

RESOLUTION NO. 21-01

**A RESOLUTION OF THE MILLCREEK COMMUNITY REINVESTMENT AGENCY
APPROVING AN AMENDED PARTICIPATION AGREEMENT WITH OPUS GREEN
(f/k/a CLEARWATER DEVELOPMENT)**

WHEREAS, the Millcreek Community Reinvestment Agency (“Agency”) met in a public meeting on February 8, 2021, to consider, among other things, approving an amended participation agreement with Opus Green (f/k/a Clearwater Development); and

WHEREAS, the Agency was created to transact the business and exercise all of the powers provided for in the former Utah Redevelopment Agencies Act and the current Utah Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to the Act, and more particularly Utah Code Section 17C-1-202, the Agency is authorized enter into participation agreements with developers or property owners; and

WHEREAS, on October 24, 2019 the Agency approved a participation agreement with Clearwater Development; and

WHEREAS, Millcreek OG, LLC has requested that the referenced development agreement be amended to provide among other thing for an assignment to a new party and other miscellaneous matters; and

WHEREAS, staff has reviewed the request and recommends that an amendment be approved; and

WHEREAS, Opus Green as successor in interest to Clearwater Development and the Agency have negotiated a contract for repayment of certain property tax increment, the terms of which are set forth in the amended participation agreement (“Amended Agreement”) attached hereto as exhibit “A.”

NOW THEREFORE BE IT RESOLVED BY THE MILLCREEK COMMUNITY REINVESTMENT AGENCY as follows:

1. that the Amended Agreement be approved, with such minor changes and recommendations as deemed necessary by the Agency.
2. that the Chairperson and Recorder are hereby authorized and directed to execute and deliver the Amended Agreement on behalf of the Agency.
3. that this resolution takes effect upon adoption.

PASSED AND APPROVED this 8th day of February, 2021.



**MILLCREEK COMMUNITY REINVESTMENT
AGENCY**

A handwritten signature in blue ink, appearing to read "Jeff Silvestrini".

Jeff Silvestrini, Chair

ATTEST:

A handwritten signature in blue ink, appearing to read "Elyse Sullivan".

Elyse Sullivan, Agency Recorder

Roll Call Vote:

Silvestrini	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Marchant	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Jackson	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Catten	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Uipi	<input checked="" type="radio"/> Yes	<input type="radio"/> No

**PARTICIPATION AGREEMENT by and between the
MILLCREEK COMMUNITY REINVESTMENT AGENCY and
MILLCREEK OG, LLC
for the
WEST MILLCREEK URBAN RENEWAL PROJECT AREA**

This Participation Agreement (the “**Agreement**”) is made and entered into as of this 14 day of April, 2021 (the “**Effective Date**”), by and among the MILLCREEK COMMUNITY REINVESTMENT AGENCY (the “**Agency**”), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Act**”; § 17C-1-101 *et seq.*, or its predecessor statutes), and MILLCREEK OG, LLC, a Utah limited liability company (“**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 Participation Agreement (the “**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 certain public infrastructure and amenities within Millcreek City (the “**City**”) to be constructed by Participant pursuant to that certain development agreement between the City and Participant dated as of April 14, 2021 (the “**Development Agreement**”). The Development Agreement contemplates the construction of a mixed-use development on approximately 7.14 acres more particularly described on the ALTA survey attached to **Exhibit A** (the “**Site**”). 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 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 and ordained in 2009 by the Redevelopment Agency of Salt Lake County. The Project Area was transferred to the City in 2018 as authorized by Section 17C-1-205 of the Act. This Agreement is also subject to the provisions

of the project area budget (the “**Budget**”), as created by the Sale Lake County Redevelopment Agency in 2009 and transferred to the Agency on November 20, 2018.

1.5. Description of the Improvements

Pursuant to the Development Agreement, Participant has agreed to develop a public park of not less than 1.09 acres and a pedestrian bridge crossing Cottonwood Creek as shown on the Site Plan attached hereto as **Exhibit B** (the “**Site Plan**”). The park and pedestrian bridge as contemplated by the Development are referred to as the “Public Amenities.” For purposes of this Agreement, the Public Amenities shall be deemed complete when fully constructed, and in the case of the public park, when accepted by and transferred to the City. Notwithstanding the foregoing, in the event Participant cannot obtain third-party approval for the pedestrian bridge as outlined in the Development Agreement, “Public Amenities” for purposes of this Agreement shall mean only the public park. In such event, Agency’s reimbursement of the Total Cost (as defined below) shall not include any costs attributable to the pedestrian bridge.

1.6. Description of the Investment

The Participant intends to invest approximately \$33,622,000 within the Site. The total cost of the Public Amenities, including the value of the land transferred to the City, is expected to be approximately \$2,298,683. Prior to any reimbursement payments, as described by Section 2.7, Participant shall provide to the Agency evidence of the actual costs of constructing the Public Amenities (the “**Total Cost**”). Such evidence shall include invoices showing actual costs and other supporting documentation as reasonably required by the Agency. An estimate of the Total Cost, and the previously-agreed upon value of the land, is set forth in **Exhibit C**.

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
3330 South 1300 East
Millcreek, UT 84106

1.7.2. The Participant

Participant’s address for purposes of this Agreement is:

Millcreek OG, LLC
Attn: Micah W. Peters
336 West Broadway, Suite 110
Salt Lake City, UT 84101

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 contemplated investments within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section 1.8, may be considered, for practical purposes, a transfer or disposition of the Site, 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 development of 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, during the term of this Agreement and except as set forth in the following sentence, 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 attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default that shall be subject to the provisions of Article 5 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 property within the Site to a tax-exempt organization other than the City or otherwise to exempt any of the property within the Project Area 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.

1.8.5. Continuing Obligations

No assignment or transfer of this Agreement, in whole or in part, shall relieve Participant from any and all obligations under this Agreement without the express written consent of the Agency. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant and its successors and assigns until the expiration or termination of this Agreement.

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, the Agency shall reimburse Participant for the Total Cost, plus interest, subject to the conditions set forth in this Agreement (the “**Reimbursement**”). The contemplated payment of the Reimbursement shall be made by the Agency within ninety (90) days after the date on which all of the conditions precedent as set forth in Section 2.3 have been met.

2.2. Tax Increment and Other Project Area Funds

Other than the Reimbursement, Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area, including sales tax or property tax.

2.3. 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:

2.3.1. Development of the Site

The Agency is not obligated to pay to Participant the Reimbursement unless Participant has constructed upon the Site the Public Amenities. Notwithstanding any provision in this Agreement to the contrary, the Agency shall begin paying the Reimbursement upon the earlier of the completion of (i) the public park (as defined in the Development Agreement) or (ii) the pedestrian bridge (as defined in the Development Agreement) for that portion of the Reimbursement attributable to either the public park or the pedestrian bridge, as the case may be. .

Upon completion of the Park Property infrastructure, the Developer reserves the right to maintain private ownership of the 1.09 improved Park Property for a period not exceeding 36 months. In the event the Developer elects to maintain private ownership of the Park Property, and not dedicate the property to Millcreek City for 0-36 months, the Developer is obligated to record a temporary public access & use easement for the said Park Property. The said easement will be automatically vacated upon dedication of the Park Property to Millcreek City. At which time the said public access and use easement is recorded, or ownership of the Park Property is dedicated to Millcreek City, (a) the one-year warranty period for landscaping and infrastructure begins, and (b) reimbursements associated with the Participation Agreement and Millcreek City Parks fees will be activated in accordance with those agreements, and (c) maintenance of the Park Property will be managed and paid for by Millcreek City.

2.3.2. Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation, reasonably acceptable to the Agency, from Participant that all real and personal property taxes attributable to the portions of the Site owned by Participant have been paid for the particular year of the Reimbursement Term. Such documentation shall be provided to the Agency by March 31 of the year following the year for which the Reimbursement is sought.

2.3.1. Request for Payment by Participant

The Agency is not obligated to pay the Reimbursement to Participant unless Participant has made a Request for Payment in writing pursuant to Section 2.6 for the year for which payment of the Reimbursement is being sought. Such request shall be made no later than March 31 of the year following the year for which payment of the Reimbursement is sought.

2.4. Effect of Failure to Meet Conditions Precedent to Payment of Reimbursement

In the event that the conditions precedent as described in Section 2.3 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.

2.5. Calculation of Reimbursement

Salt Lake County or other governmental or quasi-governmental entities will receive 20% of the Total Tax Increment (as defined below) attributable to the Site, and the Agency shall receive the remaining 80% of the Total Tax Increment (the “**Annual Reimbursement Amount**”). Developer shall received 76% of the Agency’s 80% share of the Total Tax Increment. The Agency shall not be required to pay to Participant in any given year more than the Annual Reimbursement Amount for the preceding year. Participant shall not have claim to Tax Increment generated from any part of the Project Area other than the Site. For purposes of this Agreement, “Tax Increment” means the following, which shall be calculated annually: property taxes for any property within the Site paid in a given year minus property taxes paid for the Site in 2019.

The Reimbursement shall be paid until the expiration of the tax increment program for the West Millcreek Urban Renewal Project, which is estimated to be fourteen (14) years from the date for which Participant first receives the Reimbursement (the “**Reimbursement Term**”). The total amount of the Reimbursement, including interest, paid to Participant under this Agreement shall not exceed \$3,316,296.00 (the “**Reimbursement Cap**”).

Participant further acknowledges that the Reimbursement paid by the Agency to Participant under this Agreement is limited by the Reimbursement Term and the Reimbursement Cap. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount during the Reimbursement Term.

2.6. Request for Reimbursement

Participant shall submit in writing a request for payment to the Agency by March 31st of the year following the calendar year for which payment of the Reimbursement is sought (the “**Request for Payment**”). The Participant shall include in the request proof of payment of all *ad valorem* personal property taxes subject to and as described in Section 2.3.2. 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.

2.7. Payment of Taxes

During the term of this Agreement, to the extent applicable, Participant agrees to pay, prior to delinquency, all undisputed real property and other *ad valorem* taxes and assessments assessed against any portion of the Site that is owned by Participant.

2.8. 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 are changed or amended so as to reduce or eliminate the Reimbursement, 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. Further, Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, and the Budget were properly approved, adopted and made effective. 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 the Reimbursement to the Agency and/or Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

2.9. 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 Reimbursement, 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. 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 Participant. In the event that the court declares that the Participant cannot receive the Reimbursement, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Reimbursement, 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 necessary to comply with the order of the court.

2.10. 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.

2.11. 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.

2.12. Development Deadline

Development of the Site, as described in Section 2.3.1, shall be completed no later than seven (7) years after the Effective Date. Failure to complete development by this date is a Default and subject to Article 5 of this Agreement

2.13. Funding Responsibility

The Parties understand and agree that funding for the investment within the Site 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.

3. ADDITIONAL TERMS

3.1. Investment Responsibility

Participant will at all times be responsible for its investment within the Site. 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 an incentive to develop the Site.

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 development of the Site; provided, however, that Participant's development of the Site and construction of the Public Amenities is subject to the City's approval of the Site Plan for the Site, which is satisfactory to the City and Participant.

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. 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 Site.

3.3.3. 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.

3.3.4. Local, State, and Federal Laws

Participant shall develop the Site 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.

3.3.5. 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.

3.3.6. 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 or the City under the Governmental Immunity Act of Utah, Utah Code 63G-7-101, *et seq.*

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 expiration of the Reimbursement Term, unless terminated earlier by 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 have. 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.

Notwithstanding to foregoing, the Agency shall not have to right to compel, through a remedy of specific performance or otherwise, the Participant to make any investment within the Project Area, including, without limitation, the construction of the Public Amenities.

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 1.7.1 and 1.7.2 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. Nonliability 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, delayed, or conditioned.

6.7. Time of the Essence

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

6.8. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. 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.

6.10. 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.

6.11. 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.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. 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, § 63-2-101 *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.

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.

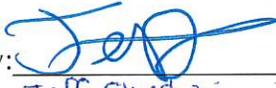
7.3. Waivers and Amendments

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.

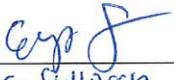
[Remainder of page intentionally left blank; signature pages follow]



**MILLCREEK REINVESTMENT
AGENCY**

By: 
Jeff Silvestrini, Executive Director
Chair

Attest:

By: 
Elysa Sullivan, Secretary Recorder

MILLCREEK OG, LLC

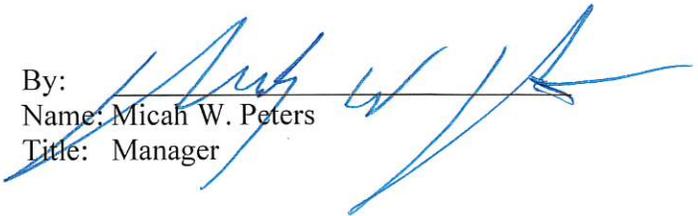
By: 
Name: Micah W. Peters
Title: Manager

Exhibit A
Alta Survey of the Site

[Attached]

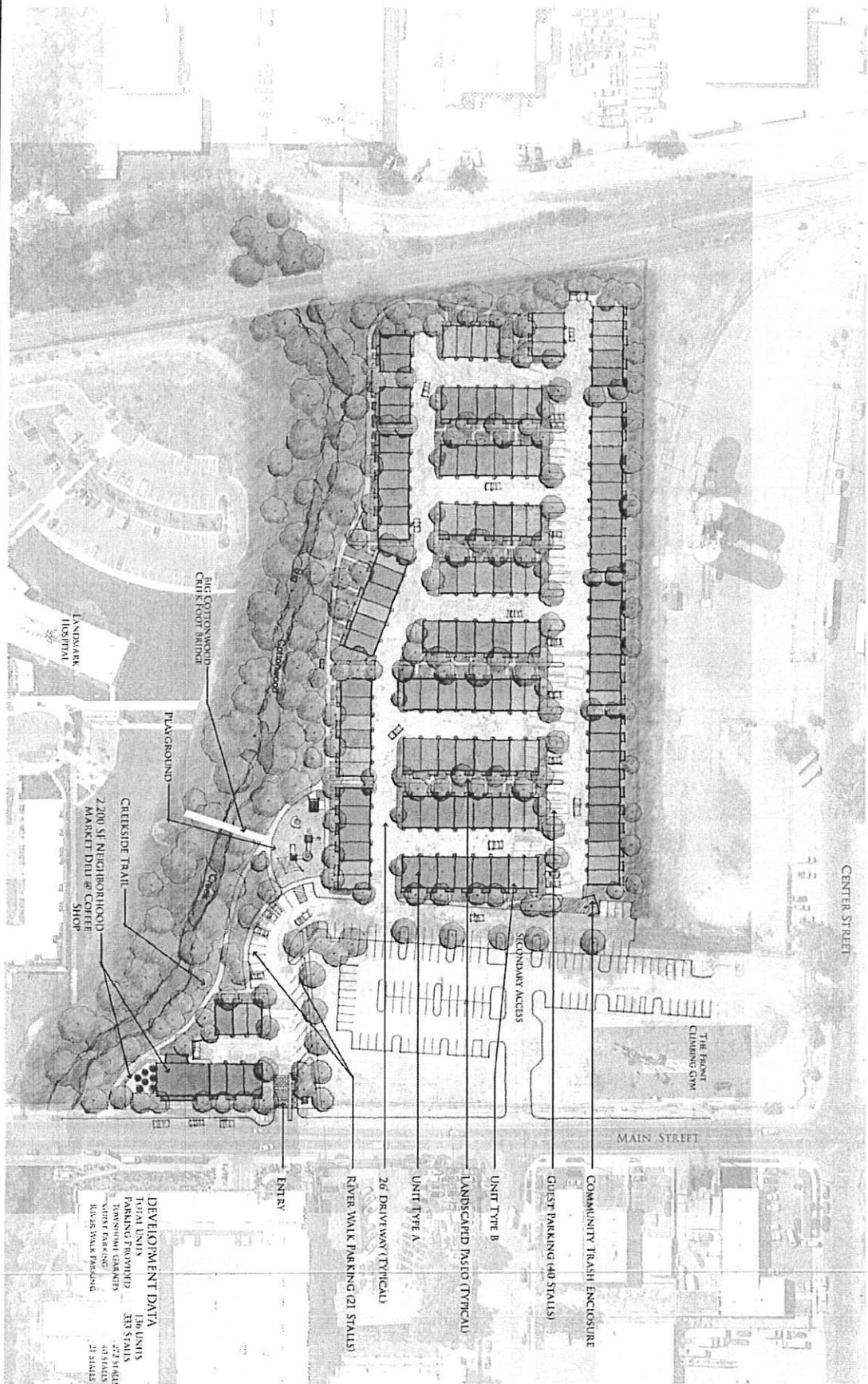
Exhibit B
Site Plan

[Attached]

CLEARWATER HOMES



OPUS GREEN MASTER PLAN



CLEARWATER HOMES



OPUS GREEN MASTER PLAN

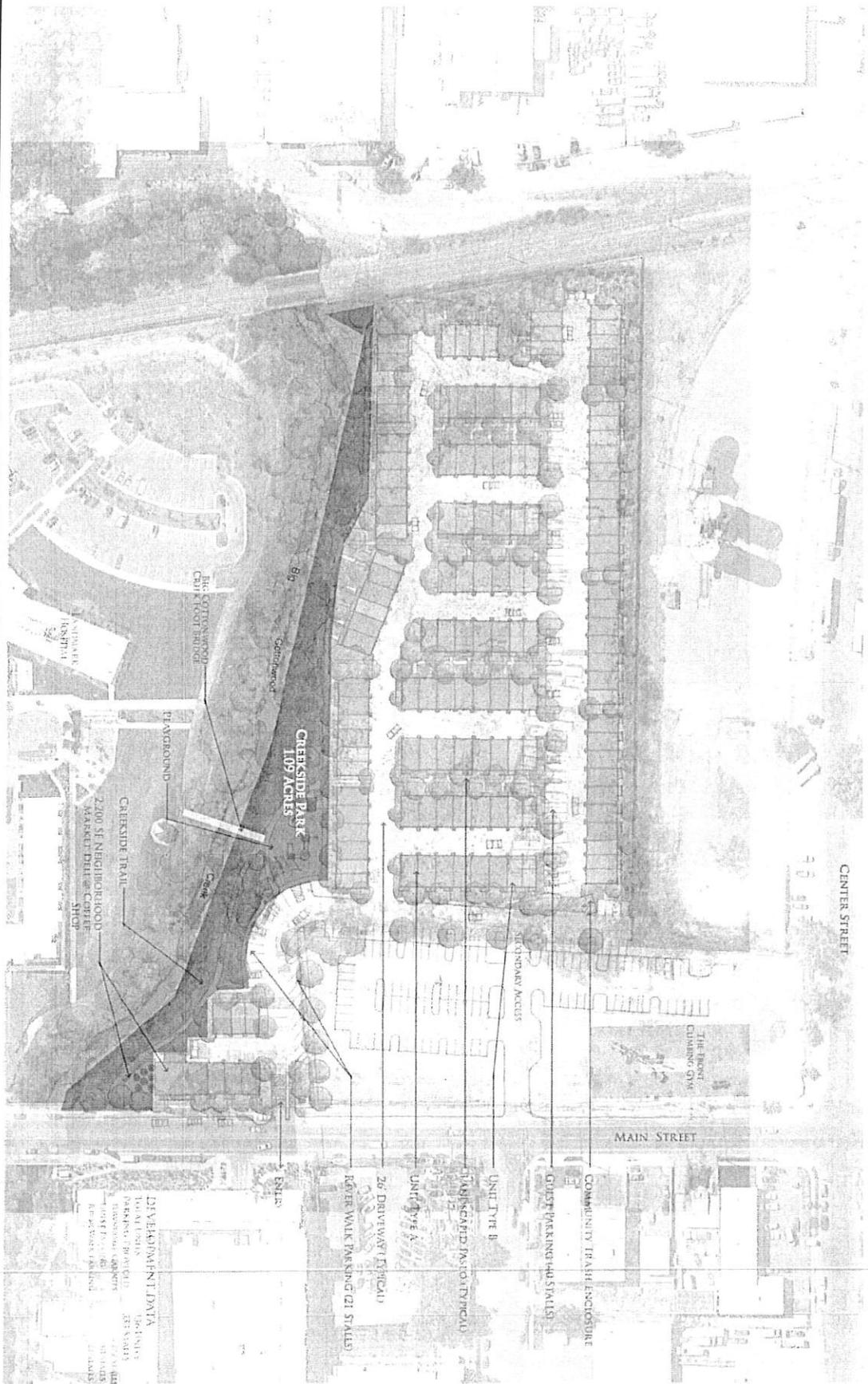


Exhibit C
Total Cost Reimbursement Estimate

Interest carry period (in years)	14		
Interest rate	6.50%		
	Cost estimate	Total Interest	
Walking Path and Benches	\$ 100,000	\$44,276.64	
Value of Contributed Land ⁽¹⁾	\$ 809,683	\$358,334.00	
Bridge over Big Cottonwood Creek	\$ 575,000	\$254,590.66	
Playground/Park Equipment	\$ 175,000	\$77,484.11	
Landscaping	\$ 235,000	\$104,050.10	
Other Park Amenities	\$ 200,000	\$88,553.27	
Utility costs	\$ 30,000	\$13,282.99	
Site and soil work	\$ 95,000	\$42,062.80	
Site improvements	\$ 79,000	\$34,978.54	
Murray City, SL County, other governing entity fees associated with bridge installation	TBD	TBD	
Totals	\$2,298,683	\$1,017,613	
Total Site Improvement costs	\$3,316,296		
⁽¹⁾ Based upon acquisition cost of land purchase price of \$5,200,000 for 7 acres			