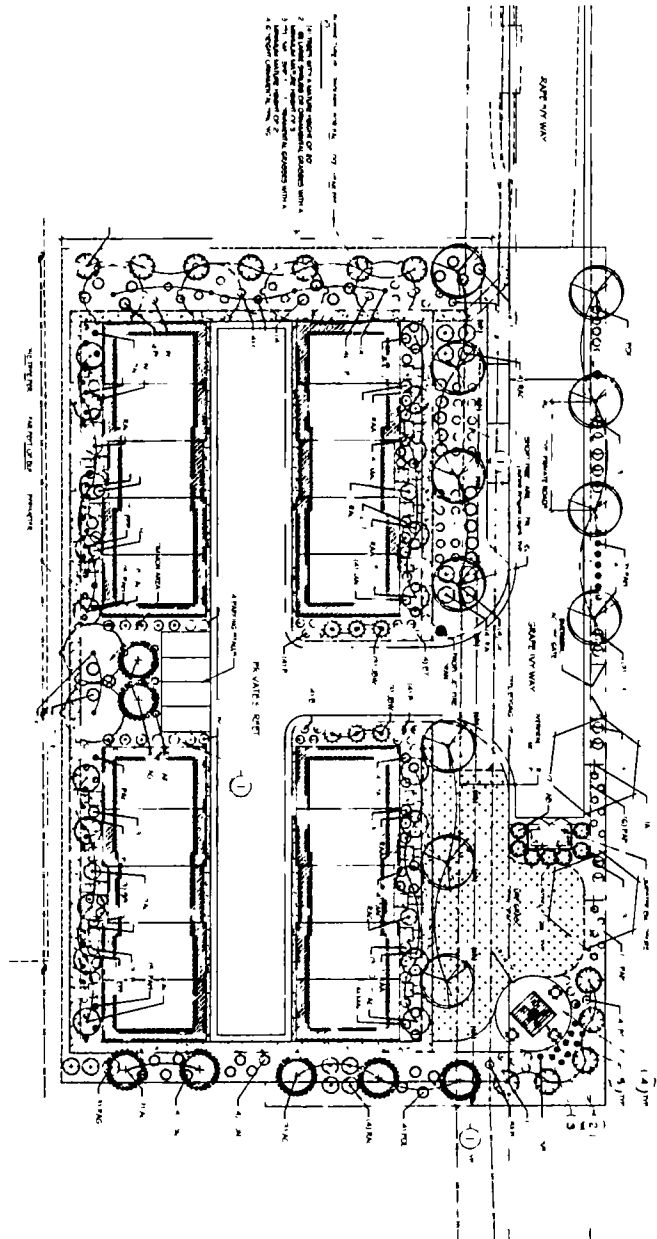
C.W.
URBAN

PROJECT
theIVY
MILLCREEK, UTAH

TITLE
RIGHT / LEFT
ELEVATIONS

SHEET
A301

DATE: 7/26/2011 11:28 AM



MILLCREEK CITY LANDSCAPE STANDARDS: CH. 19.77

1. NO MORE THAN 20% OF THE LANDSCAPE AREA OUTSIDE OF RECREATION ZONES SHALL BE PLANTED WITH TREES.
2. STREET TREES SHALL BE PLANTED ALONG PUBLIC OR PRIVATE ROADWAYS AT THE RATE OF ONE CANOPY TREE PER (40 FT) FRONT, JAWAL FEET OF FRONTAGE.
3. A MINIMUM OF ONE (1) TREE SHALL BE PROVIDED FOR EVERY HUNDRED LINEAR FEET (40 FT) OF BUILDING PERIMETER LANDSCAPE AREA. AT LEAST 10% OF REQUIRED TREES SHALL BE DECIDUOUS TREES.
4. TREES PLANTED WITHIN THE ZONE OF CANOPY SHALL BE PROVIDED FOR EVERY TEN DECADE FEET (10 FT) OF BUILDING PERIMETER AREA.
5. TREES PLANTED WITHIN TEN FEET (10 FT) OF OVERHEAD POWERLINES SHALL HAVE A MAXIMUM PLANT COVERAGE AND CROWN WIDE THE QUANTIFY AND SIZE OF MATERIALS PLANTED.

LANDSCAPE NOTES

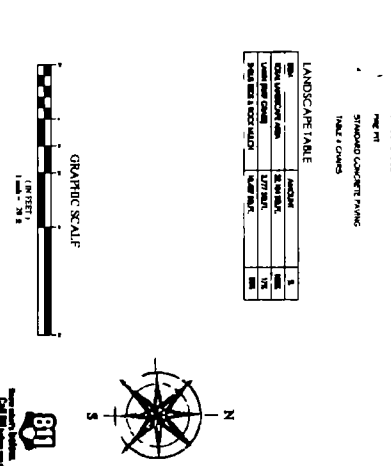
1. LAWN AREAS WILL BE SOFTED WITH FERTILIZER & GRASS SEED OVER A INCHES GOOD TOP DRESS AND SIMILAR BED AREAS AND OTHER A REALIABLED ROCK MULCH WITH A DEEP OF PROS (TYPE) SPECIFIED IN THE REFERENCE NOTE SCHEDULE. PLACE ROCK OVER DOWNT APPLIED FIBER BRIDGE FOR LOW STRESS, REMOVE LAWN AREAS AND PLANTING BEDS.
2. CONTRACTOR TO CONTACT THEIR OWN QUANTIFIER TAKE OFFS IN THE PLAN AND VERIFY ANY DISCREPANCIES WITH THE LANDSCAPE ARCHITECT.

PLANT SCHEDULE

SYMBOL	COMMON NAME	SCIENTIFIC NAME	ZONE	SIZE	QTY
1
2
3
4
5

REFERENCE NOTES SCHEDULE

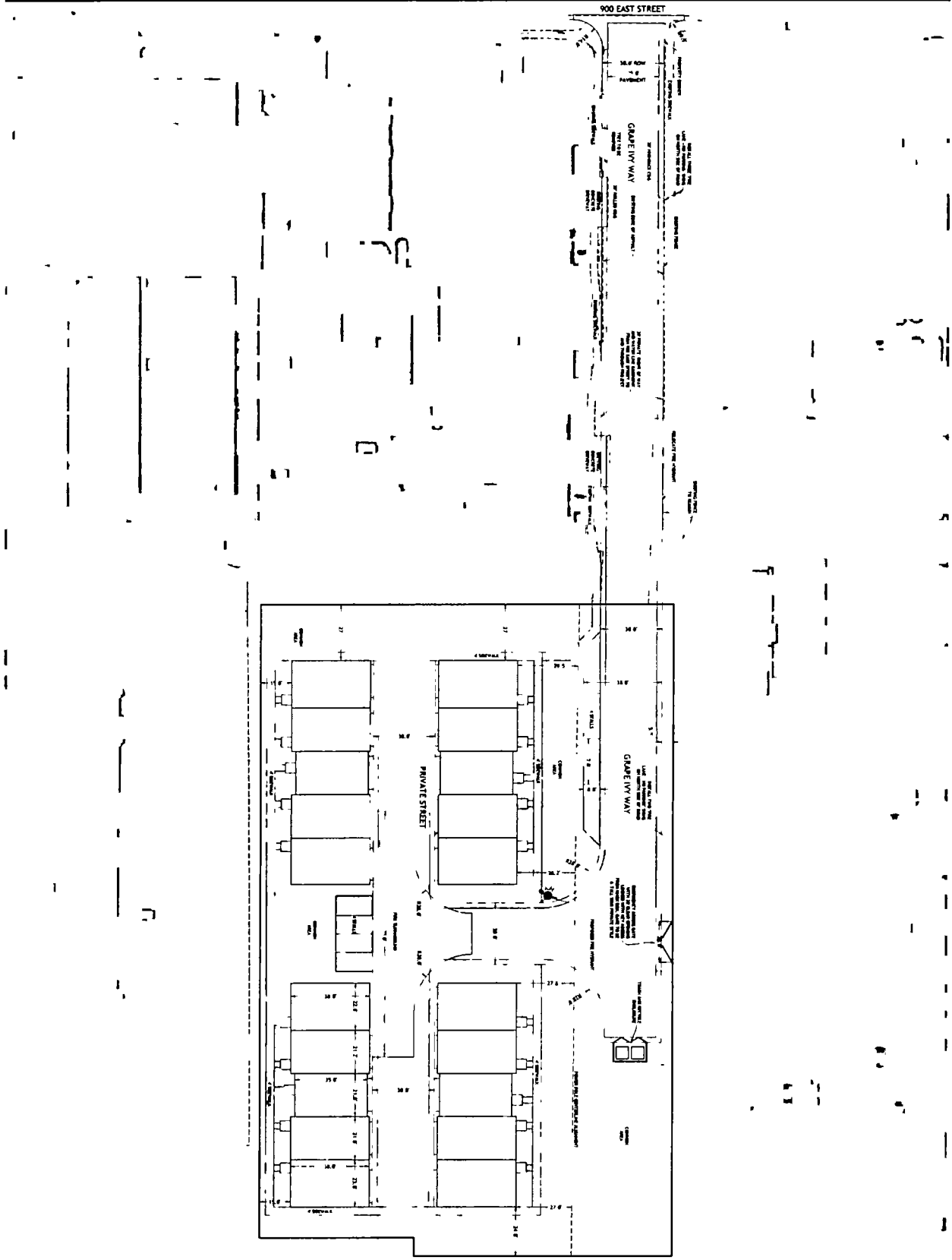
NO.	DESCRIPTION	DATE	BY
1
2



NO.	DATE	DESCRIPTION

THE IVY
MILLCREEK, UTAH
LANDSCAPE PLAN

FOCUS ENGINEERING AND SURVEYING, LLC
11533 BLYTHE DRIVE #1122
MIDVALE, UTAH 84047
www.focus-eh.com



PROJECT STATISTICS

TOTAL PROJECT AREA: 42,206 m²

RESIDENTIAL UNITS: 20

RENDER: 03 SHANTUNG


LANDMARK PARTNER: 48 WALLS (2 SHANTUNG)

CLIENT PARTNER: 5 STILLS

TOTAL PARKING: 48 STALLS


OPEN SPACE: 20,000 m² (2.5%)

DISCLAIMER: THIS IS A PRELIMINARY CONCEPTUAL SITE PLAN. IT IS NOT A CONTRACT DOCUMENT. IT IS SUBJECT TO CHANGE WITHOUT NOTICE. THE CLIENT ACCEPTS THE RISK OF OMISSIONS AND ERRORS. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY THE CLIENT OR ANY THIRD PARTY.



3811 Park Lane, Suite 1000, Cape Town, South Africa
 (021) 761-1010
 www.edmpartners.com

SCALE: 1:200



HOME
BY C.W. URBAN

NOTES:

the IVY

Conceptual Site Plan

PROJECT: _____

DRAWN BY: _____

REVIEWED BY: _____

NO. DATE: _____

REVISIONS: _____

DATE: July 1, 2024

SHEET NUMBER: **0-1**