

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on September 20, 2005, by and between Provo City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and RMB Investments, LLC, a Utah limited liability company, hereinafter referred to as "Developer".

Recitals

A. Developer is the developer of certain property located generally at 450 East 4525 North in Provo, Utah (the "Property"), which is more fully described in the Exhibit "A" attached hereto and incorporated herein. As part of the development of the Property, Developer desires to have the Property placed in the R1.10 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 residential subdivision on the Property which meets the development standards of the R1.10 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 and City desire 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, §§ 10-9a-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 November 9, 2004, City adopted a comprehensive update to its 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 are consistent with the proposed development on the Property.

F. On August 10, 2005, after a duly noticed public hearing, 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 August 10, 2005, after a duly noticed public hearing, the Provo City Planning Commission approved a preliminary project plan for the Property subject to

certain findings and conditions as set forth in Exhibit "C", attached hereto and incorporated herein.

H. On September 20, 2005, the Provo City Municipal Council held a duly noticed public hearing to consider Developer's application to rezone the subject property and duly considered (i) comments from the public, neighborhood representatives, Developer, and city officials and (ii) recommendations of the General Plan regarding the Property.

I. On September 20, 2005, the Provo City Municipal Council reviewed the preliminary project plan for the Property, attached hereto as Exhibit "D", and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

J. 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 voluntarily to enter into this Agreement and are each willing to abide by the terms and conditions set forth herein.

K. Acting pursuant to its legislative authority under Utah Code Annotated §§ 10-9a-101, 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 Provo 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 R1.10 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 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 to the extent this Agreement is more restrictive. 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 14.10 (One-Family Residential Zone) and the project plan approval process therein.

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 Provo 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. Final Project or Development Plan Approval. In the event City approves the Rezoning Request, Developer shall cause final project development plans and specifications (including site and building design plans) (the "Plans") to be prepared for the Project.

A. In particular, such Plans shall meet the following requirements:

(1) 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.

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

(3) Comply with the standards and requirements of Chapter 15 of the

Provo City Code.

(4) Comply with Chapter 14.37 of the Provo City Code (Off-Street Parking Requirements).

B. Developer shall:

(1) Comply with the conditions of approval as set forth in the Planning Commission Report of Action as set forth in Exhibit C attached hereto and made a part hereof.

(2) Comply with the special conditions (the "Special Conditions") as set forth in Exhibit "E" attached hereto and made a part hereof.

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

6. Standard for Approval. City, on recommendation of its Planning Commission, shall approve the Plans if such Plans meet the standards and requirements enumerated in Paragraph 3 and if, as determined by City, the Plans are consistent with commitments made to City that the Project will be a high quality development that will be designed in a manner to minimize adverse impacts to the neighborhood and, in particular, conforms to the Special Conditions set forth in Exhibit "E" attached to this Agreement.

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 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 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 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 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 zone where the Property is located,

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 R1.10 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 Plans, this Agreement shall expire and shall have no further force or effect and City may initiate a rezoning action. This Agreement shall expire when certificates of occupancy have been issued for all buildings and/or dwelling units in the Project, provided, however, that any provision expressly intended to survive this Agreement shall continue in force according to the terms of such provision.

12. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, 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.

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 Agreement. Thereafter, the ordinance rezoning the Property shall be finally executed and this Agreement shall be recorded 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; Invalidity. 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. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void.

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.

I. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement or any special condition set forth in Exhibit "E" hereof unless this Agreement is amended pursuant to a vote of the Municipal Council taken with the same formality as the vote approving this Agreement.

J. 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.

K. 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:	Reed Beus 1285 South 1145 West Orem, UT 84058
To the City:	Community Development Director P.O. Box 1849 Provo, Utah 84603
With a copy to:	Municipal Council Attorney P.O. Box Provo, Utah 84603

L. 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.

M. 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.

N. 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 this Paragraph N 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 J 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.

O. 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 full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

P. Annual Review. City may 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.

Q. 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.

R. Title and Authority. Developer expressly warrants and represents to City that Developer 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.

S. 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.

[signature page follows]

IN WITNESS WHEREOF, this Development Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

Attest:

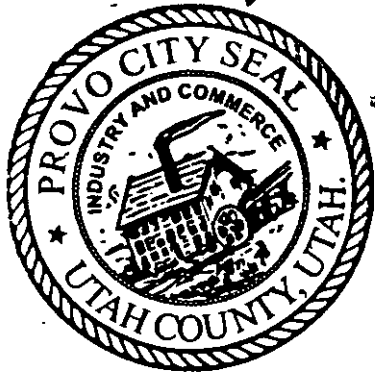
PROVO CITY, a political subdivision of the State of Utah

Salaci Grosbeck
City Recorder

By: *[Signature]*
Mayor

RMB INVESTMENTS, LLC

By: *Reed A. Beus*
Reed A. Beus, Managing Member



State of Utah
County of Utah

On this 20th day of September in the year 2005, before me *Ann T. Gulley*, a notary public, personally appeared Reed A. Beus, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Ann T. Gulley
Notary Public

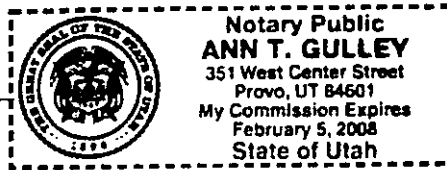


Exhibit "A"
Legal Description
Canyon Crest Estates Subdivision
450 East 4525 North, Provo, Utah

Commencing at a point located South $89^{\circ}05'47''$ West along the section line 420.80 feet and North 1185.66 feet from the south quarter corner of Section 18, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence South $87^{\circ}38'58''$ West 571.64 feet; thence North $07^{\circ}42'39''$ West along the east line of Plat "A", LDS Canyon Road Church Subdivision 468.27 Feet; thence North $88^{\circ}55'20''$ East along a fence line 651.78 Feet; thence South $00^{\circ}58'41''$ East 203.12 feet; thence South $43^{\circ}59'52''$ West 42.46 feet; thence South $02^{\circ}10'50''$ East 219.37 feet to the point of beginning.

Area = 6.43 acres.

Exhibit "B"
Planning Commission Report of Action
Rezoning - August 10, 2005
Canyon Crest Estates Subdivision
450 East 4525 North, Provo, Utah

Provo City Planning Commission

Report of Action

August 10, 2005

REQUEST FOR COUNCIL ACTION

Type of Action Requested: **X**
 Resolution _____
 Ordinance **X** _____
 Formal Action/Motion _____
 Review at Study Session _____
 Administrative; No Action _____

ITEM 3* Reed Beus requests rezoning of approximately 8.10 acres from the RA (Residential Agricultural) Zone to R1.10 (One-Family Residential) Zone to facilitate the development of the Canyon Crest Estates Subdivision, a 17-lot development, located approximately 450 East 4525 North. *Little Rock Canyon Neighborhood* 05-0007R

The following action was taken by the Planning Commission on the above described item at its regular meeting of August 10, 2005.

RECOMMENDATION OF APPROVAL FOR R1.10 ZONING

On a vote of 5:0, the Planning Commission recommended that the Municipal Council approve the above noted application in order to rezone 6.43 acres of property from RA (Residential Agricultural) to R1.10 (One-family residential) in accordance with the legal description attached as Exhibit A.

Motion By: Pam Boshard

Second By: Todd Roach

Votes in Favor of Motion: Todd Roach, Leonard McKay, Pam Boshard, Roy Peterman, Marian Monnahan

Votes Opposed to Motion: None

Ron Madsen was present as Chair.

- Additional Report of Action for item previously continued after a public hearing or other discussion:
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.
- New findings stated as basis of action taken by the Planning Commission or recommendation to the Municipal Council; Planning Commission determination is not generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

The property to be rezoned to the R1.10 Zone is described in the attached Exhibit A.

RELATED ACTIONS

05-0005SP The Preliminary Subdivision plat for a 17-lot residential development was conditionally approved by the Planning Commission, subject to approval of the rezoning of the property to R1.10, as Item 4 of the Aug. 10, 2005, Planning Commission agenda. The amended conditions of approval are included in the Report of Action for Item 4.

DEVELOPMENT AGREEMENT

- Applies - referred applicant to Council Attorney.
- Does not apply at this stage of review or approval.
- May apply with future approvals.

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- The proposed zoning is consistent with the General Plan and the surrounding neighborhoods.
- Rezoning is contingent upon approval of a preliminary subdivision.
- No Development Agreement has been proffered by the developer at this time.

CITY DEPARTMENTAL ISSUES- These were addressed with the Staff Report for the Preliminary Subdivision.

- Environmental thresholds or physical capacities of impacted roadway(s) exceeded.
- Traffic study required and reviewed at this stage of project review or approval.
 - Preliminary traffic study submitted.
 - Traffic study may be required with future stages of approval.
- Important issues raised by other departments – addressed in Staff Report to Planning Commission.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on June 9, 2005.
- The Neighborhood Chair determined that a neighborhood meeting would not be required.
- No information was received from the Neighborhood Chair.
- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present / addressed the Planning Commission during the public hearing.
- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.
- This item was City-wide or affected multiple neighborhoods.
 - Multiple Neighborhood Chair(s) were present or addressed the Planning Commission.
- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

No one from the public spoke to this item.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- The applicant was in agreement with staff's report, their findings, and recommendations. The applicant did want to ensure that he was requesting a rezone of only 6.43 acres and not the 8.10 as advertised. The confusion came as a result of the proposed subdivision being 8.10 acres. The applicant is requesting that Lot 17 in the proposed subdivision remain RA, while Lots 1-16, which total 6.43 acres, be rezoned to R1.10.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Rezone is consistent with the General Plan and the surrounding neighborhoods.



 Planning Commission Chair



 Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 351 W. Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit "C"
Planning Commission Report of Action
Preliminary Project Plan - August 10, 2005
Canyon Crest Estates Subdivision
450 East 4525 North, Provo, Utah

Provo City Planning Commission

Report of Action

August 10, 2005

REQUEST FOR COUNCIL ACTIONType of Action Requested: **X**

Resolution _____

Ordinance _____

Formal Action/Motion _____

Review at Study Session _____

Administrative; No Action **X**

- ITEM 4 Reed Beus requests preliminary subdivision approval for the Canyon Crest Estates Subdivision, a 17-lot development on 8.10 acres, located approximately 450 East 4525 North, within a proposed R1.10 (One-Family Residential) Zone. The property is currently zoned RA (Residential Agricultural). *Little Rock Canyon Neighborhood* 05-0005SP

The following action was taken by the Planning Commission on the above described item at its regular meeting of August 10, 2005.

CONDITIONAL APPROVAL

On a vote of 4:1, the Planning Commission gave preliminary plat approval for the above noted subdivision, with additions to the conditions of approval recommended in the Staff Report.

Conditions of Approval:

1. The applicant provide a plat showing 475 East extending into the rear of lot 17, to provide street frontage for future development, with an additional condition by the Planning Commission that should the applicant be unable to provide such a plat, or have the issue be mitigated by staff, that the preliminary subdivision return to the Planning Commission.
2. The applicant provide a relocation plan for the irrigation line running through lots 5-8, and a representative from Water Resources supervise the relocation.
3. That any remaining technical concerns raised by various City Departments be resolved prior to final plat approval.

Motion By: Todd RoachSecond By: Pam BoshardVotes in Favor of Motion: Todd Roach, Leonard McKay, Pam Boshard, Roy PetermanVotes Opposed to Motion: Marian Monnahan

Ron Madsen was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.
- New findings stated as basis of action taken by the Planning Commission or recommendation to the Municipal Council; Planning Commission determination is not generally consistent with the Staff analysis and determination.

RELATED ACTIONS

05-0007R An application for rezoning of a section of the property from RA to R1.10 was recommended for approval of the Municipal Council under Item 3* of this agenda.

DEVELOPMENT AGREEMENT

- Applies - referred applicant to Council Attorney (related rezoning application from Item 3* of this agenda).

- Does not apply at this stage of review or approval. May apply with future approvals.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- Staff concluded that the subdivision was in compliance with Provo City Code, and should be conditionally approved in order to address specific needs addressed by the Water Resources Division and Community Development.
- Water Resources is requiring the applicant to submit a plan to relocate a water line running through lots 5-8 of the proposed subdivision, and that prior to relocating the line, the applicant give 48 hour notice for a representative from Water Resources to be on site to supervise the relocation.
- Provo City Code 15.03.200(12)(c) requires that public right-of-ways be extended into adjacent undeveloped, or partially developed, contiguous land. As such, that applicant should provide a plan showing how he can accommodate future development to the rear of lot 17 in the proposed subdivision.

CITY DEPARTMENTAL ISSUES

- Environmental thresholds or physical capacities of impacted roadway(s) exceeded.
- Traffic study required and reviewed at this stage of project review or approval.
 - Preliminary traffic study submitted.
 - Traffic study may be required with future stages of approval.
- Important issues raised by other departments – addressed in Staff Report to Planning Commission.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on June 9, 2005.
- The Neighborhood Chair determined that a neighborhood meeting would not be required.
- No information was received from the Neighborhood Chair.
- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present / addressed the Planning Commission during the public hearing.
- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.
- This item was City-wide or affected multiple neighborhoods.
 - Multiple Neighborhood Chair(s) were present or addressed the Planning Commission.
- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- The subdivision fits the needs of the area, but future development of Lot 17 needs to be accommodated.
- Randy Loveless, owner of Lot 17, does not think the slope to the north of the lot is too steep to prohibit development.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- The applicant is willing to meet conditions #2 and 3 of the staff report, but has issues with condition #1.
- The applicant has concerns with the slope to the north of lot 17, and claims to connect a street to the rear of the lot would be counter productive because of the slope.
- At this time the applicant is unwilling to connect 475 East to the rear of lot 17.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Ron Madsen- It is important that plans for the future development of lot 17 be taken into consideration.

- Leonard McKay- The Engineer of the project should provide an alternative plan with a street stub to the rear of lot 17.
- Roy Peterman- Staff, together with the Engineering Department, should work to determine that a street stub is even possible, and if it isn't then the subdivision can be approved as submitted.
- Mirian Monnahan- The street stub makes sense, but would rather settle this matter now than grant conditional approval.



 Planning Commission Chair



 Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 351 W. Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit "D"
Preliminary Project Plan
Canyon Crest Estates Subdivision
450 East 4525 North, Provo, Utah

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Figure 1

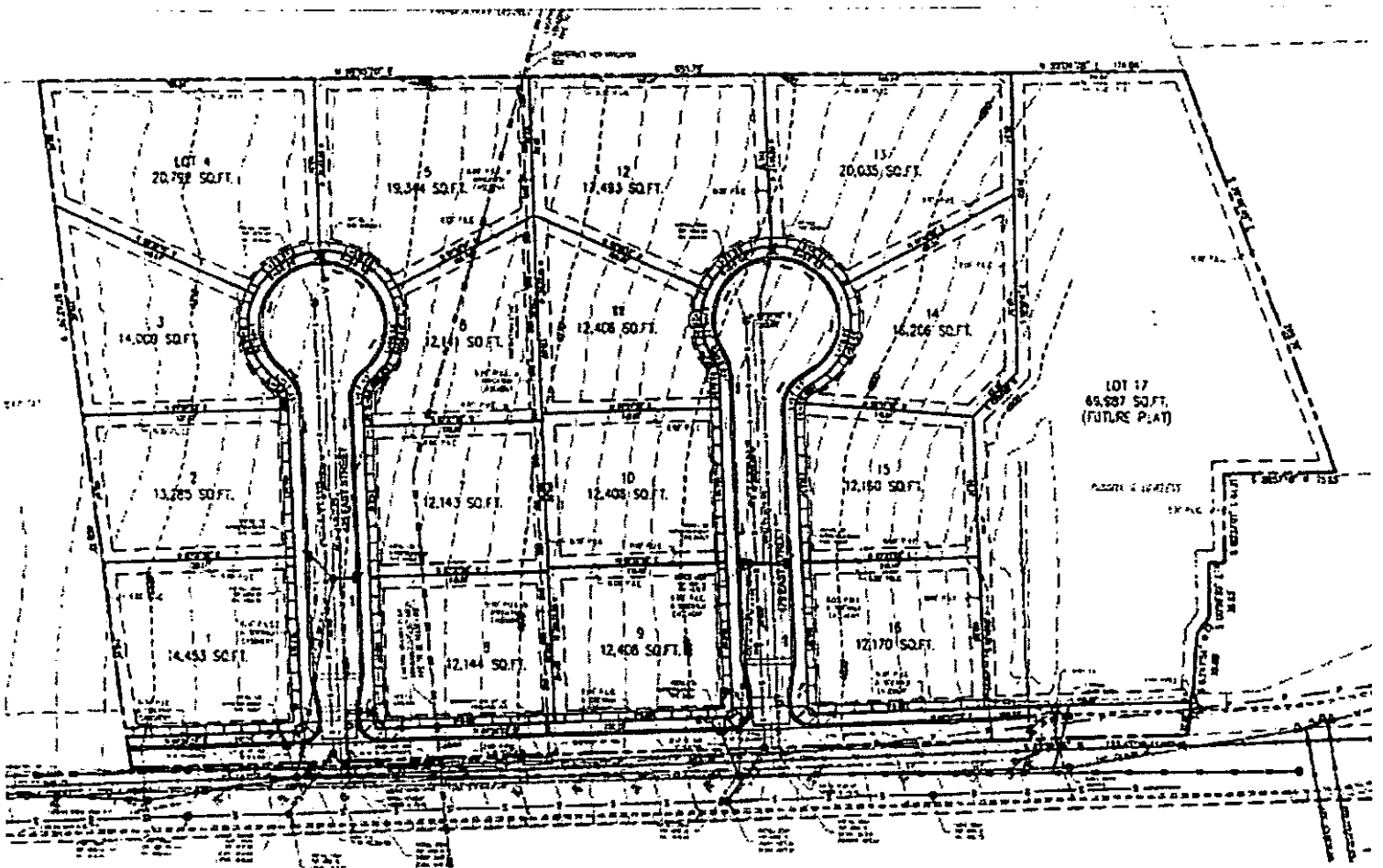


Exhibit "E"
Special Conditions
Canyon Crest Estates Subdivision
450 East 4525 North, Provo, Utah

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The following requirements shall apply to the development of the Property which is the subject of the within Agreement. Capitalized terms shall have the meaning set forth in the Agreement.

Development of land in the Canyon Crest Estates Subdivision (the "Project") shall be subject to the following conditions. All final plans for the Project shall note these conditions on the body of the plan along with all other notes required by Provo City; provided, however, that a condition need not be placed on the final plans as a note if such plans clearly illustrate the substance and requirements of the requirement.

1. Each dwelling unit shall have at least a two (2) car garage. Carports shall be prohibited.
2. Each single story dwelling built within the Project shall have a minimum finished floor area of at least one thousand six hundred (1,600) square feet. Each two story dwelling shall have a minimum finished floor area of at least two thousand (2,000) square feet with at least one thousand four hundred (1,400) square feet on the main floor. The area within a garage or a basement shall not be included in the calculation of finished floor area, even if the area is finished.
3. The exterior of each single family dwelling shall consist of brick, rock, stucco, Hardiboard (or equivalent), or a combination thereof. Vinyl siding shall be prohibited.
4. Each single family dwelling shall have a roof pitch of at least 5:12 or greater.