

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on ^{February} ~~January~~ 12, 2008, by and between Provo City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and Greyfields, LLC, a Utah limited liability company, hereinafter referred to as "Developer".

Recitals

A. Developer is the developer of certain property located generally at 1988 North Geneva Road in Provo, Utah (the "Property"), which is more fully described in Exhibit "A" attached hereto and incorporated herein. As part of the development of the Property, Developer desires to have the Property placed in the Lakeview Fields Specific Development Plan Overlay ("SDP-4") 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 planned residential and commercial development project which meets the development standards of the SDP-4 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 voluntarily into this Agreement which sets forth the process and standards whereby Developer may develop the Project.

D. On November 9, 2004, City adopted a comprehensive update to its general plan ("General Plan") pursuant to Utah Code Annotated §§ 10-9a-401, et seq. A portion of the General Plan establishes development policies for the Property. Such development policies are consistent with the proposed Project.

E. On December 12, 2007, after a duly noticed public hearing, City's 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. ...

F. On December 12, 2007, after a duly noticed public hearing, City's Planning Commission approved Developer's application for preliminary subdivision of the Property subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein.

G. On February 5, 2008, City's Municipal Council held a duly noticed public hearing to consider Developer's application to rezone the subject property to the SDP-4 zone and duly considered (i) comments from the public, neighborhood representatives, Developer, and City officials, and (ii) recommendations of the General Plan regarding the Property.

H. On February 5, 2008, City's Municipal Council reviewed the preliminary development plan for the Property, attached hereto as Exhibit "C", and found 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 § 10-9a-101, et seq., and after (i) all required public notice and hearings and (ii) execution of this Agreement by Developer, City's Municipal Council, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) City's General Plan, and (iii) Titles 14 and 15 of the Provo City Code (collectively, the "Public Purposes"). As a result of such determination, 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's Municipal Council approves Developer's Rezoning Request, development of the Property shall be subject to the terms and conditions of this Agreement. In the event City's Municipal Council 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 Lakeview Fields Specific Development Plan Overlay 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 14.49D (Lakeview Fields Specific Development Plan [SDP-4] Overlay 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 or statute. 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. Final Project or Development Plan Approval. In the event City's Municipal Council approves the Rezoning Request, Developer shall cause final Project 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 Title 15 of the Provo City Code; and

(4) comply with Chapter 14.37 of the Provo City Code (Off-Street Parking Requirements) except as otherwise provided in the SDP-4 zone and this Agreement.

B. Developer shall:

(1) comply with the conditions of preliminary subdivision approval as set forth in the Planning Commission Report of Action dated December 12, 2007 (attached hereto as Exhibit "B" to this Agreement);

(2) comply with the special conditions (the "Special Conditions") shown on Exhibit "D" attached hereto and made a part hereof; and

(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 above 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 "D" 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 phases, subject to the Special Conditions set forth in Exhibit "D" attached hereto.

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 SDP-4 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. 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 covenant included in this Agreement which is intended to run with the land shall as set forth in any Special Condition shall survive this Agreement as provided in such Special Condition.

12. Successors and Assigns.

A. Change in Developer. 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 transfer of the Project or any portion thereof ("Transfer"), Developer and the transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer (i) 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, or (ii) Developer obtains from the transferee a letter acknowledging the existence of this Agreement and agreeing to be bound thereby. Said letter shall be signed by the transferee, notarized, and delivered to City prior to the Transfer. Upon execution of an agreement or receipt of the letter described above, the transferee shall be substituted as Developer under this Agreement and the person or entity executing this Agreement as Developer shall be released from any further obligations under this Agreement as to the property so transferred.

B. Individual Lot Sales. Notwithstanding the provisions of Subparagraph 12A, a transfer by Developer of a lot located on the Property within a City approved and recorded plat shall not be deemed a Transfer as set forth above so long as Developer's obligations with respect to such lot have been completed. In such event, Developer shall be released from any further obligations under this Agreement pertaining to such lot.

13. Default.

A. Events of Default. Upon the happening of one (1) 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; or

(2) a determination by City made upon the basis of substantial evidence that Developer has not complied in good faith with one (1) or more of the material terms or conditions of this Agreement; or

(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 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 13(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 Subparagraphs 13(A) and 13(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. 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 City's 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 "D" hereof unless this Agreement is amended pursuant to a vote of City's 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 (4) 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:

David K. Gardner

724 North 1890 West
Provo, Utah 84601

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

With copy to: Municipal Council Attorney
P.O. Box 1849
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, or judicial or equitable relief which may arise from or are related to any activity connected with the Project, including approval of the Project; 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; or which arises out of claims for personal injury, including health, and claims for property damage.

(1) The agreements of Developer in this Paragraph 14(N) shall not be applicable to (i) any claim arising by reason of the negligence or intentional tort actions of City, or (ii) attorneys fees under Paragraph 14(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 the 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 (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned, or otherwise transferred to any entity or individual other than to Developer. 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 these 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 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

Talicia Grosbeck
City Recorder

By: *[Signature]*
Mayor



DEVELOPER, Greyfields, LLC, a Utah limited liability company

By: *[Signature]*
David K. Gardner, Manager

State of Utah)
):
County of Utah)

The foregoing instrument was acknowledged before me this 12 day of February 2008 by David K. Gardner, Manager of Greyfields, LLC.

Tam Kate Hodges
Notary Public



Exhibit "A"
Legal Description of Property
Lakeview Fields
1988 North Geneva Road, Provo, Utah

A PARCEL OF LAND LYING IN THE NORTHWEST QUARTER OF SECTION 34, AND THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENTING THE NORTHWEST CORNER OF SAID SECTION 34; THENCE N89°31'44"W A DISTANCE OF 255.46 FEET ALONG THE SECTION LINE; THENCE SOUTH 36.48 FEET TO THE POINT OF BEGINNING:

THENCE N89°24'28"E A DISTANCE OF 1477.23 FEET; THENCE S38°12'05"E A DISTANCE OF 471.40 FEET; THENCE S51°47'55"W A DISTANCE OF 120.00 FEET; THENCE S 89°24'23"W A DISTANCE OF 1604.18 FEET; THENCE N11°10'38"W A DISTANCE OF 137.42 FEET; THENCE N13°37'55"W A DISTANCE OF 179.15 FEET; THENCE N00°35'37"W A DISTANCE OF 137.10 FEET TO THE REAL POINT OF BEGINNING.

CONTAINING 16.55 ACRES.

Exhibit "B"
Planning Commission Report of Action
Rezoning and Preliminary Project Plan - December 12, 2007
Lakeview Fields
1988 North Geneva Road, Provo, Utah

Provo City Planning Commission

Report of Action

December 12, 2007

REQUEST FOR COUNCIL ACTION

Type of Action Requested: X

Resolution X

Ordinance X

Formal Action/Motion

Review at Study Session

Administrative; No Action

- ITEM 2* Gardner and Associates requests approval of the Lakeview Fields Specific Development Plan (SPD-4) for property located generally at 1988 North Geneva Road. The property is currently zoned R1.20 (One-family Residential). *Lakeview North Neighborhood* The following actions are requested:
- (a) Preliminary subdivision approval of the Lakeview Fields Subdivision, a 51-lot subdivision containing 18.62 acres of property. (07-0010SP)
 - (b)* Ordinance Text Amendment to Chapter 14.49D Lakeview Fields (SDP-4) Specific Development Plan Overlay Zone. (07-0015OA)
 - (c)* Zone Map Amendment for 18.62 acres from R1.20 (One-Family Residential) to SDP-4 (Specific Development Plan) zone, in order to facilitate development of the Lakeview Fields Subdivision. (07-0011R)

The following action was taken by the Planning Commission on the above described item at its regular meeting of December 12, 2007.

**(a) CONDITIONALLY APPROVED
PRELIMINARY SUBDIVISION**

On a vote of 5:1, the Planning Commission approved the above noted application, with the following conditions:

1. That any remaining technical requirements of the Public Works Department are addressed prior to final plat approval;
2. That the property is rezoned to SDP-4 (Lakeview Fields Specific Development Plan) in order to validate the approval;
3. That the SDP-4 Overlay text ordinance is adopted to validate the rezone.

Motion By: Ron Madsen

Second By: Roy Peterman

Votes in Favor of Motion: Ron Madsen, Roy Peterman, Pam Boshard, Marian Monnahan, Paul Bird

Votes Opposed to Motion: Ron Philips

Leonard Mackay was present as Chair.

**(b)* RECOMMEND APPROVAL OF ORDINANCE
TEXT AMENDMENT WITH CONDITIONS**

On a vote of 6:0, the Planning Commission recommended that the Municipal Council approve the applicant's proposed ordinance amendment, with an additional recommendation noted below in the FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION section. The proposed ordinance is attached as Exhibit A.

Motion By: Roy Peterman

Second By: Ron Madsen

Votes in Favor of Motion: Ron Madsen, Roy Peterman, Pam Boshard, Marian Monnahan, Paul Bird, Ron Philips

Votes Opposed to Motion: none

Leonard Mackay was present as Chair.

(c)* RECOMMEND APPROVAL OF ZONING MAP AMENDMENT

On a vote of 6:0, the Planning Commission recommended that the Municipal Council approve the applicant's proposed zoning map amendment. The legal description of the proposed property is attached as Exhibit B.

Motion By: Ron Madsen

Second By: Marian Monnahan

Votes in Favor of Motion: Ron Madsen, Roy Peterman, Pam Boshard, Marian Monnahan, Paul Bird, Ron Philips

Votes Opposed to Motion: none

Leonard Mackay was present as Chair.

PLANNING COMMISSION RECOMMENDED TEXT AMENDMENT

The ordinance text of the proposed SDP-4 Zone is attached as Exhibit A.

PLANNING COMMISSION RECOMMENDED ZONING MAP AMENDMENT

A legal description of the property to be rezoned is attached to this report as Exhibit B.

DEVELOPMENT AGREEMENT

Applies - referred applicant to Council Attorney.

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 those points raised in the finding of fact and analysis section of the Staff Report. It should be noted that access from the apartment complex parking to Geneva Road has been accepted by UDOT.

NEIGHBORHOOD MEETING DATE

Multiple neighborhood meetings were held to discuss this project. The first meeting was held July 7, 2007, and a report of this meeting was an attachment to the staff report. A second meeting was held December 1, 2007. The past and current neighborhood chairs of the Lakeview North Neighborhood were present to report on that meeting. A vote of those present at the December meeting was taken with the following results; 68% voted to accept the project as submitted, 8% voted not to accept, 12% voted to accept it with conditions, and 12% had no preference.

NEIGHBORHOOD AND PUBLIC COMMENT

Neighbors and other interested parties were present to address the Planning Commission concerning this item. Items discussed included traffic volumes and the widening of Geneva Road, signaling the intersection of 2000 North and Geneva, whether or not this was a leap frog development, and whether or not this area would be better served by larger lots. In general, those present were in favor of the proposed development.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included double frontage lots, the street scape and width requirements for 2000 North, timing of the apartment phase, and access to Geneva Road. Commissioner Phillips advocated the closing of access from the apartment complex parking to Geneva Road, and having it connect through the R1 portion of the subdivision to the proposed east-west street.

There was significant discussion regarding the appropriateness of the subdivision design. The Planning Commission felt that this subdivision was no different than any other westside subdivision and there should be a better mix of lot sizes. In addition, the comment was made that there are too many lots off cul-de-sacs, and with six homes off each there would be no space for on-street parking. Provisions need to be made for better subdivision design to help create a more dynamic lot layout.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included a change in the proposed minimum floor area requirement for single family homes to an average of 2200 square feet per home, a statement that basements could be allowed if approved by the findings of individual soil's reports, and that an HOA will maintain the parkstrips along 2000 North as well as the fencing. The applicant did not know specifics of proposed UDOT widening of Geneva Road, but noted that his plans for improvements of Geneva Road would be subject to UDOT approval.

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION

The Planning Commission identified the following findings as the basis of this decision or recommendation:

- The applicant's stated change of an average of 2200 square feet per one-family home should be included in the proposed ordinance text;
- The proposed text should include more specific language concerning the HOA responsibilities for fence maintenance, including landscaping around the fence, graffiti removal, and so forth.



 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.

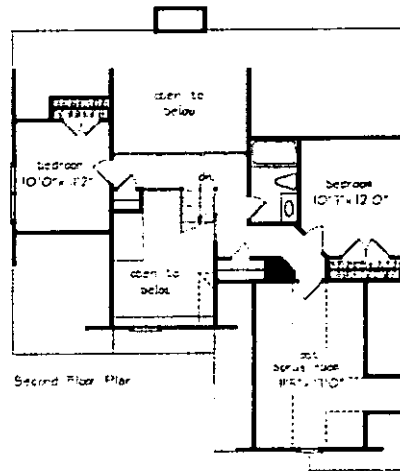
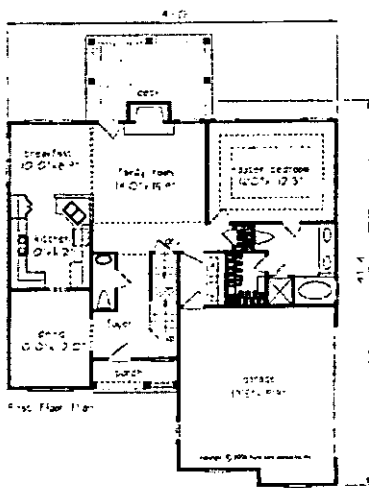
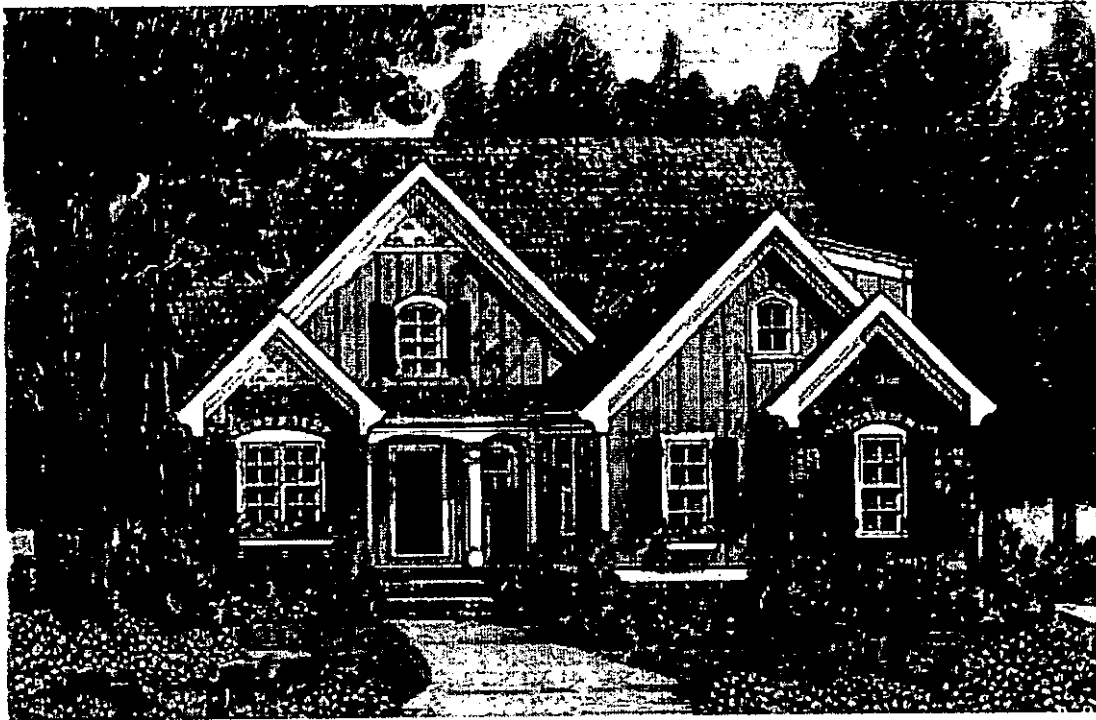
Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

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, 330 West 100 South, 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.).

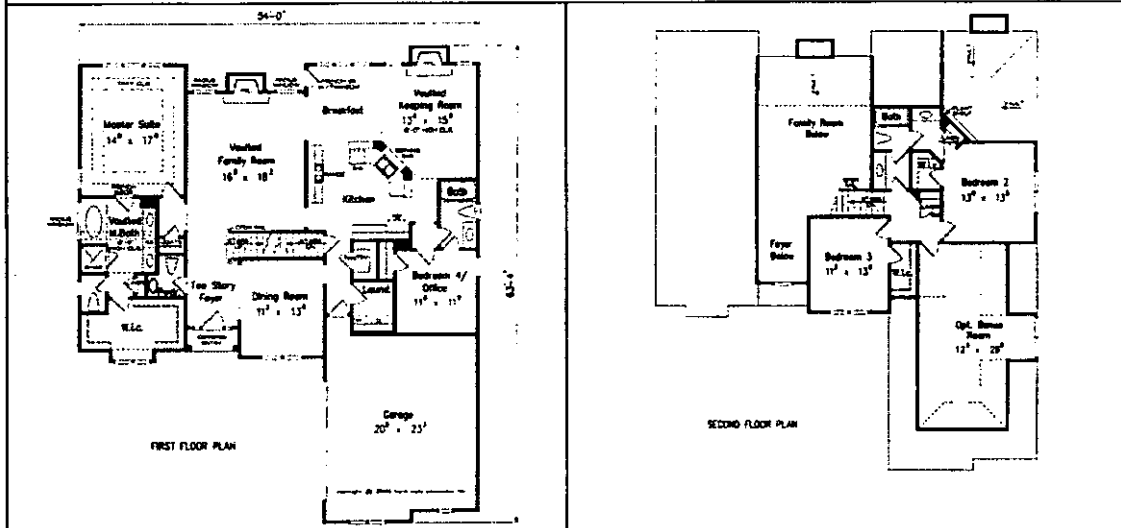
BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit "C"
Preliminary Project Plan
Lakeview Fields
1988 North Geneva Road, Provo, Utah

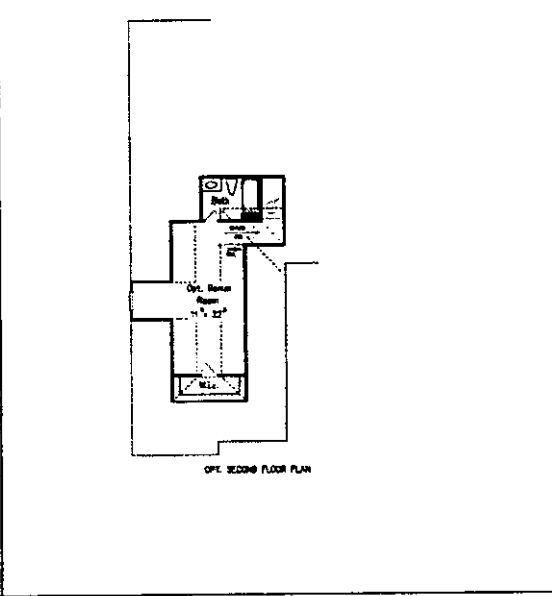
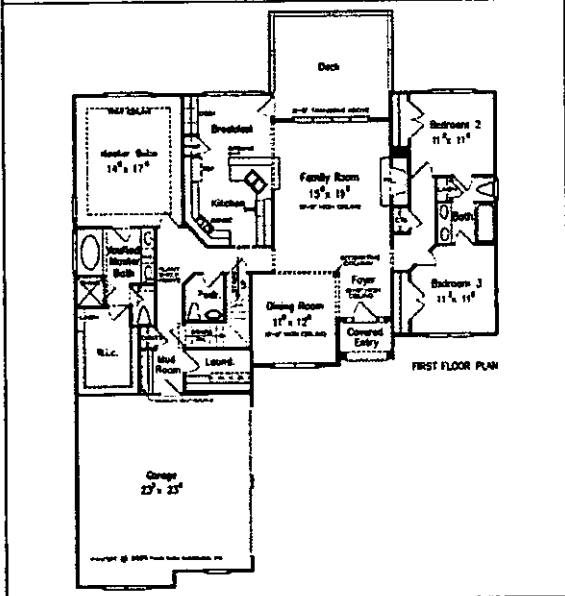
ABERDEEN PLACE	
UNFINISHED BASEMENT	1190
MAIN FLOOR	1118
UPSTAIRS	698
TOTAL FINISHED	1816
TOTAL ALL FLOORS	3006



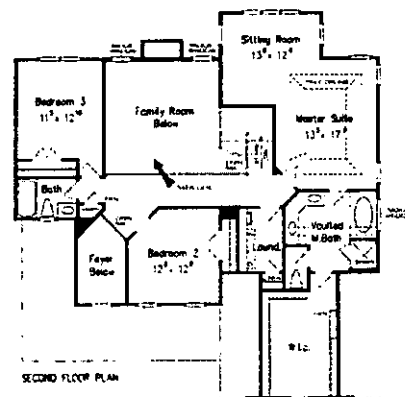
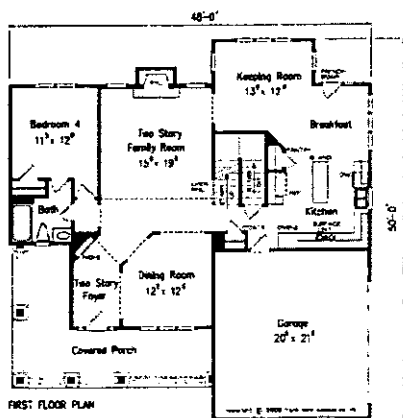
ASHWORTH PLACE	
UNFINISHED BASEMENT	2036
MAIN FLOOR	1946
UPSTAIRS	928
TOTAL FINISHED	2874
TOTAL ALL FLOORS	4910



BAGWELL PLACE	
UNFINISHED BASEMENT	2001
MAIN FLOOR	1949
UPSTAIRS	398
TOTAL FINISHED	2347
TOTAL ALL FLOORS	4348



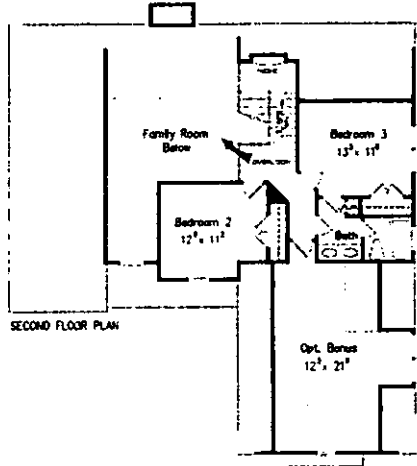
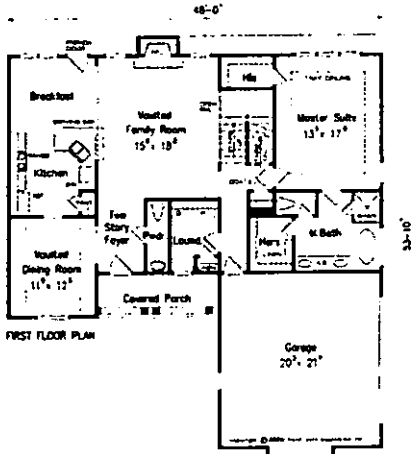
BAKERSFIELD	
UNFINISHED BASEMENT	1372
MAIN FLOOR	1322
UPSTAIRS	1262
TOTAL FINISHED	2584
TOTAL ALL FLOORS	3956



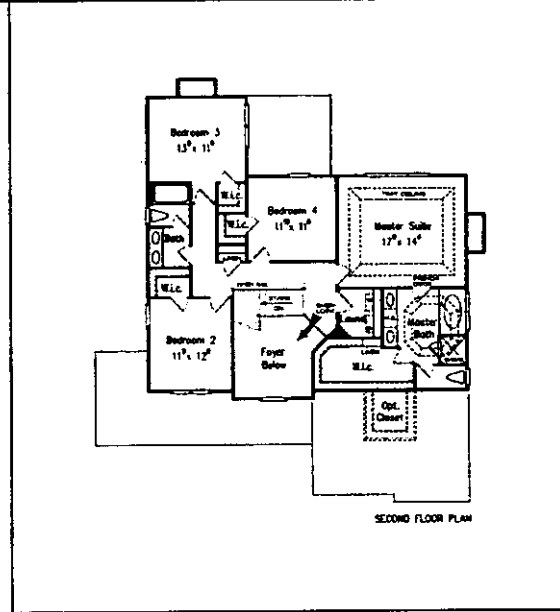
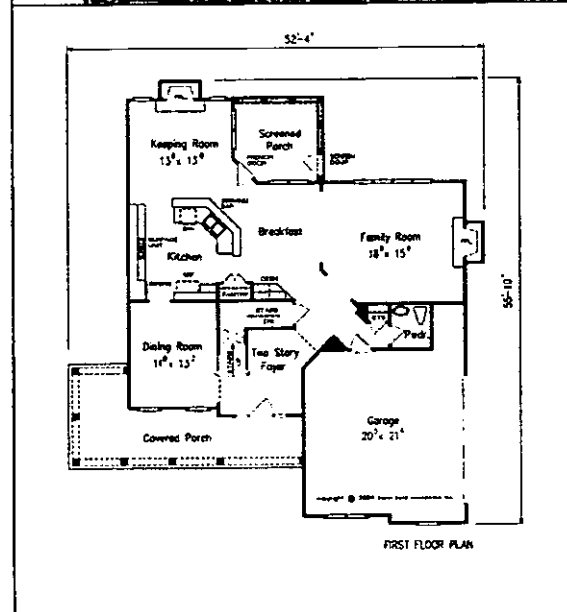
BOULDERCREST	
UNFINISHED BASEMENT	1457
MAIN FLOOR	1407
UPSTAIRS	793
TOTAL FINISHED	2200
TOTAL ALL FLOORS	3657



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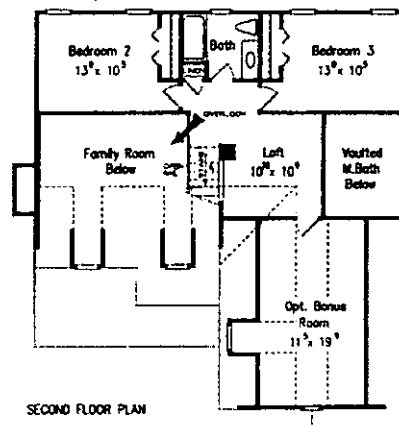
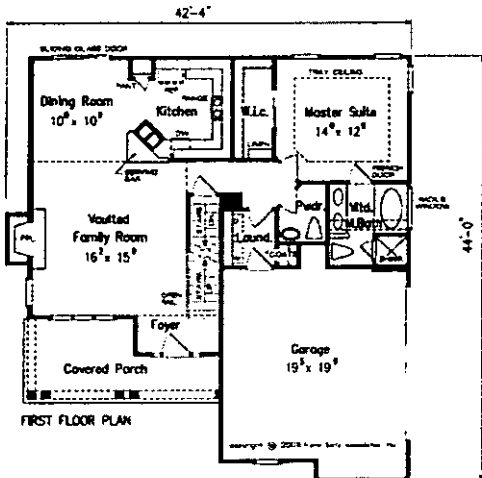


CULBERTSON	
UNFINISHED BASEMENT	1254
MAIN FLOOR	1214
UPSTAIRS	1229
TOTAL FINISHED	2443
TOTAL ALL FLOORS	3697

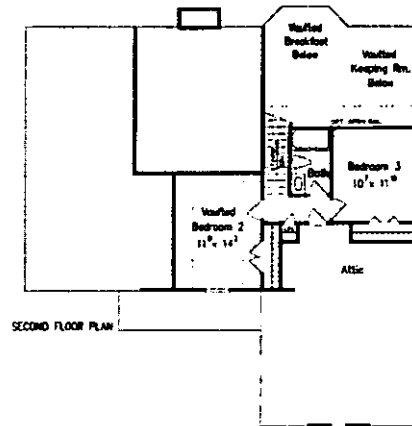
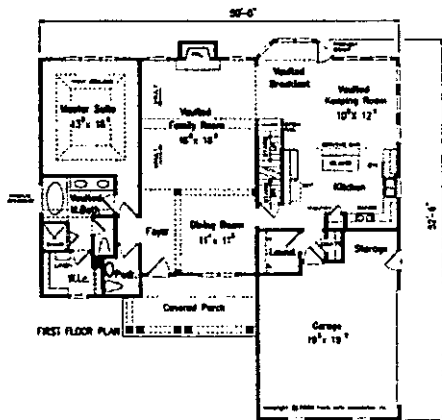


CULVERHOUSE

UNFINISHED BASEMENT	1052
MAIN FLOOR	1012
UPSTAIRS	830
TOTAL FINISHED	1842
TOTAL ALL FLOORS	2894



HEDGEWICK	
UNFINISHED BASEMENT	1557
MAIN FLOOR	1507
UPSTAIRS	426
TOTAL FINISHED	1933
TOTAL ALL FLOORS	3490



MACENZIE

UNFINISHED BASEMENT	1692
MAIN FLOOR	1642
UPSTAIRS	702
TOTAL FINISHED	2344
TOTAL ALL FLOORS	4036

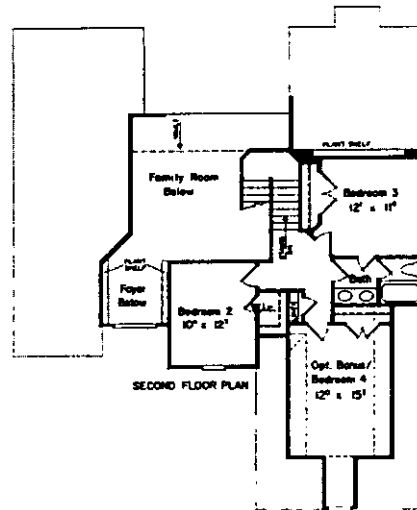
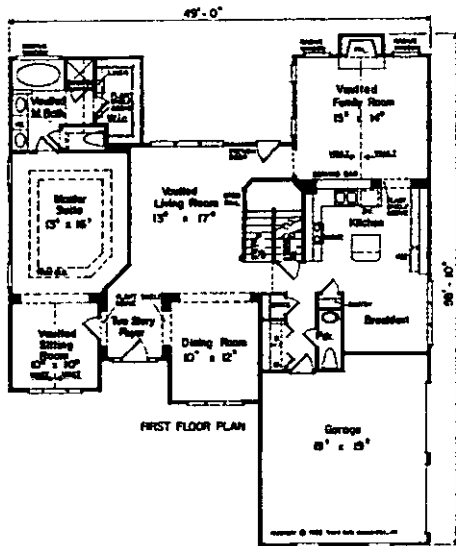


Exhibit "D"
Special Conditions
Lakeview Fields
1988 North Geneva Road, Provo, Utah

The following special conditions shall apply to development of the Property which is the subject of the within Agreement. Capitalized terms shall have the meaning set forth in the Agreement. 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 condition, except as otherwise provided in the special conditions below.

1. Not more than one (1) dwelling unit shall be constructed on each of Lots 1 to 50 shown on the preliminary subdivision plat set forth in Exhibit "C" herein (the "One-Family Subdivision Lots") for a total of fifty (50) one-family dwelling units in the Project subject to approval by Provo City as provided in the within Agreement.
2. Each one-family dwelling unit built on a One-Family Subdivision Lot within the Project shall have a minimum finished floor area as follows:
 - A. Single-story dwelling unit with a full unfinished basement: one thousand seven hundred (1,700) square feet.
 - B. Two story dwelling unit with a full unfinished basement: one thousand (1,000) square feet on the main floor and eight hundred (800) square feet on the upstairs floor.
 - C. Not more than ten (10) dwelling units may be built without a basement. Any such dwelling unit shall have two (2) stories and a minimum finished floor area of two thousand three hundred (2,300) square feet.
 - D. 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. Each one-family dwelling unit shall have at least a two (2) car garage. Carports shall be prohibited.
4. The exterior of each one-family dwelling unit shall consist of masonry material such as stone, brick, rock, stucco, Hardiboard (or equivalent) or a combination thereof.
5. Each one-family dwelling unit shall have a roof pitch of at least 5:12 or greater.
6. Each One-Family Subdivision Lot owner shall install landscaping in the front yard and street side yard of the lot prior to the issuance of a certificate of occupancy for the dwelling unit located thereon; provided, however, that installation of landscaping may be reasonably delayed due

to weather conditions so long as:

A. Landscaping is completed within six (6) months after issuance of an occupancy permit.

B. The lot owner escrows funds sufficient to install landscaping as reasonably determined by Provo City.

C. The lot owner and Provo City execute an escrow and landscaping improvement agreement consistent with this special condition.

7. Prior to issuance of any building permit for a one-family dwelling unit on a One-Family Subdivision Lot in the Project, covenants, conditions, and restrictions (the "Subdivision CCRs") shall be recorded against the One-Family Subdivision Lots in the Project which shall run with the land. Provo City shall approve the Subdivision CCRs, which approval shall not be unreasonably withheld, to determine compliance with this Agreement. Such CCRs shall include provisions that:

A. Establish a property owners association for the One-Family Subdivision Lots.

B. Establish an architectural control committee.

C. Require architectural control committee approval of the architectural design of any dwelling unit located on a One-Family Subdivision Lot before any application for a building permit for such unit is submitted to Provo City.

D. Require the property owners association to maintain any common areas and landscaping and fencing improvements located within the public right-of-way of 2000 North which abuts the Project.

8. The special conditions set forth in Paragraphs 7 shall run with the land and shall survive the within Agreement as provided in Paragraph 11 thereof. Provided, however, that the parties to the within Agreement, or their successors or assigns, may elect to modify or remove the foregoing conditions on the Property. Modification or removal of any special condition set forth in Paragraph 10 shall be in written form mutually agreed to and executed by each of the parties and shall constitute an amendment to the within Agreement. The amendment shall be undertaken pursuant to a vote of the Municipal Council as provided in Section 14(I) of the within Agreement.

9. A seven (7) foot high concrete or masonry wall, approved by Provo City, shall be installed along the entire east boundary of the One-Family Subdivision Lots. Following issuance of ten (10) building permits for one-family dwellings on such lots, no further permits shall be issued unless and until the wall has been completely installed.

10. A six (6) foot high cedar fence with decorative masonry columns and landscaping on the north side of the fence, approved by the Provo City Design Review Committee, shall be installed

along the entire north boundary of the One-Family Subdivision Lots. Fence panels shall not be aligned in a straight line but shall be staggered to achieve a higher design quality as reasonably determined by the Committee. Following issuance of twenty (20) building permits for one-family dwellings on such lots, no further permits shall be issued unless and until the fence has been completely installed.

11. Notwithstanding anything herein to the contrary, Special Conditions 1-6, 9 and 10 shall be included on each recorded plat for Property.

12. Developer shall improve the east side of the intersection of 2000 North and Geneva Road, including acquisition of any property necessary to make such improvements (collectively, the "Improvements"), pursuant to construction drawings approved by Provo City; provided, however, that Developer shall not be required to construct such Improvements unless and until Developer and Provo City execute an agreement under which Developer will be reimbursed the cost of such Improvements less Developer's proportionate share thereof.