

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into on January 18, 2005, by and between Provo City Corporation, a Utah municipal corporation, hereinafter referred to as the "City", and the Provo Housing Authority, a Utah municipal corporation, hereinafter referred to as the "Developer".

### Recitals

A. Developer is the developer of certain property located generally at 150 South 500 East in Provo, Utah (the "Property"), which is more fully described in the attached Exhibit "A". As part of the development of the Property, Developer desires to have the Property placed in the Historic Maeser School Project Redevelopment Option zone (the "PRO" 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 redevelop the Property as a high quality, multiple residential project which meets the development standards of the PRO 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, §§ 10-9-101, 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 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 December 8, 2004, 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 December 8, 2004, after a duly noticed public hearing, the Provo City Planning Commission approved Developer's application for preliminary project plan on the Property subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein.

H. On January 18, 2005, the 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, the Developer, and city officials and (ii) recommendations of the General Plan regarding the Property.

I. On January 18, 2005, the Municipal Council reviewed the preliminary project 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.

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 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 §§ 10-9-102 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 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 PRO 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 14.50(7) (Historic Maeser School PRO 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 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 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) except as otherwise provided in the PRO zone and this Agreement.

B. Developer shall:

(1) Comply with the conditions of preliminary project plan approval as set forth in the Planning Commission Report of Action dated December 8, 2004.

(2) Comply with the special conditions (the "Special Conditions") shown on Exhibit "D" 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 "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 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 PRO 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 survive this Agreement as provided in the covenant.

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.

(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 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:	Doug Carlson Provo Housing Authority 650 West 100 North 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, 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 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 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]

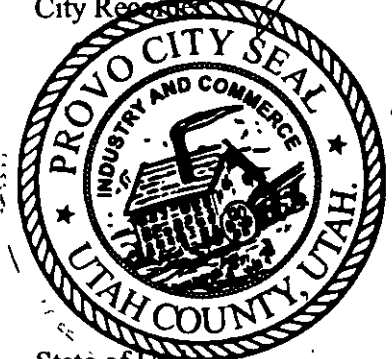
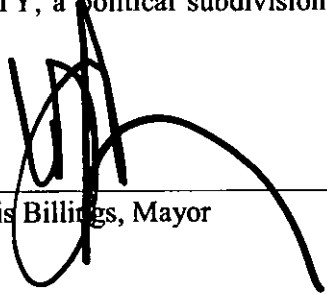
IN WITNESS WHEREOF, this Development Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

Attest:

PROVO CITY, a political subdivision of the State of Utah

*Laraine Groesbeck*  
City Recorder

By: \_\_\_\_\_  
Lewis Billings, Mayor



PROVO HOUSING AUTHORITY

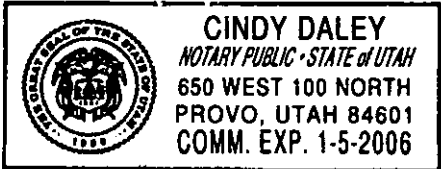
By: \_\_\_\_\_  
Doug Carlson, Director



State of Utah  
County of Utah

On this 1<sup>st</sup> day of ~~January~~ <sup>February</sup> in the year 2005, before me Cindy Daley, a notary public, personally appeared Doug Carlson, 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.

Cindy Daley  
Notary Public



**Exhibit "A"**  
**Legal Description of Property**

**Exhibit A**

*A legal description changing the zone classification of land within the city of Provo, Utah\**

**Legal Description:**

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, S.L.B.&M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND MONUMENT MARKING THE NORTHWEST CORNER OF SAID SECTION 7; THENCE N.89°26'27"E. ALONG THE SECTION LINE A DISTANCE OF 1325.82 FEET; THENCE NORTH A DISTANCE OF 99.10 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.89°40'09"E. A DISTANCE OF 398.96 FEET; THENCE S.00°18'18"W. A DISTANCE OF 399.16 FEET; THENCE N.89°39'07"W. A DISTANCE OF 399.20 FEET; THENCE N.00°20'20"E. A DISTANCE OF 399.04 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 159,272 SQ. FT. OR 3.66 ACRES OF LAND.

CLOSURE ERROR: 0.00'

\* This zone change does not take effect until passed by ordinance and published in the newspaper.

**Exhibit "B"**  
**Planning Commission Report of Action**  
**December 8, 2004**

Provo City Planning Commission  
**Report of Action**  
 December 8, 2004

- ITEM 6\* Douglas Carlson, agent for the Provo Housing Authority, requests approval for the Historic Maeser School PRO zone for the development of 32 elderly housing units inside of the existing historic Maeser School building, and 12 one-family lots on the Maeser School block. The property is located generally at 150 South 500 East in the PF (Public Facilities) Zone. *Maeser Neighborhood* 04-0005 PRO
- a. Preliminary project plan for 32 elderly housing units and a 12 lot subdivision.
  - b.\* Ordinance text amendment to Title 14 Zoning to create Chapter 14.50(8)A, Historic Maeser School PRO Zone.
  - c.\* Rezone of approximately 3.66 acres from the PF (Public Facilities) Zone to the Historic Maeser School Project Redevelopment Option(PRO) zone.

The following action was taken by the Planning Commission on the above described item at its regular meeting of December 8, 2004.

- a. Preliminary project plan for 32 elderly housing units and a 12-lot subdivision.

**APPROVED WITH CONDITIONS**

Motion By: Leonard Mackay  
 Second By: Pam Boshard  
 Votes in Favor of Motion: Roy Peterman, Ron Madsen, Kathy Froerer, Pam Boshard, Leonard Mackay  
 Votes Opposed to Motion: \_\_\_\_\_  
 Todd Roach was present as chair.

The Preliminary Plat for the proposed adaptive reuse of the Maeser School for 32 senior housing units to be owned and managed by the Provo Housing Authority and for twelve one-family dwellings on individual lots was approved, subject to Council approval of the proposed Historic Maeser School PRO Zone and rezoning of the property to the new PRO Zone, and subject to the conditions as recommended by staff, highlighting the staff's recommendation that the owner occupancy requirement be noted on the deeds and on the subdivision plat for the twelve lots.

Conditions of Approval:

1. The applicant is to enter into a Development Agreement with Provo City to specifically address the occupancy and use for both the Historic Maeser School building and the 12 one family homes that are to be constructed. Reference should be made to the owner occupancy requirement for the 12 one family homes. Reference should also be made to the need for the developer to provide landscaping and an automated sprinkler system in front yards for each of the 12 homes.
2. Prior to application for any building permit for the 12 one family homes, the applicant must receive final approval for all home designs from the Design Review Committee.
3. Prior to application for a building permit, the applicant must submit application and associated fees for a subdivision plat. After this plat has received approval from Provo City Departments and has been signed by the Mayor, said plat is to be recorded.

*Planning Commission Report of Action, 04-0005 PRO  
December 8, 2004, Item 6\* – Page 2*

4. Reference to the owner-occupancy restriction for the 12 one family homes should be recorded against the titles of each property. Alternatively or in addition, a note could be placed on the plat referencing this restriction.
5. That prior to the issuance of a Certificate of Occupancy, the fencing that will separate the Historic Maeser School from the one family homes be installed.
6. No second kitchens or accessory apartments be permitted in the Historic Maeser School PRO zone.

b.\* Ordinance text amendment to Title 14 Zoning to create Chapter 14.50(8)A, Historic Maeser School PRO Zone.

### RECOMMEND APPROVAL

Motion By: Leonard Mackay  
 Second By: Ron Madsen  
 Votes in Favor of Motion: Roy Peterman, Ron Madsen, Kathy Froerer, Pam Boshard, Leonard Mackay  
 Votes Opposed to Motion: \_\_\_\_\_  
 Todd Roach was present as chair.

#### **RECOMMENDED TEXT AMENDMENT**

The Planning Commission recommended approval of amending Title 14 Zoning to add the text, as proposed by the applicant, to create Chapter 14.50(8)A, Historic Maeser School PRO Zone:

***Chapter 14.50(7). Historic Maeser School Project Redevelopment Option Zone.***

- 14.50(7).010. Purpose and Intent.*
- 14.50(7).020. Compliance with Chapter 14 and 15 Required.*
- 14.50(7).030. Permitted Uses.*
- 14.50(7).040. Ownership and Control.*
- 14.50(7).050. Project Area.*
- 14.50(7).060. Minimum Finished Floor Area.*
- 14.50(7).070. Building Pad Width and Depth Requirements.*
- 14.50(7).080. Lot Frontage.*
- 14.50(7).090. Residential Density.*
- 14.50(7).100. Yard Requirements.*
- 14.50(7).110. Projections into Yards.*
- 14.50(7).120. Garbage Collection.*
- 14.50(7).130. Trash Storage.*
- 14.50(7).140. Building Height.*
- 14.50(7).150. Distance Between Buildings.*
- 14.50(7).160. Permissible Site Coverage.*
- 14.50(7).170. Parking, Loading and Access.*
- 14.50(7).180. Access to Enclosed Parking.*
- 14.50(7).190. Project Plan Approval/Design Review.*
- 14.50(7).200. Fencing Standards.*
- 14.50(7).210. Notice of Occupancy Restrictions.*

*Planning Commission Report of Action, 04-0005 PRO  
December 8, 2004, Item 6\* – Page 3*

**14.50(7).010. Purpose and Intent.**

*The purpose of the Historic Maeser School Project Redevelopment Option zone is to preserve an historic landmark, provide affordable rental housing for senior citizens, and provide home ownership opportunities in the Maeser Neighborhood. This zone has been created to implement the goals of the General Plan to revitalize downtown neighborhoods with owner-occupancy to protect the historic neighborhood character, and increase the supply of affordable housing for the elderly. The intent of this zone is to reinforce the growth through owner occupancy in the Maeser Neighborhood. The standards set forth herein are intended to encourage long term stability through home ownership requirements and to enhance the quality of these neighborhoods through compatible residential densities.*

**14.50(7).020. Compliance with Chapter 14 and Chapter 15 Required.**

*In addition to the development standards contained in this Chapter, areas zoned to the Historic Maeser School PRO zone shall comply with the development requirements in Chapters 14 and 15, Provo City Code, which are not specifically addressed in this Chapter.*

**14.50(7).030. Permitted Uses.**

*(1) Those uses or categories of uses as listed herein, and no others, are permitted in the Historic Maeser School PRO zone.*

*(2) All uses listed herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or groupings of such uses permitted in the zone are identified by a four (4) digit number in which the last one or two digits are zeros.*

*(3) All such categories listed herein and all specific uses contained within them in the Standard Land use Code shall be permitted in the Historic Maeser School PRO zone, subject to the limitations set forth in this Chapter.*

*(4) Permitted Principal Uses. The following principal uses and structures are permitted in the Historic Maeser School PRO zone:*

<u>Use No.</u>	<u>Use Classification</u>
1111	One-family dwelling - detached
1142	Apartment (Low Rise)
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)

*(5) Permitted Accessory Uses. Accessory uses and structures are permitted in the Historic Maeser School PRO zone, provided they are incidental to and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:*

- (a) Vegetable and flower gardens;*
- (b) Home occupations subject to the regulations of Chapter 14.41, Provo City Code;*



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*(c) Storage of materials used for construction of a building, including the contractor's temporary office, provided that such use is on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter;*

*(d) Household pets, provided that there shall be no more than two (2) such pets, over the age of four (4) months, per dwelling unit. Nothing herein shall be construed as authorizing the keeping of any animal capable of inflicting harm or discomfort or endangering the health and safety of any person or property.*

*(e) No accessory buildings shall be permitted, except as determined by a homeowner's association to be appropriate.*

*(6) Conditional Uses. No conditional uses shall be permitted in the Historic Maeser School PRO zone.*

**14.50(7).040. Ownership and Control.**

*Land within the Historic Maeser School PRO zone shall be in single ownership or single control during design and dual ownership during construction to insure conformance with these provisions and all conditions imposed upon preliminary and final development plans. Completed units may be owned by an individual, partnership, corporation, and other legally recognized entity. Common open space areas, if any, shall be managed by a homeowners association created in conformance with Utah State law.*

**14.50(7).050. Project Area.**

*The minimum area for a project in the Historic Maeser School PRO zone shall be 3.66 acres.*

**14.50(7).060. Minimum Finished Floor Area.**

*The minimum finished floor area of a dwelling unit in the Historic Maeser School PRO zone shall be thirteen hundred (1300) square feet for the owner occupied units and four hundred thirty two (432) square feet for the units for the elderly. The minimum square footage of the owner occupied units is excluding garages, porches, verandas, carports, patios, basements and steps.*

**14.50(7).070. Building Pad Width and Depth Requirements.**

*Each building pad in the Historic Maeser School PRO zone shall have an average width of not less than forty (42) feet. The building pad shall have a minimum depth of sixty-two (62) feet.*

**14.50(7).080. Lot Frontage.**

*Each lot in the Historic Maeser School PRO zone shall have public street frontage of at least sixty-two (62) feet.*

**14.50(7).090. Residential Density.**

*Residential density in the Historic Maeser School PRO zone shall not exceed twelve (12) dwelling units per gross acre.*

**14.50(7).100. Yard Requirements.**

*The following minimum yard requirements shall apply to each lot or parcel of land in the Historic Maeser School PRO zone:*

- (1) Front Yard. The front yard shall be not less than twenty (20) feet.*
- (2) Side Yard. One side yard shall be at least eight (8) feet and the total of both side yards shall be not less than sixteen (16) feet.*
- (3) Street Side Yard shall be a minimum of twenty (20) feet*
- (4) Rear yard. All primary structures shall have a rear yard of not less than fifteen (15) feet.*

**14.50(7).110. Projections into Yards.**

*(1) The following structures may be erected on or project into any required yard:*

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- (a) Fences and walls in conformance with the Provo City Code and other City codes and ordinances.*
- (b) Landscape elements including trees, shrubs, agricultural crops, and other plants.*
- (c) Necessary appurtenances for utility service.*

*(2) The structures listed below may project into a minimum front or rear yard not more than six (6) feet, and into a minimum side yard not more than two (2) feet:*

- (a) Cornices, eaves, belt courses, sills, buttresses, or other similar architectural features.*
- (b) Fireplace structures and bays, provided they are not wider than eight (8) feet and are generally parallel to the wall of which they are a part.*
- (c) Stairways, balconies, door stoops, fire escapes, awnings, and planter boxes or masonry planters.*

**14.50(7).120. Garbage Collection.**

*Each owner occupied unit shall have individual garbage containers which conform with Provo City Code requirements. Garbage containers shall be placed for pick-up on a public street. When not placed outside for pick-up, garbage containers shall be stored inside a garage. A single garbage collection bay shall be constructed adjacent to the parking lot for the elderly units in conformance with Provo City Code requirements. Garbage pick-up shall be contracted by the owner.*

**14.50(7).130. Trash Storage.**

*No trash, used materials, or wrecked or abandoned vehicles or equipment shall be stored in an open area. Storage of commercial goods or materials shall be prohibited.*

**14.50(7).140. Building Height.**

*No owner occupied lot or parcel of land in the Historic Maeser School PRO zone shall have a building or structure that exceeds a height of two (2) stories with a maximum of thirty-five (35) feet. Chimneys, flagpoles, or similar structures not used for human occupancy shall be excluded in determining height. The height of the existing Maeser School Building shall not be altered.*

**14.50(7).150. Distance Between Buildings.**

*The minimum distance between buildings on a lot or parcel of land in the Historic Maeser School PRO zone shall be as allowed by the building code or sixteen (16) feet, which ever is greater.*

**14.50(7).160. Permissible Site Coverage.**

*Total coverage of all buildings and structures on a lot or parcel of land in the Historic Maeser School PRO zone shall not exceed twenty-six (26) percent of the site area.*

**14.50(7).170. Parking, Loading, and Access.**

*Each owner occupied dwelling unit in the Historic Maeser School PRO zone shall have two (2) covered parking spaces. Each elderly unit in the Historic Maeser School shall have 1.3125 uncovered spaces. A private garage for the owner occupied dwellings shall be placed at the rear of the dwelling and may be detached. Parking design standards shall be in compliance with Section 14.37.100, Provo City Code.*

**14.50(7).180. Access to Enclosed Parking.**

*Access to owner occupied unit parking shall be provided by a driveway which is at least ten (10) feet wide. No parking shall be permitted in a driveway. Shared driveways shall be at least 12 feet wide.*

**14.50(7).190. Project Plan Approval/Design Review.**

*Each development in the Historic Maeser School PRO zone shall comply with Sections 14.040A.020 (Project Plan) and 14.34.280 (Design Review), Provo City Code. In addition, the following specific design standards shall apply to all development in the Historic Maeser School PRO zone:*

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**(1) Building Requirements.**

(a) Development design for owner occupied units shall include variety among individual building colors and textures. Building forms and landscape materials shall be harmonious with existing neighborhood dwellings. Architectural character shall be similar to the character of dwellings in the Maeser neighborhoods. Architectural features should enhance individual identity of each dwelling unit.

(b) Architecture shall harmonize with permanent neighboring development.

(c) Roof shapes shall harmonize with the architectural character of neighborhood dwellings.

(d) Building materials should be durable and suitable for the design in which they are used.

(e) Light fixtures shall be provided at each building entry.

(f) Each residential unit shall have an associated private outdoor space.

**(2) Landscape Requirements.** All residential yard areas except those portions devoted to driveways, buildings, or parking, shall be designed with suitable landscaping of plants, shrubs, trees, grass, and similar landscaping materials. All trees shall be a minimum one and one-half (1 ½) inch caliper in size. For the owner occupied units, there shall be a minimum of two (2) trees per dwelling unit and ten (10) shrubs per dwelling unit. Two (2) trees, species to be determined by the Urban Forester, shall be provided in the park strip fronting the lots of the owner occupied units.

**14.50(7).200. Fencing Standards.**

A six (6) foot site obscuring wood or vinyl fence shall be provided to separate the Historic Maeser School site from the one family subdivision. A site obscuring wood or vinyl fence of three (3) feet in height shall be provided along the parking lot entry drives separating the owner occupied units from the elderly unit lot, but shall not extend into a front yard area.

**14.50(7).210. Occupancy Restrictions.**

(1) Dwelling unit occupancy in the Historic Maeser School PRO zone shall be limited to family occupancy as defined by Section 14.06, Provo City Code. No accessory apartments or second kitchens shall be permitted.

(2) Prior to the issuance of a Certificate of Occupancy for a dwelling unit, a permanent notice shall be placed on the electrical box within the unit indicating maximum allowable occupancy of the unit based on the approved occupancy consistent with a recorded parking and occupancy agreement. This notice shall be located on a 6" X 6" metal or plastic plate permanently attached to the electrical box with minimum one-half (½) inch engraved letters. (New 2004-22)

END OF PROPOSED AMENDMENT

c.\* Rezone of approximately 3.66 acres, located generally at 150 South 500 East, from the PF (Public Facilities) Zone to the Historic Maeser School Project Redevelopment Option (PRO) Zone.

**RECOMMEND APPROVAL OF REZONING  
With a Development Agreement to Address  
Owner Occupancy and Other Conditions of  
the Approved Project Plan**

Motion By: Leonard Mackay

Second By: Ron Madsen

Votes in Favor of Motion: Roy Peterman, Ron Madsen, Kathy Ernerer, Pam Boshard, Leonard Mackay

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Votes Opposed to Motion: \_\_\_\_\_

Todd Roach was present as chair.

### **STAFF PRESENTATION**

Staff noted that the Landmarks Commission has approved all proposed alterations to the historic Maeser School building to accommodate the senior housing, as proposed by the Provo Housing Authority. These include reverse dormers to add living space in the roof-level attic, addition of a low-profile handicap access ramp, and demolition of an earlier addition to the original school building that is not compatible or desirable to retain. Staff also noted that the Design Review Committee (DRC) had not approved the original house plans for the individual lots and was scheduled to review the new house plans the day after the Planning Commission meeting; the new plans have been prepared in response to comments from the DRC at its previous review. Staff recommended that owner occupancy of these homes be required through a development agreement, deed restrictions, and note on the plat.

### **NEIGHBORHOOD ISSUES**

Maeser Neighborhood Chair Maria Winden indicated she had come to the Planning Commission meeting prepared to support the new use, but had been contacted by neighbors who indicated there is a willing buyer for the property for use as a school. Although the neighbors had voiced excitement to her about the school proposal, Ms. Winden voiced personal concerns about the viability of that proposal. The neighbors' secondary concern, after loss of a school use, is that the one-family homes will become rentals. Ms. Winden noted that many of the surrounding lots are smaller than those proposed and that home ownership has been increasing through various efforts in the neighborhood. She feels the PRO project is positive, and noted that 22 of the 24 people attending the September 1<sup>st</sup> neighborhood meeting favored the project. Their understanding is that the involvement of the Rural Housing Authority requires owner occupancy for a minimum of five years.

Some neighbors were requesting, through the neighborhood chair, that this item be continued to allow time to negotiate on the reported offer for a school use (no one representing the proposed school was present to address the Planning Commission). Ms. Winden recommended that the Planning Commission move forward with a decision and recommendations on the request for the Historic Maeser School PRO, with the understanding that, should a new proposal come forward, a new property owner could request that the zoning be reverted to the PF (Public Facilities) Zone. She expressed appreciation to the Housing Authority and the School District for their work in preventing the historic school building from being razed.

Joaquin Neighborhood Chair, Kurt Peterson, noted that Farrer Middle School has recently been selected for conversion to an elementary school to replace Joaquin and Maeser Elementary Schools.

Several neighbors addressed the Planning Commission and made the following comments:

- Disagree with earlier comments that efforts to keep the school and find a use for the school building have been ongoing for five years. This is the first public hearing on the PRO application, so comments from the Planning Commission that it is too late in the process to request that the application be continued (to allow time to explore the opportunity for a new buyer that has come forward to propose a school use) is not valid.
- The Maeser School continues to be in public ownership, first through the School District and now through the Housing Authority, and was paid for with tax payers' dollars; this makes it the citizens' property, and they should have an opportunity to decide whether an alternate proposal would be better suited for the property.
- Neighbors at the meeting agreed to this proposal because they were told that this was the "only alternative" to tearing down the historic school building.
- Ms. Winden's presentation on surrounding lot sizes is not complete or accurate; this project is "wearing a label that says "rental" all over it," with standard housing materials (as opposed to high-quality construction), shared driveways, and small back yards. Deed restrictions (for owner occupancy) can be changed.

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- Design for shared driveways won't work; request examples of where this has been successfully used elsewhere. Lots are too small if they can't accommodate individual driveways; economics should not be the deciding factor in determining an appropriate lot size.
- A single mother stated she had been able to purchase a home in the city where she lived previously because of the program available through the Rural Housing Authority; she spoke very favorably of the RHA and its service to enable lower-income families to share in the opportunity to become home owners.

**APPLICANT RESPONSE**

The Provo Housing Authority hopes to begin construction in February 2005 and be ready to occupy the senior housing by February 2006. Parking ratios are proposed based on observance of parking in other Provo Housing Authority projects serving senior citizens. Although the Housing Authority would like to be able to provide covered parking for the residents, finances do not make that possible. The Housing Authority will maintain the parking lot and sidewalks and keep them cleared of snow. The design of the individual lots to have shared driveways for access to back yard parking is necessary, as the design to keep garages from intruding into front yard space takes more room on the lot. The desire is to have a street-friendly appearance to the homes by keeping the parking spaces to the rear of the homes. Homes will use brick and a more-expensive and lower-maintenance type of siding to be compatible with area homes; a representative of the Rural Housing Authority was present to address construction of the homes and requirements for owner occupancy. This representative indicated he knew of no reason that the RHA would object to the deed restriction recommended by staff.

**PLANNING COMMISSION DISCUSSION**

Commissioner Leonard Mackay noted that the Provo Housing Authority, who is the applicant for the project, has already closed on the purchase of the property; the Housing Authority cannot be compelled to sell the property if their proposal is acceptable to the City. He feels the neighborhood had five years to make the school proposal work and that bringing up a possible new buyer at the time another project is ready for approval is not a reason to delay a proposal that has been fully developed and is a good use of the property.

**FINDINGS OF FACT**

The Planning Commission recommendation is based on the Findings of Fact, Analysis, Conclusions and Recommendations of the Staff Report to the Planning Commission, Item 6, December 8, 2004. The staff report is part of this public record of decision.

  
\_\_\_\_\_  
Planning Commission Chair

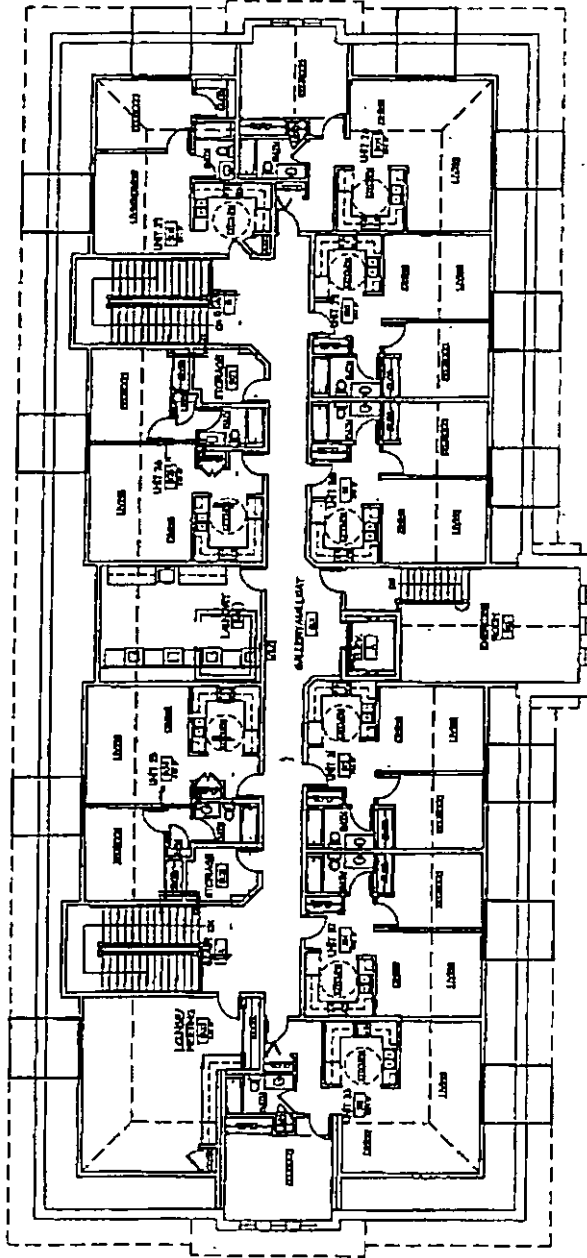
\*\*See Land Use Policies Draft, Staff Report, and minutes summary for further detailed information.

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

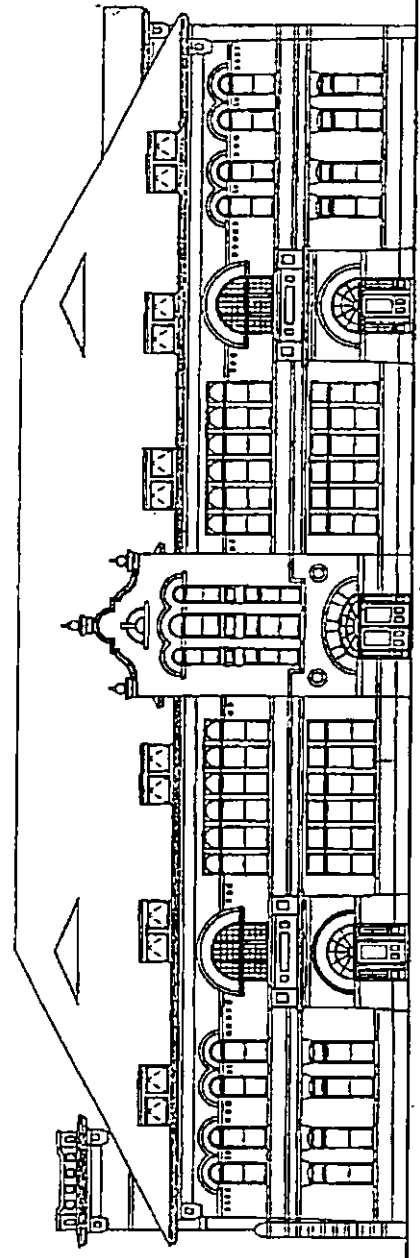
Administrative decisions (items not marked with a star) of the Planning Commission may be appealed by submitting an application and the required application and noticing fees for the Board of Adjustment at the Community Development Department within ten (10) days of the Commission's decision.

**BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS**

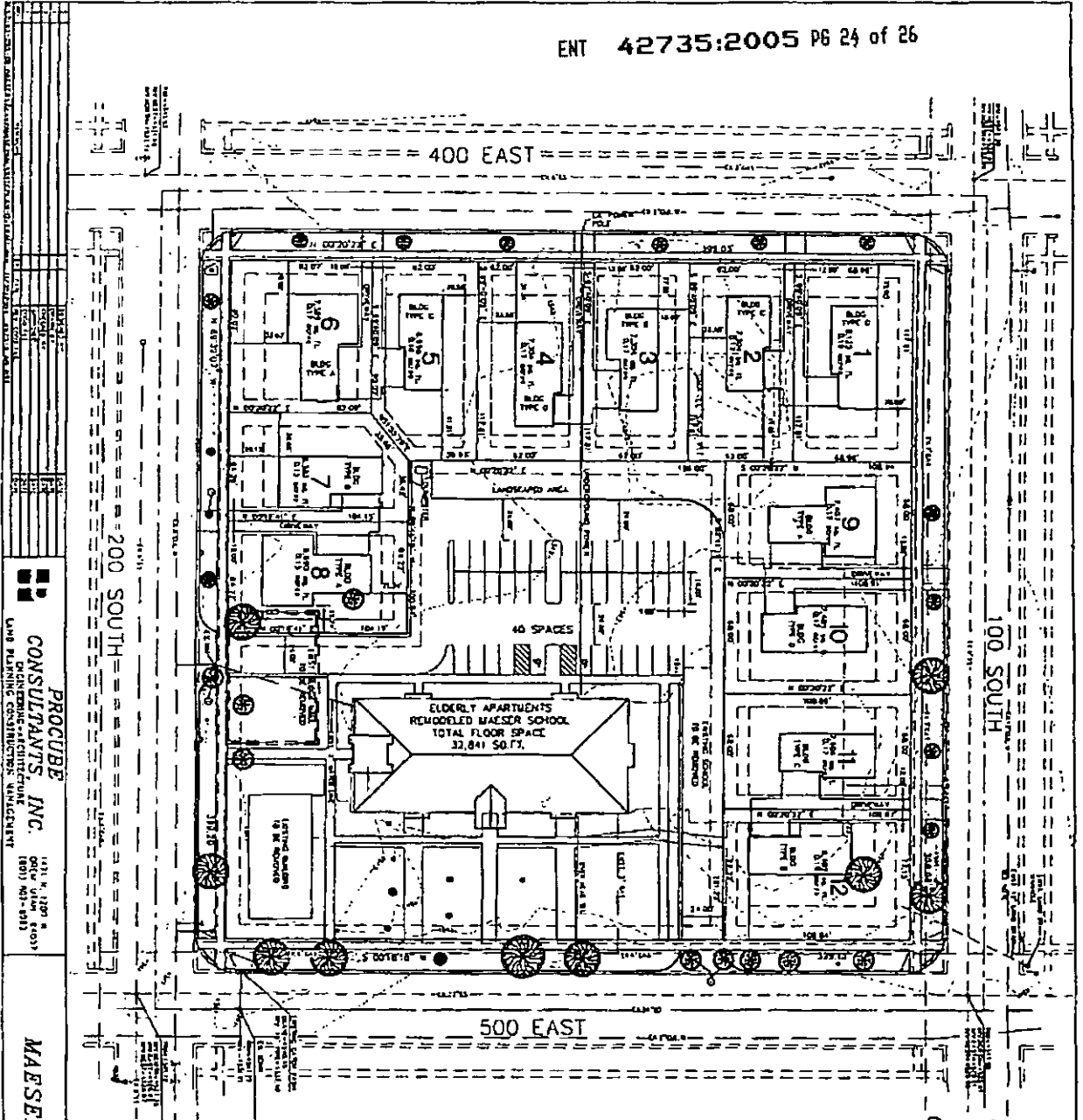
**Exhibit "C"**  
**Preliminary Project Plan**



OPTION 1A - RECESSED WINDOWS / EXIST. PLAN



EAST EXTERIOR ELEVATION



**PRODUCE CONSULTANTS, INC.**  
PLANNING-ARCHITECTURE  
LAND PLANNING-CONSTRUCTION MANAGEMENT

151 W 1200 S  
SUITE 100  
PROVO, UTAH 84601  
(801) 437-8913

**RECEIVED**  
NOV 29 2004  
Provo City  
Community Development

**MAESER BLOCK**

SITE PLAN  
PROVO, UTAH

**IRISH QUARTERS ENCLOSURE DETAIL**  
-N15-

**TYPICAL BUILDING FRAGMENTS**

SCALE 1" = 30'  
SCALE 1/4" = 60'

REVISIONS:  
FIELD INQUIRY FOR SUTHERLAND  
DANIEL CARLSON 11/18/04  
151 W 1200 S  
801-437-7000

**VICINITY MAP**

<p>DATE: 11/18/04 DRAWN BY: [unintelligible] CHECKED BY: [unintelligible] SCALE: AS SHOWN PROJECT: MAESER BLOCK SHEET NO: CS101</p>	<p>DATE: 11/18/04 DRAWN BY: [unintelligible] CHECKED BY: [unintelligible] SCALE: AS SHOWN PROJECT: MAESER BLOCK SHEET NO: CS101</p>
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NEO - FOUR SQUARE



FRONT 1/8" = 1'-0"

NEO - BUNGALOW

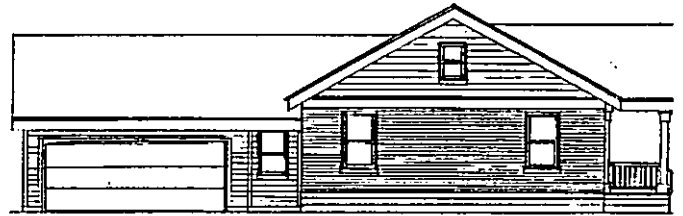


FRONT 1/8" = 1'-0"

ENT 42735:2005 PG 25 of 26



SIDE



SIDE

**DESIGN REVIEW  
APPROVED PLAN**

Date 1/13/05

Molloy  
Coordinator

NEO-VICTORIAN

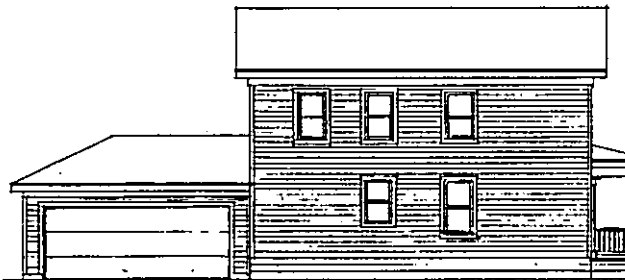
NEO-VERNACLAR



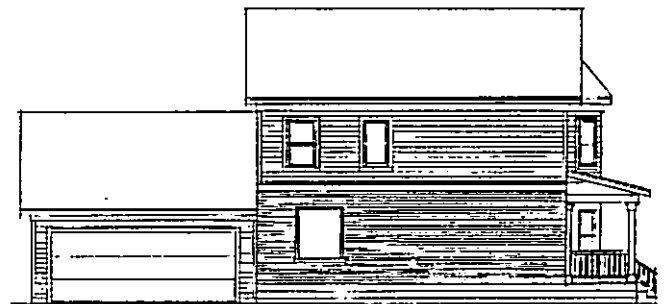
FRONT 1/8" = 1'-0"



FRONT 1/8" = 1'-0"



SIDE ....



SIDE ...

**Exhibit "D"**  
**Special Conditions**  
**Maeser Historic School Project**  
**150 South 500 East, Provo, Utah**

The following requirements 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.

1. Development of land on the Property 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 a final plan as a note if such plans clearly illustrate the substance and requirements of the condition.

A. Development of the Project shall consist of not more than thirty-two (32) elderly housing units within the redeveloped Maeser School building and twelve (12) single family dwelling units located on individual lots on the property surrounding the School as shown on the preliminary project plan set forth in Exhibit "C" of the within Agreement.

B. Occupancy of the elderly housing units shall be limited to not more than two (2) persons per unit. This special condition shall run with the land and shall survive the within Agreement as provided in Paragraph 11 thereof.

C. Prior to issuance of a building permit for the Project, Developer shall record a covenant against each of the single-family lots requiring owner occupancy in the dwelling located on each such lot. Occupancy of each single family dwelling unit in the Project shall be further limited to family occupancy as defined by Title 14 of the Provo City Code, provided, however, that the number of related or unrelated persons who constitute a family as set forth in subparagraph (c) of the definition of "family" in Section 14.06.020, Provo City Code, shall be limited to two (2) persons only. This special condition shall run with the land and shall survive the within Agreement as provided in Paragraph 11 thereof.

2. Developer shall provide landscaping and an automatic sprinkler system in the front yard of each single-family dwelling lot.