

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this 20th day of April, 1999 by and between the Provo City Corporation, a Utah municipal corporation, hereinafter referred to as the "City", and Bay Harbor at Slate Canyon, L.C., a Utah limited liability company, hereinafter referred to as the "Developer".

ENT 54690 BK 5081 PG 90
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 May 11 12:32 pm FEE 0.00 BY JRD
RECORDED FOR PROVO CITY

Recitals

A. Developer is the owner of certain property located at 1015 South State Street in Provo, Utah (the "Property"), which is more fully described in Exhibit "A". As part of the development of the Property, Developer desires to have the Property placed in the R3 (Medium Multiple Residential) zone (the "R3 Zone"), as provided in Title 14 of the Provo City Code, as amended, (the "Rezoning Request").

B. Developer has indicated a desire and intent to develop on the Property a high quality, multi-family apartment project which meets the development standards of the R3 Zone (the "Project").

C. To assist City in its review of the Rezoning Request and to assure development of the Project in accordance with Developer's representations to City, Developer desires to enter into this Agreement which sets forth the process and standards whereby Developer may develop the Project.

D. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9-101, et seq., and after all required public notice and hearings, City, in the exercise of its legislative discretion, (i) has elected to process the proposed Project in a manner resulting in the negotiation, consideration, and approval of this Development Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

E. On August 26, 1997, City adopted a General Plan, pursuant to Utah Code Annotated §§ 10-9-301, et seq. A portion of the General Plan establishes development policies for the Property. Such development policies provide that the Property may be developed for multi-family uses, such as those allowed by the R3 Zone.

F. On January 13, 1999, after duly noticed public hearings, the Provo City Planning Commission recommended approval of Developer's application to rezone the Property, subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein, and forwarded such application to the Municipal Council for its consideration.

G. On March 2 and April 20, 1999 the Municipal Council held duly noticed public hearings to consider Developer's application to rezone the subject property and duly considered (i) comments from the public, neighborhood representatives, the Developer, and city officials and (ii) recommendations of the General Plan regarding the Property.

H. On April 20, 1999, the Municipal Council reviewed a concept plan for the Property, attached hereto as Exhibit "C", and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

I. To allow development of the Property for the benefit of Developer, to ensure City that the development of the Property will conform to applicable policies set forth in the General Plan, and address concerns of property owners in proximity to the Property, Developer and City desire to enter into this Agreement and are each willing to abide by the terms and conditions set forth herein.

J. Acting pursuant to its legislative authority under Utah Code Annotated §§ 10-9-102 and 10-9-401, et seq., and after (i) all required public notice and hearings and (ii) execution of this Agreement by Developer, the Municipal Council of City, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Development and Management Act, (ii) City's General Plan, and (iii) Chapter 14 of the Provo City Code (collectively, the "Public Purposes"). As a result of such determination, the City has elected to process the rezoning request and the subsequent development authorized thereunder in accordance with the provisions of this Agreement and has concluded that the terms and conditions set forth in this Agreement accomplish the Public Purposes referenced above and promote the health, safety, prosperity, security and general welfare of the inhabitants and taxpayers of the City.

Agreement:

Now, therefore, in consideration of the premises recited above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. Development. In the event City approves Developer's Rezoning Request, development of the Property shall be subject to the terms and conditions of this Agreement. In the event City does not approve Developer's Rezoning Request this Agreement shall be null and void.

2. Zone Change and Permitted Uses. Subject to the terms of this Agreement, the zoning classification on the Property shall be the R3 Zone. Land uses allowed pursuant to such zoning designation shall be governed by Title 14 of the Provo City Code as constituted on the effective date of this Agreement, except to the extent that this Agreement is more restrictive.

3. Applicable Code Provisions. All provisions of the Provo City Code as constituted on the effective date of this Agreement shall be applicable to the project proposed on the Property except as expressly modified by this Agreement. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement, Titles 14 and 15 of the Provo City Code, and other requirements generally applicable to development in Provo City. In particular, and not by way of limitation, Developer shall conform to the requirements of Chapter 14.12A of the Provo City Code, the project plan approval process therein and the project plan provisions in Section 14.02.090, Provo City Code.

4. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such

legislation under its police power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988) or successor case law. Any such proposed change affecting Developer's rights shall be of general application to all development activity in city. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.

5. Project Plan Approval. In the event City approves the Rezoning Request, Developer shall cause project plans and specifications (including site and building design plans) (the "Project Plans") to be prepared for the Project. Project Plans shall be in sufficient detail, as reasonably determined by City, to enable City to ascertain whether the Project will be of high quality design (including the size, scope, composition of the primary exterior components, on and off-site vehicular and pedestrian access, and general Project design) and in accordance with the terms and conditions of this Agreement. Project building elevations and landscaping plans shall be reviewed and approved by City's Design Review Committee.

A. In particular, such Project Plans shall:

(1) Substantially conform to the Concept Plan attached hereto as Exhibit "C" and the total number of dwelling units in the Project shall not exceed sixty (60).

(2) Show Project building elevations that substantially conform to the illustration attached hereto as Exhibit "D" except that brick or stucco shall be used on all exterior vertical surfaces (except where doors and windows, gables and dormers, soffit and fascia are located).

(3) Comply with all City standards and requirements applicable to drainage, site and traffic engineering and utilities.

(4) Comply with the standards and requirements of Chapter 14.12A of the Provo City Code (the R3 Zone).

(5) Comply with Chapter 14.37 the Provo City Code (Off-Street Parking Standards).

(6) Comply with Chapter 14.38 (Signs and Outdoor Advertising) of the Provo City Code.

B. Developer shall also:

(1) Comply with the conditions of preliminary project or development plan approval as determined by the Provo City Planning Commission.

(2) Acquire the property located at 987 South State Street, demolish the buildings thereon, and incorporate the property into the Project.

(3) For a term of thirty (30) years, be bound by the terms and conditions of Developer's tax-exempt bond financing which shall not allow full-time single students without any dependents to occupy any dwelling in the Project.

(4) Provide other information as City may reasonably request.

6. Standard for Approval. City, on recommendation of its Planning Commission and Design Review Committee, shall approve the Project Plans if such plans meet the standards and requirements enumerated in this Agreement, particularly Paragraphs 3 and 5.

7. Commencement of Site Preparation. Developer shall not commence site preparation or construction of any Project improvement on the Property until such time as the Project Plans have been approved by City in accordance with the terms and conditions of this Agreement.

8. Project Phasing and Timing. Upon approval of the Project Plans, Developer may proceed by constructing the entire Project at one time or in approved phases.

9. Changes to Project. No material modifications to the Project Plans shall be made after approval by City without City's written approval of such modification. Developer may request approval of material modifications to the Project Plans from time to time as Developer may determine necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which (i) increases the total perimeter size (footprint) of building area to be constructed on the Property by more than ten (10) percent, (ii) substantially changes the exterior appearance of the Project, or (iii) changes the functional design of the Project in such a way that materially affects traffic, drainage, or other design characteristics. Modifications to the Plans which do not constitute material modifications may be made without the consent of City. In the event of a dispute between Developer and City as to the meaning of "material modification," no modification shall be made without express City approval. Modifications shall be approved by City if such proposed modifications are consistent with City's then applicable rules and regulations for projects in the R3 zone, and are otherwise consistent with the standard for approval set forth in Paragraph 6 hereof.

10. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with procedures applicable to the R3 zone.

11. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the Ordinance approving the Rezoning Request. In the event a building permit has not been issued within twelve (12) months after approval of the Project Plans, this Agreement shall expire and shall have no further force or effect and City may initiate a rezoning action.

12. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. A purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained

in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such sale or transfer, Developer shall obtain from the buyer or transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to City prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.

13. Default.

A. Events of Default. Upon the happening of one or more of the following events or conditions Developer or City, as applicable, shall be in default ("Default") under this Agreement:

(1) A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

(2) A determination by City made upon the basis of substantial evidence that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(3) Any other event, condition, act or omission, either by City or Developer, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

B. Procedure Upon Default.

(1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default with such thirty (30) day period and thereafter proceeds diligently to cure the default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph C herein. Failure or delay in giving notice of default shall not constitute a waiver of any default.

(2) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental

controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

(3) An express repudiation, refusal, or renunciation of this Agreement, if the same is in writing and signed by Developer, shall be sufficient to terminate this Agreement.

C. Breach of Agreement. Upon Default as set forth in Paragraphs A and B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a default by the City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

14. General Terms and Conditions.

A. Recording of Agreement. In the event City approves the Rezoning Request, an ordinance rezoning the Property shall not be finally executed until Developer executes this development agreement. Thereafter, the ordinance rezoning the Property shall be finally executed and this Agreement shall be recorded immediately as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

B. Severability. Each and every provision of this Agreement shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

C. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

D. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City.

E. State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall

be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

F. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

G. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Municipal Council taken with the same formality as the vote approving this agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

H. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties.

I. Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

J. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):

To the Developer: Bay Harbor at Slate Canyon, L.C.
 PCH Investments, L.C.
 Attn: Mark Cohen
 132 South 600 East
 Salt Lake City, UT 84102

To the City: Richard Secrist
 Community Development Director
 P.O. Box 1849
 Provo, Utah 84603

With copy to: Neil Lindberg
 Municipal Council Attorney
 P.O. Box 1849
 Provo, Utah 84603

K. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

L. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

M. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages, just compensation restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project.

(1) The agreements of Developer in Paragraph M shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of City, or (ii) attorneys' fees under Paragraph I herein.

(2) City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

N. Relationship of Parties. The contractual relationship between City and

Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

O. Annual Review. City shall review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 13 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

P. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.

Q. Title and Authority. Developer expressly warrants and represents to City that it is a Partnership in good standing and that such Partnership owns all right, title and interest in and to the Property and that no portion of the Property, or any right, title or interest therein has been sold, assigned or otherwise transferred to any entity or individual. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on such representations and warranties in executing this Agreement.

R. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

IN WITNESS WHEREOF, this Development Agreement has been executed by City, acting by and through its Municipal Council, pursuant to Municipal Council motion adopted on April 20, 1999 authorizing such execution, and by a duly authorized representative of Developer as of the date first written above.

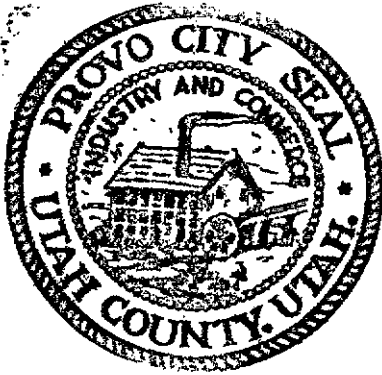
[signature page follows]

Attest:

PROVO CITY, a political subdivision of the State of Utah

Marilyn J. Perry
City Recorder

By: [Signature]
Mayor Robert Stockwell, CAO



DEVELOPER

Bay Harbor at Slate Canyon, L.C.

By: [Signature]

STATE OF UTAH
COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this 27th Day of April, 1999,
by Peter S. Coche, representing Bay Harbor at Slate Canyon L.C., "Developer".

[Signature]
NOTARY PUBLIC

My commission expires:
10 July 1999

Salt Lake City, Utah
Residing at:



List of Exhibits

Development Agreement

Provo City Corporation and

Bay Harbor at Slate Canyon L.C.

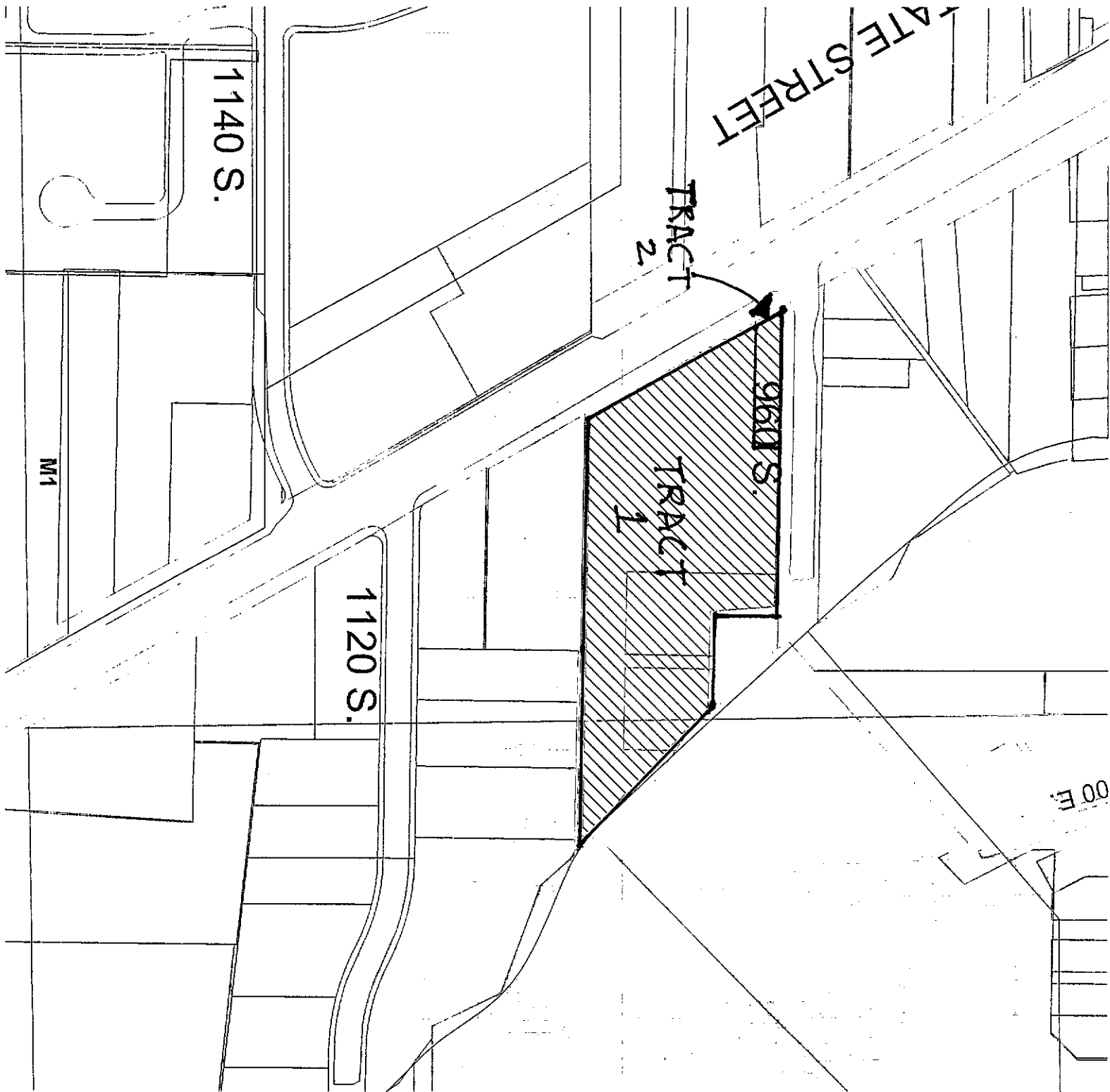
Exhibit A Legal Description

Exhibit B Report of Action, January 13, 1999

Provo City Planning Commission

Exhibit C Development Concept Plan

Exhibit D Exterior Design Illustration



TRACT 1

BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE WESTERLY BANK OF A DITCH WHICH POINT IS EAST 194.80 FEET AND NORTH 826.01 FEET FROM THE SOUTHEAST CORNER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH $89^{\circ}03'23''$ WEST PARTIALLY ALONG FENCE LINE 678.19 FEET TO THE EASTERLY RIGHT OF WAY LINE OF STATE STREET (HIGHWAY 89, 91); THENCE NORTH $30^{\circ}15'08''$ WEST ALONG SAID RIGHT OF WAY 297.92 FEET TO A POINT IN A BLOCK WALL; THENCE NORTH $89^{\circ}44'04''$ EAST ALONG SAID WALL 190.57 FEET TO A CORNER IN SAID WALL; THENCE NORTH $01^{\circ}15'44''$ EAST ALONG SAID WALL AND THE EXTENTION OF SAID WALL 45.59 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF 960 SOUTH STREET; THENCE SOUTH $89^{\circ}00'00''$ EAST ALONG SAID RIGHT OF WAY 269.73 FEET; THENCE SOUTH $01^{\circ}00'00''$ WEST 94.94 FEET; THENCE SOUTH $89^{\circ}00'00''$ EAST 137.78 FEET TO THE BANK OF SAID DITCH; THENCE ALONG SAID BANK THE FOLLOWING FIVE (5) CALLS: SOUTH $44^{\circ}00'00''$ EAST 40.73 FEET; SOUTH $55^{\circ}45'00''$ EAST 95.10 FEET; SOUTH $24^{\circ}15'00''$ EAST 50.20 FEET; SOUTH $49^{\circ}30'00''$ EAST 104.30 FEET AND SOUTH $58^{\circ}15'12''$ EAST 28.20 FEET TO THE POINT OF BEGINNING.

AREA = 3.75 ACRES

BASIS OF BEARING: NORTH $02^{\circ}09'14''$ WEST FROM THE SOUTHEAST CORNER OF SAID SECTION 7 TO THE TRIANGULATION CONE ON MT. TIMPANOGOS

ENT 54690 BK 5081 PG 103

LEGAL DESCRIPTION TRACT 2

COMMENCING NORTH 1150.96 FEET AND WEST 647.645 FEET FROM THE SOUTHEAST CORNER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEG EAST 213.5 FEET; THEN SOUTH 1 DEG WEST 40 FEET; THENCE NORTH 89 DEG WEST 139.7 FEET; THENCE SOUTH 29 DEG 43' EAST 3 FEET; THENCE NORTH 89 DEG WEST 50 FEET; THENCE NORTH 29 DEG 43' WEST 49.53 FEET MORE OR LESS TO THE PLACE OF BEGINNING.
AREA .19 ACRES.

Report of Action
of the
Provo City Planning Commission
January 13, 1999

EXHIBIT B, PAGE 1

ENT 54690 BK 5081 PG 104

ITEM 2* Gardner & Associates, agents for Leon Sprouse, request the rezoning of approximately 3.7 acres located generally at 1015 South State from CM (Heavy Commercial) zone to R3 (Medium Multiple Residential) zone. *Provost South Neighborhood 98-023 (R)*

The following action was taken by the Planning Commission on the above described item at their regular meeting of January 13, 1999

RECOMMEND APPROVAL

Motion By: Royden Shurtz
Second By: John Stohlton
Votes in Favor of Motion: Shurtz, Kelson, Peterman, Stohlton, Harding
Votes Opposed to Motion: Young
Abstained Ron Fakler

The following is a brief summary of the decision including conditions of approval and/or comments by the Commission:

The Planning Commission adopted the following findings and conclusions and recommends approval of the request as set forth in the application.

FINDINGS OF FACT:

1. The subject property is zoned CM, Heavy Commercial. The property currently contains the Sprouse Apartments, which were constructed in 1940.
2. The applicant would like to rezone the property to the R3, Medium Multiple Residential zone, to facilitate the removal of the existing units and the construction of a new 60 unit multiple residential housing complex.
3. Although Section 14.12A.140 does not require a project plan at the time of rezoning, the applicants have submitted a preliminary concept plan for review by the Planning Commission and Municipal Council. If the rezoning is granted, a final project plan would need to be reviewed and approved before the issuance of a building permit.
4. Section 14.02.020 (2) sets forth the following guidelines for consideration of zoning map amendments:
 - a. Public purpose for the change in question
 - b. Confirmation that the public purpose is best served by the change in question
 - c. Compatibility of the proposed change with general plan policies, goals, and objectives
 - d. Consistency of proposed change with the general plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

- e. Potential for hindrance or obstruction of attainment of the plan's articulated policies by the proposed change
- f. Adverse impacts on adjacent land owners ENT 54690 BK 5081 PG 105
- g. Verification of correctness in the original zoning or general plan for the area in question.
- h. In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

5. This proposal has been reviewed for compliance with these guidelines, with the following findings as a result:

- a. Public purposes for the change in question are to facilitate the development of a modern multiple residential complex to take the place of the existing facility. This redevelopment will enhance the appearance and character of the South State Street corridor. In addition, the proposal provides living units along a transit corridor, encouraging the use of alternate modes of transportation. Construction of additional housing units in this area may lead to the construction of additional commercial services in the corridor, which further serves to reduce the length of trips and vehicle miles traveled in the community.
- b. These public purposes are best served by a change of the zoning designation to a zone that provides an opportunity to create a medium density housing complex that complies with the vision for South State Street set forth in the Provo City General Plan.
- c. The subject property is located within the HC/GC/MDR general plan land use area (flexibility was intentionally built into the general plan for this area). The R3 zoning proposal complies with the MDR density as outlined in the General Plan. The proposed zoning map amendment would bring this property into compliance with the policies outlined in the general plan, which call for a mixture of medium density housing and commercial uses along South State Street.
- d. The General Plan contains no "timing and sequencing" provisions that would preclude rezoning of this property at this time.
- e. The proposed change will not hinder attainment of the general plan policies, in fact, the proposed change is in accordance with the general plan, which provides for medium density residential development, mixed with commercial uses along the South State Street corridor. Medium density residential was selected due to the transit service available along South State Street.
- f. Provided that the project is developed in accordance with city standards, there are no anticipated impacts on adjacent land owners. No such impacts were identified at the neighborhood meeting. In fact, the adjacent property owner to the north wishes to be zoned from CM to R.3 as part of the rezoning. There is an existing non-conforming duplex on this property and rezoning this property would make the property conforming.
- g. The zoning and general plan designation for the property is verified as correct and is well documented in the 1997 general plan deliberations.
- h. There are no conflicts between the general plan map and the general plan policies to resolve in this case.

ENT 54690 BK 5081 PG 106

6. Currently pending before the Planning Commission are design corridor guidelines for South State Street. These guidelines would establish a high standard of landscaping and other site design features as a means of upgrading the appearance of the corridor. A neighborhood meeting was held to discuss these guidelines on October 29, 1998. The Planning Commission will consider these guidelines on January 27, 1999. Municipal Council approval will be necessary before such guidelines become law. If the rezoning is granted, final site plan approval should be timed to ensure compliance with these new guidelines if they are adopted by the city. It appears that the applicant can comply with the new guidelines, based on the concept plan submitted.
7. This request has been reviewed by the various city departments. Comments received are as follows:
Planning Department:
 1. There are large mature trees covering the vacant portion of the property that will need to be indicated on an existing site analysis plan when the project plan is submitted to the City for review. These trees should be evaluated by the Urban Forester to determine whether they should be saved and integrated into the project.
 2. The plan must comply with the adopted Design Corridor for South State Street.
 3. Project plan must be submitted to and approved by the Design Review Committee prior to being reviewed by the Planning Commission.

Engineering Department:

1. The Engineering Department has reviewed the Traffic Study and their comments are attached for the Planning Commission to review. The access into and out of the project will meet with some delay due to the high volume of traffic and the speed of the traffic along State Street. Exiting the project by left turn southbound will be the most difficult.
2. The traffic situation will improve in the future when a light is installed south of the project when the Pioneer Drive In property develops. This will improve the access to this property.

CONCLUSIONS:

1. The proposed rezone is in compliance with the 1997 Provo City General Plan.
2. The proposed rezone fulfills a public purpose in that it will facilitate a development that provides for needed redevelopment along South State Street.
3. South State Street design corridor guidelines are pending before the city. The proposed development associated with this rezone request should be designed in accordance with these guidelines.

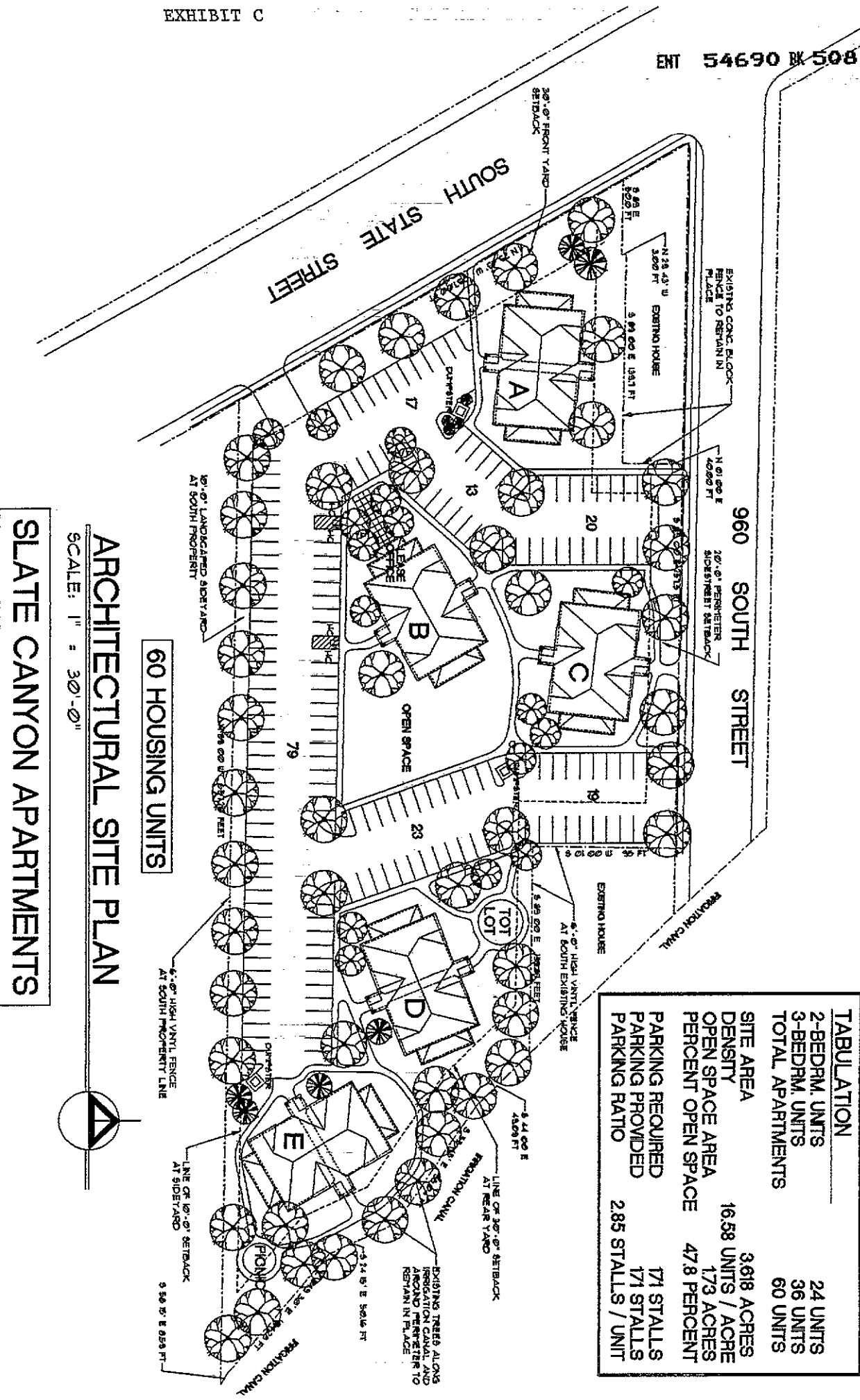
RECOMMENDATION: The Planning Commission recommends that the Municipal Council approve this rezoning request, subject to the following conditions:

1. That final project plan approval be timed to ensure compliance with the South State Street Design Corridor guidelines, if adopted by the city.
2. That an existing site analysis plan indicating the location of all existing trees be submitted with project plan submittal and be reviewed by the Urban Forrester.
3. That the project be reviewed by the Design Review Committee prior to application for Project Plan approval.

The staff report is accepted for the official record.

Legislative items are noted with a () and require legislative action by the Municipal Council and a public hearing.

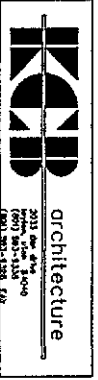
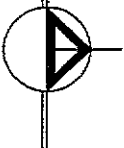
Administrative decisions (items not marked with a star) of the Planning Commission may be appealed by submitting an application and a \$100 fee to the Board of Adjustment at the Community Development Department within ten (10) days of the Commission's decision.



TABULATION	
2-BEDRM UNITS	24 UNITS
3-BEDRM UNITS	36 UNITS
TOTAL APARTMENTS	60 UNITS
SITE AREA	3.618 ACRES
DENSITY	16.58 UNITS / ACRE
OPEN SPACE AREA	1.73 ACRES
PERCENT OPEN SPACE	47.8 PERCENT
PARKING REQUIRED	171 STALLS
PARKING PROVIDED	171 STALLS
PARKING RATIO	2.85 STALLS / UNIT

ARCHITECTURAL SITE PLAN
SLATE CANYON APARTMENTS

SCALE: 1" = 30'-0"



architecture
 2015 W. 4th Ave
 8007 WASHINGTON
 DENVER, CO 80202