

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into April 17, 2001, by and between Provo City Corporation, a Utah municipal corporation, hereinafter referred to as the "City", and Foothill Park, L.C., hereinafter referred to as the "Developer".

### Recitals

A. Developer is the Developer of certain property located at approximately 300 North Seven Peaks Blvd in Provo, Utah (the "Property"), which is more fully described Exhibit A, attached hereto and incorporated herein. As part of the development of the Property, Developer desires to have the Property placed in the R1.10 zone, as provided in Title 14 of the Provo City Code, as amended (the "Rezoning Request").

B. Developer has indicated a desire and intent to develop on the Property a high quality, single family residential subdivision.

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

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

E. On August 26, 1997, City adopted a General Plan, pursuant to Utah Code Annotated §§ 10-9-301, et seq. A portion of the General Plan establishes development policies for the Property. Such development policies provide that the Property should be developed for single family uses, such as those allowed by the R1.10 zone.

F. On March 14, 2001, after duly noticed public hearings, the Provo City Planning Commission recommended approval of Developer's application to rezone the Property subject to certain findings and conditions as set forth in Exhibit "B" attached hereto and incorporated herein, and forwarded the rezoning application to the Municipal Council for its consideration.

G. On April 17, 2001, 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.

H. On April 17, 2001, the Municipal Council reviewed the preliminary project plan for the Property, attached hereto as Exhibit C and incorporated herein, and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

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

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

#### **Agreement:**

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

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

2. Zone Change and Permitted Uses. Subject to the terms of this Agreement, the zoning classification on the Property shall be R1.10. Land uses allowed pursuant to such zoning designation shall be governed by Title 14 of the Provo City Code as constituted on the effective date of this Agreement, except to the extent that this Agreement is more restrictive.

3. Applicable Code Provisions. All provisions of the Provo City Code as constituted on the effective date of this Agreement shall be applicable to the project proposed on the property except as expressly modified by this Agreement. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement, Titles 14 and 15 of the Provo City Code, and other requirements generally applicable to development in Provo City. In particular, and not by way of limitation, Developer shall conform to the requirements of the R1, Single Family Residential, zone and the project plan approval process therein.

4. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present which meet the compelling,

countervailing public interest exception to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988) or successor case law. Any such proposed change affecting Developer's rights shall be of general application to all development activity in 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 Final Project or Development 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 Chapter 14.37 of the Provo City Code (Off-Street Parking Requirements).

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

B. Developer shall:

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

(2) Comply, if requested by City, with mitigating measures identified in a traffic study for the Project, as may be updated. Such measures may include:

(a) Install a right turn pocket westbound on 820 North at the intersection of 820 North and 900 East.

(b) Install a traffic signal at the intersection of 450 North and 900 East.

(c) Install a left turn signal and a right turn lane for westbound traffic at the intersection of 700 North and 900 East.

(d) Install sewer, water, curb, gutter, and asphalt paving to extend

Seven Peaks Blvd. through the Jeff Burton property and install sidewalk on the south side of such extension of Seven Peaks Blvd.

(e) Paint curb red and post "no parking" signs along public streets throughout the Project.

(3) If requested by City for the purpose of preserving open space, transfer to City by quit claim deed or other appropriate instrument the real property located to the east of the Project and shown generally on Exhibit E attached hereto and incorporated herein. The precise amount of property to be transferred shall be determined after the Project has received preliminary plan approval from City's Planning Commission. No transfer of such property shall be required until after such preliminary plan approval.

(4) Provide access (trail) easements to the open space located to the east of the Project.

(5) Limit the maximum number of lots to one hundred fifty seven (157).

(6) Record covenants, conditions and restrictions ("CCRs") for the Project which shall run with the land. City shall have the right to approve the CCRs, which approval shall not be unreasonably withheld. The CCRs shall include provisions that:

(i) limit occupancy in the Project to family occupancy only 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 persons only; and

(ii) require approval of construction plans for each dwelling unit by an architectural control committee which has the power to ensure that dwelling units within the Project are designed and constructed in a manner that will discourage future occupancy, use or reconstruction which is prohibited by the provisions of the foregoing subparagraph (6)(i) or Title 14 of the Provo City Code.

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

6. Standard for Approval. City, on recommendation of its Planning Commission and Design Review Committee, shall approve the 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 as set forth in Exhibit B attached hereto and incorporated herein.

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. Construction of the Project shall proceed in phases as provided in the Project Phasing Plan attached hereto as Exhibit D and incorporated herein.

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 R1.10 zone, and are otherwise consistent with the standard for approval set forth in Paragraph 6 hereof.

10. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with procedures applicable to the R1.10 zone.

11. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the Ordinance approving the Rezoning Request. In the event a building permit has not been issued within twenty four (24) months after approval of the Plans, this Agreement shall expire and shall have no further force or effect and City may initiate a rezoning action.

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 immediately as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

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

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

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

E. State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. 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. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties.

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

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

To the Developer:                      Foothill Park, L.C.  
    Gary Britton  
    3601 North University Ave., Suite 200  
    Provo, UT 84604

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

With copy to:                              Neil Lindberg  
    Municipal Council Attorney



P.O. Box 1849  
Provo, Utah 84603

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

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

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

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

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

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

O. Annual Review. City shall review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 11 herein. City's failure to review at least annually Developer's

compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

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

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

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

[signature page follows]

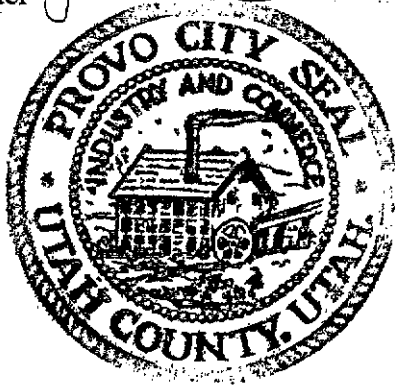
IN WITNESS WHEREOF, this Agreement has been executed by City, acting by and through its Mayor pursuant to a Municipal Council motion adopted April 17, 2001 authorizing such execution, and by a duly authorized representative of Developer as of the date first written above.

Attest:

PROVO CITY, a political subdivision of the State of Utah

By: Marilyn J. Perry  
City Recorder

By: [Signature]  
Mayor



DEVELOPER  
Foothill Park, L.C.

By: [Signature]  
Gary Brinton, Member

STATE OF UTAH  
COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this 23 day of April, 2001 by Gary Brinton, representing Foothill Park, L.C. "Developer".

[Signature]  
Notary Public

My commission expires:  
9-13-04

Provo UT  
Residing at:

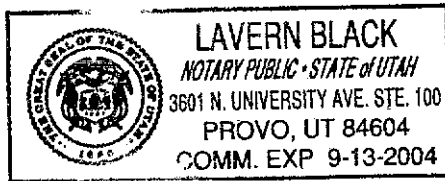


Exhibit "A"  
Legal Description

ENT 44291:2001 PG 12 of 20

## Foothill Park Boundary Description

April 16, 2001

Commencing at point which is N 00°43'43" W along the section line 530.72 feet and East 551.90 feet from the West Quarter Corner of Section 5, Township 7 South, Range 3 East, Salt Lake Base & Meridian, said point being the POINT OF BEGINNING;

Thence N 35°00'00" E 941.38 feet, to a point on a non-tangent curve,  
Thence along the arc of a 307.00 foot radius curve to the left 130.07 feet, through a central angle of 24°16'27", (Chord bears N 62°18'46" E, 129.09 feet),  
Thence N 50°09'52" E 230.63 feet, to a point on a curve,  
Thence along the arc of a 366.00 foot radius curve to the left 205.69 feet, through a central angle of 32°12'01", (Chord bears N 34°04'39" E, 203.00 feet),  
Thence S 58°45'49" E 58.48 feet,  
Thence N 35°00'00" E 220.00 feet,  
Thence East 540.00 feet,  
Thence S 09°27'44" E 370.02 feet,  
Thence S 68°29'55" W 177.34 feet,  
Thence S 53°46'21" W 133.14 feet,  
Thence S 32°27'36" W 333.45 feet,  
Thence West 95.66 feet,  
Thence S 13°18'28" W 416.37 feet,  
Thence S 04°27'11" E 972.27 feet,  
Thence S 85°32'49" W 86.66 feet,  
Thence S 7°33'15" E 86.32 feet,  
Thence S 88°18'18" W 91.58 feet,  
Thence S 88°44'41" W 143.24 feet,  
Thence S 31°36'19" E 85.44 feet, to a point on a curve,  
Thence along the arc of a 160.00 foot radius curve to the right 131.27 feet, through a central angle of 47°00'27", (Chord bears S 08°06'06" E, 127.62 feet),  
Thence S 15°24'08" W 75.17 feet,  
Thence N 89°30'30" W 1074.95 feet,  
Thence N 14°35'32" W 75.61 feet, to a point on a curve,  
Thence along the arc of a 460.00 foot radius curve to the right 166.67 feet, through a central angle of 20°45'35", (Chord bears N 04°12'44" W, 165.76 feet),  
Thence N 06°10'03" E 576.45 feet, to a point on a curve,  
Thence along the arc of an 893.64 foot radius curve to the right 449.70 feet, through a central angle of 28°49'57", (Chord bears N 20°35'02" E, 444.97 feet), to the POINT OF BEGINNING;

Containing 60.63 acres, more or less.

Basis of bearing: N 00°43'43" W between the West Quarter Corner of Section 5, and the Northwest Corner of Section 5.

## Provo City Planning Commission

## Report of Action

March 14, 2001

ITEM 6\*

Gardner and Associates requests rezoning of approximately 59 acres located generally at 300 North Seven Peaks Blvd from PF (Public Facilities) to R1.10 (Single Family Residential) *Foothills Neighborhood* 01-001(R)

The following action was taken by the Planning Commission on the above described item at their regular meeting of March 14, 2001

## RECOMMEND APPROVAL

Based on the findings of fact and conclusions presented, the Planning Commission voted unanimously to recommend approval of the rezoning for the Seven Peaks Property. In making his motion Mr. Peterman stated, "It is this body's responsibility insure that the Zoning Ordinance and the Provo City General Plan are complied with. In this case this rezoning requests meets those criteria."

Motion By: Roy Peterman

Second By: Sally Harding

Votes in Favor of Motion: Libutti, Hrding, Peterman, Shurtz, Mackay, Roach

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

FINDINGS OF FACT:

1. This request was heard by the Planning Commission on July 26, 2000 and the Planning Commission rendered the following decision: On a 4 to 0 vote the Planning Commission denied the request for rezoning after reviewing the findings of fact and conclusions. The Commission felt that this project would continually come before the Planning Commission until the General Plan Policies for this area have been firmly established by the Municipal Council. The Commission felt that it would be wise to deny the request to allow the opportunity to argue the merits of the project before the Municipal Council.
2. The Municipal Council heard the request in November, 2000 and denied the developer's request because the request was premature due to questions about the viability of the General Plan for this area.. There was a recommendation that the Administration work with the neighborhoods to come up with a way to purchase the property and that they report their progress to the Council. As of this date, no offer to purchase the property has come forth.
3. The developer, in meeting with several neighborhood chairpersons and at the suggestion of Council persons, elected to redesign the project by reducing the number of units from 222 to 157. No multi-family units are being proposed on the property. The entire property will consist of single family lots designed to be 10,000 square feet or greater as illustrated. The development will be a standard conventional subdivision and not a performance development. No density increase will be requested.

4. The upper 40 acres will remain as open space.
5. Section 14.02.020 (2) sets forth the following guidelines for consideration of zoning map amendments:
  - a. Public purpose for the change in question
  - b. Confirmation that the public purpose is best served by the change in question
  - c. Compatibility of the proposed change with general plan policies, goals, and objectives
  - d. Consistency of proposed change with the general plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.
  - e. Potential for hindrance or obstruction of attainment of the plan's articulated policies by the proposed change
  - f. Adverse impacts on adjacent land owners
  - g. Verification of correctness in the original zoning or general plan for the area in question.
  - h. In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

6. The General Plan Zoning and Development Policy Changes for this area are found on page 62 of the General Plan as follows:

**Foothills Neighborhood:**

1. Designate the high east bench as Environmental Sensitive Area (ESA).
2. Zone the Environmental Sensitive Area (ESA) A1.40 (Agricultural).
3. Designate the Low Density Residential (LDR) area between 900 East and 1080 East as "one-family" LDR1 and re-zone to R1.6A (One-family Residential, Accessory Apartment Overlay) zone.
4. Seven Peaks general plan policies include the following:

**Land Use:**

- a. The lower play field below the water park should remain Public Facilities (PF) as a buffer between the State Hospital and residential areas.
  - b. The land area in the Seven Peaks Development should be divided between Medium Density Residential (MDR), Low Density Residential (LDR) and Very Low Density Residential (VLDR) in the following percentages: 50% VLDR, 20% LDR, and 30% MDR.
  - c. Zones associated with the Medium Density Residential (MDR) and Low Density Residential (LDR) areas should be the lowest density zones falling into those general plan land use categories. This means R2.5 (Low Multiple Residential) zoning in the MDR area and R1.7 (One-family Residential) zoning in the LDR area.
  - d. Zoning associated with the Very Low Density Residential (VLDR) area should be R1.8 (One-family Residential), which is not the lowest density zone in that land use category, but which is consistent with the Hillside and Arlington Heights developments.
  - e. There should be an immediate drop in density between the Hillside and Arlington Heights projects and Seven Peaks, with densities decreasing as one moves east and north.
  - f. Building designs in the Medium Density Residential (MDR) area ought to look less like apartments, and more like large estate homes.
7. The purpose of this report is to analyze the proposal for compliance with the General Plan. When the General Plan was adopted for this area, it was tailored for the former Seven Peaks project as to designations and densities. The new proposed plan involves all single family homes and no apartment type buildings.
  8. The policies are reviewed as follows:
    1. *The lower play field below the water park should remain Public Facilities (PF) as a buffer between the State Hospital and residential areas. Note: This portion of the property will remain PF and is not part of the project.*
    2. *The land area in the Seven Peaks Development should be divided between Medium Density Residential (MDR), Low Density Residential (LDR) and Very Low Density Residential (VLDR) in the following percentages: 50% VLDR, 20% LDR, and 30% MDR. Note: This project provides all single family detached units contrary to the former project, therefore providing 100% of VLDR which is less dense than the other classifications of housing and meets the intent of the General Plan.*

3. *Zones associated with the Medium Density Residential (MDR) and Low Density Residential (LDR) areas should be the lowest density zones falling into those general plan land use categories. This means R2.5 (Low Multiple Residential) zoning in the MDR area and R1.7 (One-family Residential) zoning in the LDR area. Note: The developer is requesting R1.10 for the entire project which is less density than recommended by the General Plan.*
  4. *Zoning associated with the Very Low Density Residential (VLDR) area should be R1.8 (One-family Residential), which is not the lowest density zone in that land use category, but which is consistent with the Hillsdale and Arlington Heights developments. Note: The developer is not requesting R1.8 as outlined, but R1.10 and providing for larger lots than those permitted with R1.8.*
  5. *There should be an immediate drop in density between the Hillsdale and Arlington Heights projects and Seven Peaks, with densities decreasing as one moves east and north. Note: The developer has complied with this requirement.*
  6. *Building designs in the Medium Density Residential (MDR) area ought to look less like apartments, and more like large estate homes. Note: The developer has submitted designs of single family homes to the Design Review Committee and has received conceptual approval.*
9. Section 14.02.020 (2) sets forth the following guidelines for consideration of zoning map amendments:
- a. *Public purpose for the change in question.* Note: The project is providing for single family detached housing units which serves the public and lowers the traffic circulation.
  - b. *Confirmation that the public purpose is best served by the change in question.* The change in question would lessen the high density possibilities on the surrounding neighborhood.
  - c. *Compatibility of the proposed change with general plan policies, goals, and objectives.* This project appears to comply with the intent of the general plan policies, goals and objective, however, it could be argued that the general plan polices need to be amended to reflect what the developer is proposing, which is less density.
  - d. *Consistency of proposed change with the general plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.* No timing and sequencing provisions are mentioned.
  - e. *Potential for hindrance or obstruction of attainment of the plan's articulated policies by the proposed change.* None are noted.
  - f. *Adverse impacts on adjacent land owners.* The neighborhood is very concerned regarding traffic in the general area and would like to see no development of this property. However, with all single family homes proposed, the traffic circulation should be greatly reduced and lessen the impact.
  - g. *Verification of correctness in the original zoning or general plan for the area in question.* The General Plan is correct.
  - h. *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.* The Planning Commission will need to determine whether or not the plan complies with the policies. It appears that the policies need to be modified to reflect the plan and the lesser densities or land use classifications as proposed.
10. Concern has been raised regarding the opening of 300 North Street, adjacent to the project. The developer is not proposing that this street should be opened. The majority of the traffic generated will use Center Street. The opening of 300 North is a decision that can only be made by the City Administration, not the Planning Commission.
11. **CITY DEPARTMENT REVIEW:**  
The various City Departments have reviewed the project from a preliminary project plan perspective. They have no major concerns regarding the rezoning of the property because it is a very low density single family subdivision, but have some technical concerns that need to be addressed with final plan submittal. The Engineering Department has submitted their comments for review. Staff comments are noted in bold. The engineering comments are as follows:

1. There are several items on the preliminary plan which has been submitted which may require modification to the approved number of lots when a final preliminary approval is presented to the Planning Commission and City Council. Those items include proper street alignments which meet current City ordinances, geotechnical issues including faulting, debris flow hazards, and rock fall hazards etc.. This information has not been provided on the plan which was submitted for review and while the overall concept of the subdivision appears to be a plan which may work, this information will be necessary before final preliminary approval can be given to determine the street and lot layout.  
**(Note: The developer recognizes that he may lose some lots if the geotechnical report indicates such and will design the plan accordingly.)**
2. There is a significant portion of Seven Peaks Boulevard which is not currently constructed on the north. It will be necessary that dedication and construction of the improvements for Seven Peaks Boulevard be provided with this project. Street center lines, bearings and distances and radius' need to be included on the final preliminary plan to determine that all streets meet current City ordinance. **Note: The developer will design the project to comply with Engineering's concerns.**
3. A traffic report for this proposed project has not been submitted. The previous project on this property included a report which had several offsite mitigating measures for traffic. We do not know at this point whether or not those offsite improvements will be necessary or whether or not they or being proffered by the developer at this time. **Note: The developer will proffer a development agreement to mitigate those items which he will be responsible for as per the traffic report.**
4. Another issue which has been connected with previous projects in this area that has never been resolved is the status of 300 North Street. We would like to have some recommendation and guidance from the City Council and Planning Commission as to what their expectations are with 300 North Street, whether it should be opened, whether it should be permanently closed, or whether it is the determination that we not address that issue at this time. **(Note: This issue must be addressed by the Administration who has the authority to open 300 North. Unless the Municipal Council vacates 300 North, it will remain closed until such time the Administration renders a decision to have it opened)**
5. The plan which has been submitted does not show what the intent for termination of 300 North Street is, whether or not it will be cul-de-saced at the east end or terminated at the last street intersection with this project. This will need to be determined and included with the final preliminary design for the project. **Note: The developer will design the project to comply with engineering's concerns.**
6. Curb and gutter radii and sidewalk will be required along the project frontage of 300 North Street. **Note: The developer is willing to comply with this request.**
7. The street cross-section which has been provided does not meet current City ordinances. It will be necessary that street the cross-section be revised to show 7-foot planters and 19-foot ½ width of asphalt. **Note: The developer is willing to comply with this request.**
8. An additional cross-section should also be shown on the proposed plan indicating a 56-foot right-of-way with 28-foot asphalt, 2-foot curb and gutter, and 12-foot planters. A determination as to which streets will be able to be 28-feet in width or 38-feet will need to be made based on the amount of traffic projected on these streets. It would seem appropriate that all of the cul-de-sac streets would be able to be built to a 28-foot asphalt width. **Note: The developer is willing to comply with this request.**



9. A third street cross-section will be required for the construction of Seven Peaks Boulevard. All cross sections should include pavement width and thickness. **Note: The developer is willing to comply with this request.**
10. There are two four-way intersections designed within the project. These will need to be designed with local street roundabouts in order to meet our current City standard. **Note: The developer is willing to comply with this request.**
11. There is a partial cul-de-sac bulb shown in the vicinity of lots 98 and 99. This does not comply with current street design standards and will need to be modified to either incorporate a knuckle design or have the center line of the street designed to meet current City standards. **Note: The developer is willing to comply with this request.**
12. Final preliminary approval of this project will require the submission of a grading plan for the project, as well as a utility plan showing water, sewer, and storm drain. **Note: The developer is willing to comply with this request.**

#### 12. NEIGHBORHOOD CONCERNS:

The neighborhood is very concerned with traffic and open space. They would like the property to remain open and not developed with any type of housing. In general, some of the neighbor like the single family proposal, but overall, would like no development if possible.

13. The developer has provided pathways through the development for access to the upper trails as illustrated.

#### CONCLUSIONS:

1. This request is to rezone the property at a very low density single family residential subdivision which, in staff's opinion, meets the intent of the General plan. The General Plan indicates that the density should be reduced as you go north and east.
2. No multi-family units are being proposed.
3. Traffic will be reduced.
4. The possibilities of the property remaining vacant or as a golf course are remote and no one has offered to purchase the property as of this date.
5. The proposed R1.10 zoning is desired in this and other areas of the City.

#### RECOMMENDATION:

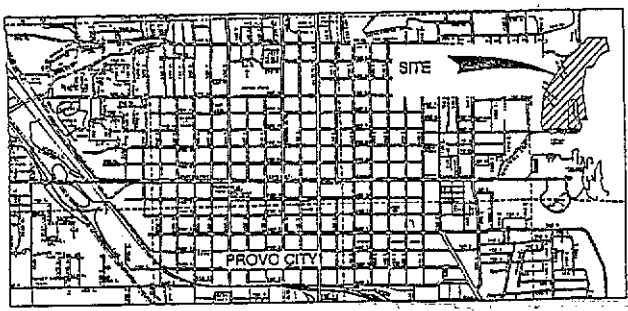
That the Planning Commission recommend to the Municipal Council to rezone the property as proposed.

The staff report is accepted for the official record.

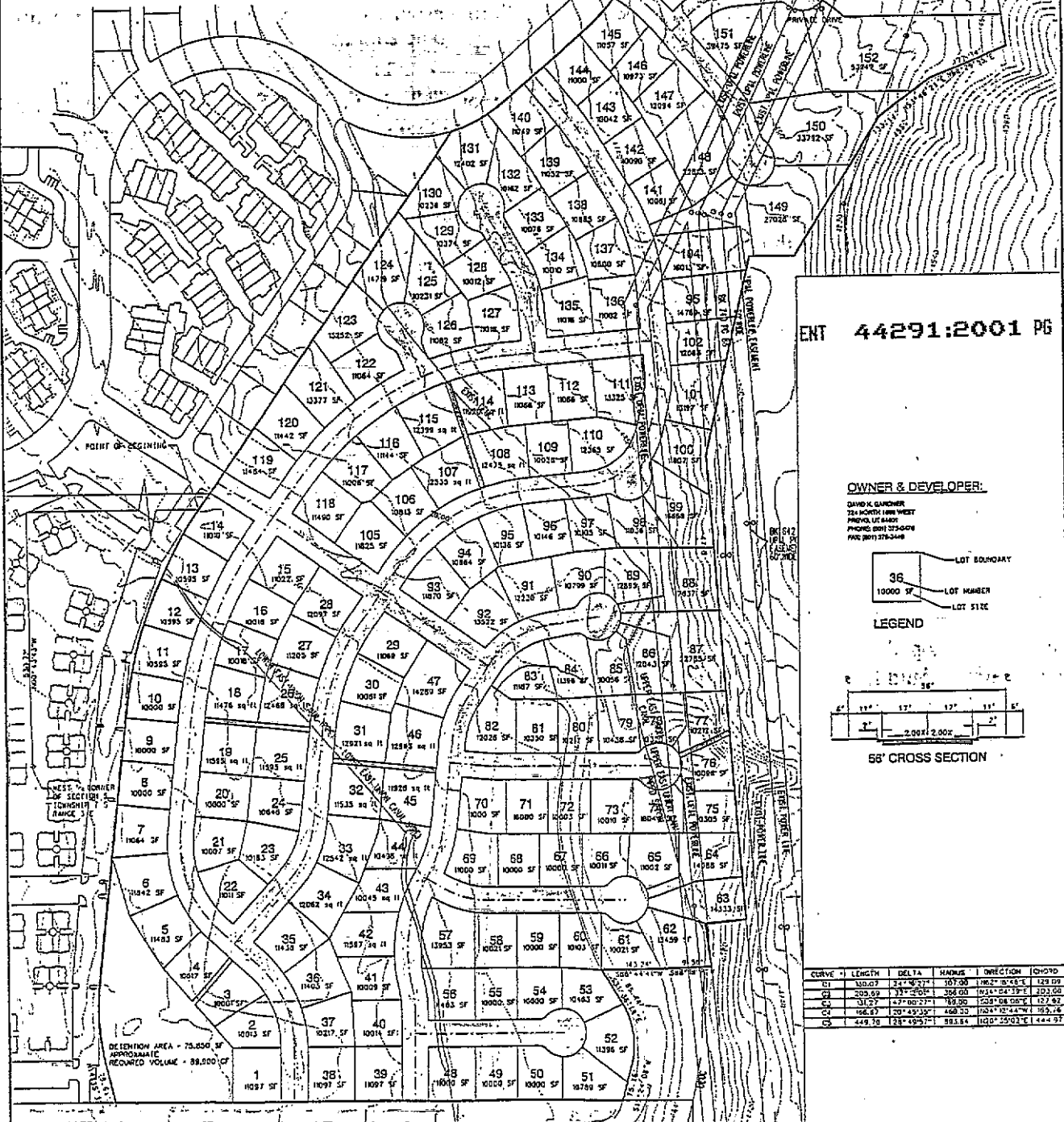
\*Legislative items are noted with a (\*) and require legislative action by the Municipal Council and a public hearing.

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

Exhibit "C"  
Preliminary Project Plan



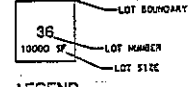
VICINITY MAP



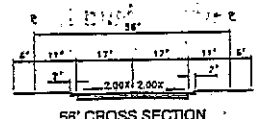
ENT 44291:2001 PG 18 of 20

OWNER & DEVELOPER:

DAVID K. GUNCHER  
224 NORTH 1000 WEST  
PROVO, UT 84607  
PHONE: 801-225-0006  
FAX: 801-225-0048



LEGEND



CURVE #	LENGTH	DELTA	WADING	DIRECTION	BYWORD
C1	130.27	24° 00' 00"	107.00	182° 00' 00"	129.00
C2	205.69	33° 20' 00"	306.00	161° 00' 00"	120.00
C3	31.27	47° 00' 00"	189.00	120° 00' 00"	127.00
C4	66.87	20° 45' 00"	468.00	128° 00' 00"	155.74
C5	449.70	124° 00' 00"	583.84	100° 25' 00"	444.97

PR1  
1

FOOTHILL PARK  
PRELIMINARY PLAN  
GARDNER & ASSOCIATES DEVELOPMENT  
PROVO, UTAH

REVISION

NO.	DATE	DESCRIPTION

J-U-B ENGINEERS, Inc.

Druid, UT 84601  
801-225-0006  
224 North 1000 West  
Provo, UT 84607  
801-225-0006

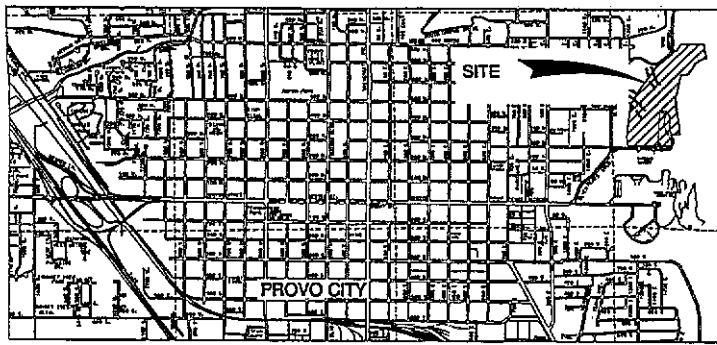
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801-225-0006  
224 North 1000 West  
Provo, UT 84607  
801-225-0006

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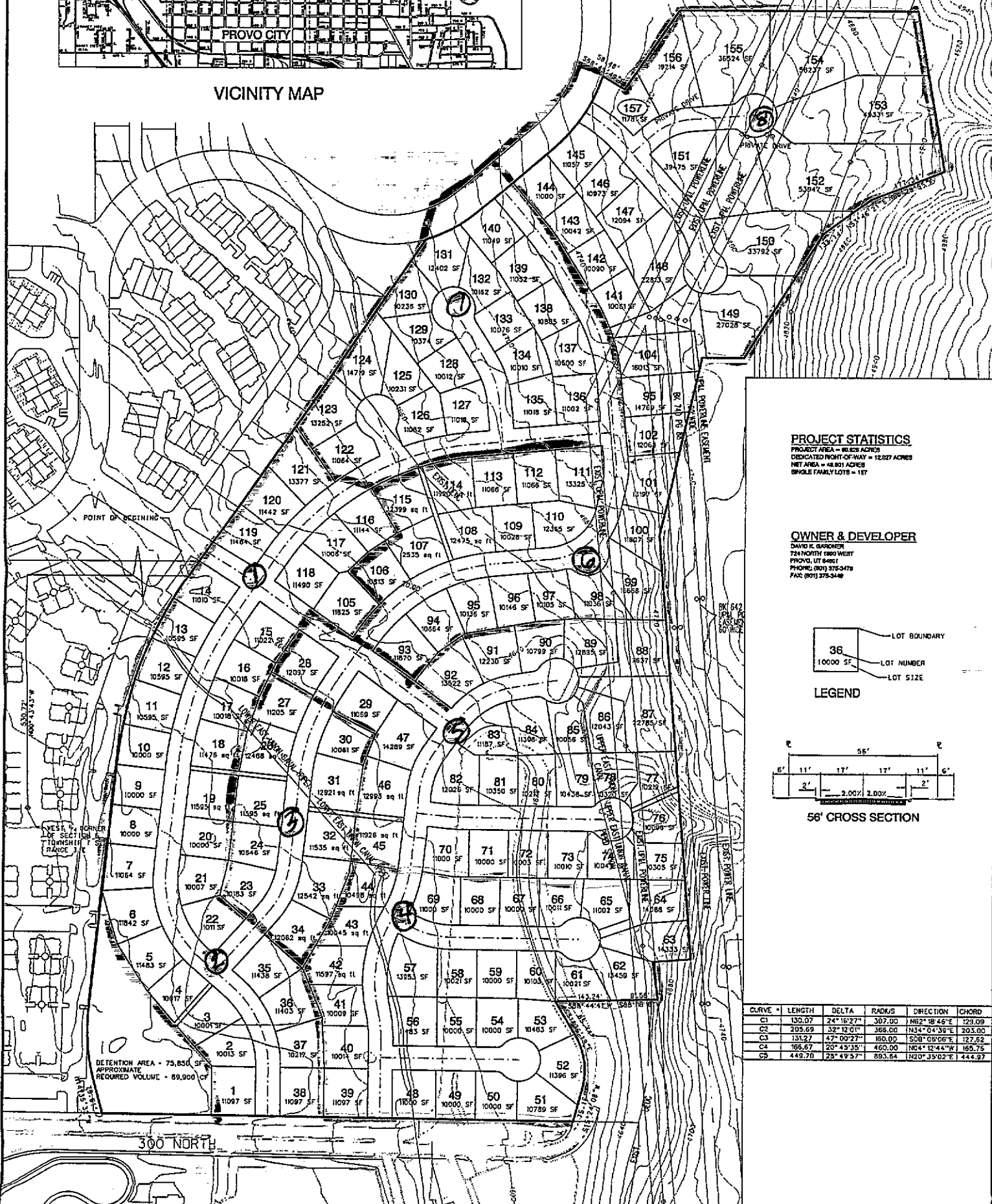


# Exhibit D Project Phasing Plan

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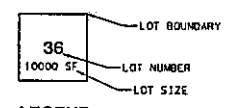


VICINITY MAP

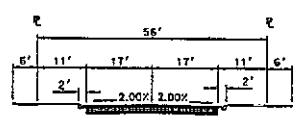


**PROJECT STATISTICS**  
 PROJECT AREA = 90.828 ACRES  
 DESIGNATED RIGHT-OF-WAY = 12.027 ACRES  
 NET AREA = 48.801 ACRES  
 SINGLE FAMILY LOTS = 157

**OWNER & DEVELOPER**  
 DAVID R. GARDNER  
 724 NORTH 1800 WEST  
 PROVO, UT 84601  
 PHONE: (801) 375-3478  
 FAX: (801) 375-3448



LEGEND

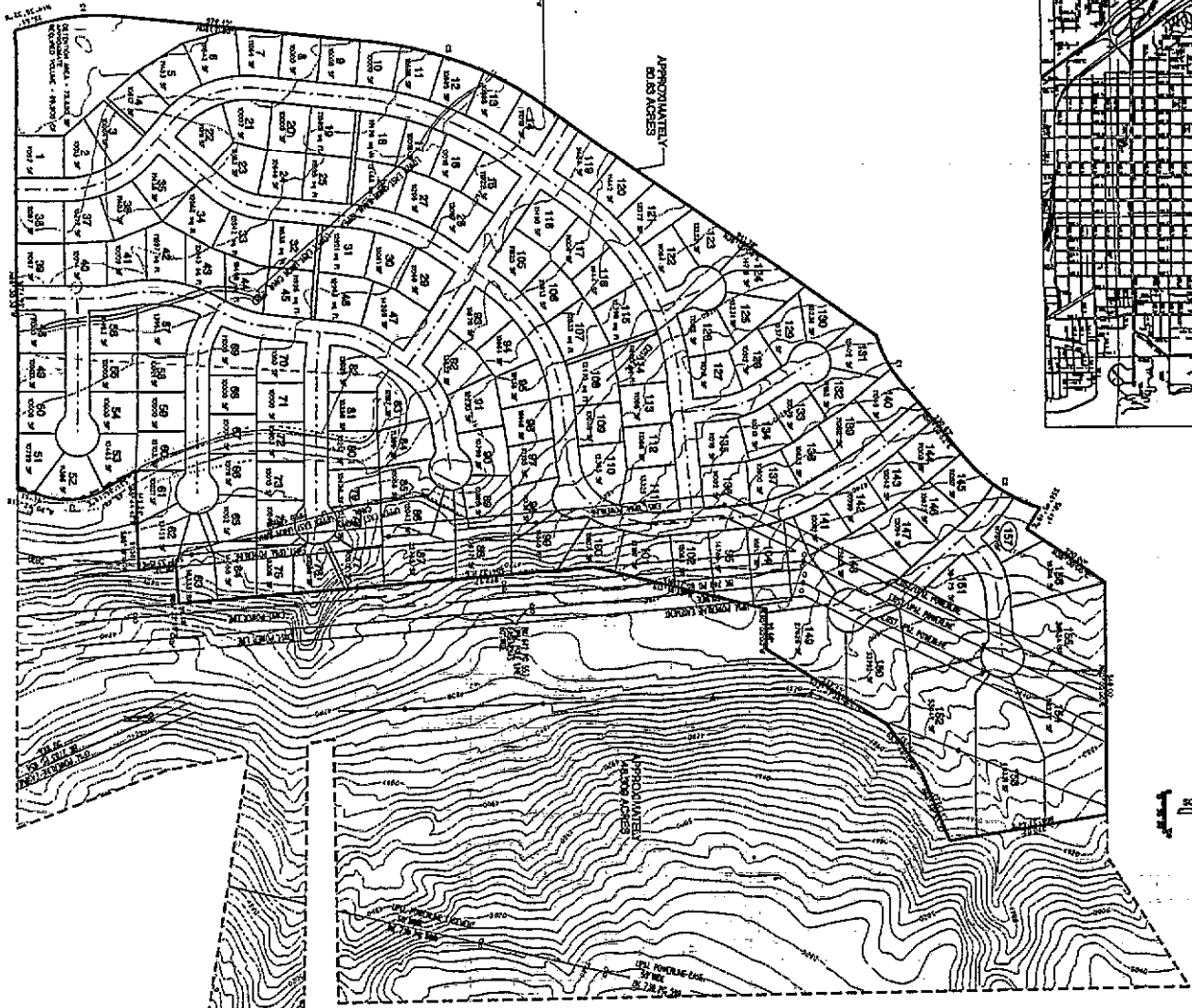


CURVE	LENGTH	DELTA	RADIUS	DIRECTION	CHORD
C1	130.07	24° 18' 27"	307.00	N82° 18' 46" E	129.09
C2	205.89	32° 12' 01"	368.00	N34° 04' 38" E	203.00
C3	131.27	47° 00' 27"	163.00	S58° 08' 06" E	127.52
C4	166.67	20° 43' 35"	460.00	N64° 12' 44" W	165.75
C5	449.70	25° 49' 57"	893.64	N02° 35' 02" E	444.97

DETENTION AREA = 75,830 SF  
 APPROXIMATE  
 REQUIRED VOLUME = 89,900 CF

300 NORTH

E x h. b. T F



SCALE 1" = 100'

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1  
M1

**FOOTHILL PARK  
BOUNDARY PLAN**  
GARDNER & ASSOCIATES DEVELOPMENT  
PROVO, UTAH

**REVISION**

NO.	DATE	DESCRIPTION

**REUSE OF DRAWINGS**  
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