

ANNEXATION and DEVELOPMENT AGREEMENT

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into effective as of the 16th day of June, 2016 between ALPINE CITY, a Utah municipal corporation (the "City") and OBERRE ALPINE FARMS, LLC, a Utah limited liability company; STEVE ZOLMAN, an individual; and ZOLMAN HOLDINGS, LLC, a Utah limited liability company (collectively the "Applicants").

RECITALS OF FACT:

- A. The City is a municipality and political subdivision of the State of Utah classified as a fifth class city under the provisions of Section 10-2-301, Utah Code Annotated. The City is located in Utah County, Utah.
- B. The Applicants are owners of approximately 179.579 acres consisting of property in Utah County. This property is more particularly described in Exhibit A hereto (the "Property"). The Property is contiguous to the northern boundary of the City and within an area proposed for municipal expansion under the Alpine City Master Annexation Policy Declaration.
- C. The Applicants have specifically requested that the Property, along with other property not owned by the Applicants, be annexed into the City, and the City Council, having considered the matter, is willing to annex the Property, only on certain conditions, as set forth herein.
- D. Unless otherwise specifically provided herein, future development of the Property is subject to and shall conform with this Agreement, as well as all of the ordinances, rules and regulations adopted by the City as of the date hereof, or which may be amended in the future, which do not conflict with this Agreement, including, but not limited to, the provisions of the Alpine City General Plan, the Alpine City Development Code (the "Development Code"), Alpine City adopted public infrastructure specifications and the Alpine City Municipal Code (collectively, the "Existing City Laws").
- E. The City is authorized to enter into annexation and development agreements in appropriate circumstances in order to promote orderly development of property within its boundaries, implement the Alpine City General Plan, and provide infrastructure and other benefits in connection with development.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing goals and objectives, the annexation of the Property to the City, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Applicants and the City, intending to be legally bound, agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.
2. **Conditions to Obligations.** The obligations of Applicants and the City hereunder are contingent upon and subject to the satisfaction of each of the following conditions.
 - 2.1. **Annexation.** The Property shall have been annexed into Alpine City. The City acknowledges that Applicants have filed an annexation petition with the City and the City has accepted the petition and has held all public hearings required for consideration of the annexation. Should the annexation not occur because of a referendum or legal challenge, this Agreement and the annexation contemplated herein, shall be null and void.
 - 2.2. **Zoning Designation.** When the Property is annexed into the City it shall be annexed into the CR-40,000 zone designation as described in the Alpine City zoning ordinances, subject only to the specific limitations on development of the Property contained in this Agreement.



3. Limitations on Development. Applicants agree in exchange for annexation into the City that the Property, which is specifically identified in Exhibit A hereto, shall be subject to the following limitations on development.

3.1 Limitations on use of the Property. The Applicants specifically agree that the Property shall be developed in the City only as a planned residential development (PRD) as defined and regulated by the Existing Laws of Alpine City.

3.2 Limitation on number of lots to be developed on the Property. The Applicants hereby specifically agree that the maximum total number of residential lots to be developed on the Property shall be calculated using the base density, as calculated in Exhibit E, for the CR-40 zone with no bonus density awarded for any public or private open space. In addition the Applicants agree that the existing Conservation Easement area on the Property shall not be included in calculating the base density for development.

3.3 Limitation on the size of lots to be developed on the Property. The Applicants further agree that no more than 20% of the lots to be developed shall be less than 30,000 sq. ft. in area, with no lot being smaller than 20,000 sq. ft. in area.

4. City's Obligations. Subject to Applicant's performance of its obligations hereunder, the City agrees as follows:

4.1 Annexation. The City agrees that it shall expeditiously proceed to adopt an ordinance annexing the Property into the City in accordance with the Annexation Petition and applicable law. The City further agrees that it will complete the annexation of the Property unless it is determined by a court of competent jurisdiction that the annexation fails to comply with the provisions of Utah's annexation statute, *Utah Code Ann 10-2-401 through 436*.

4.2 Municipal Services/ Credit.

4.2.1 The Property will receive the standard municipal services as part of this development including garbage, culinary water, pressurized irrigation, sewer, snow removal, police and fire protection subject to the payment of all use fees and charges of general application charged or levied therefore by the City. Any extension of utilities to the Property will be the responsibility of the Applicants. If the City elects to upsize any utilities and infrastructure above what is needed to serve the Property, City shall pay for the upsizing costs at the time of construction

4.2.2 Applicants shall pay for and install the variable speed pump associated with the foregoing improvements described in Section 4.2.1 above and shall submit to the City a statement of all costs, including engineering and construction costs, incurred by Applicants in installing the variable speed pump ("Reimbursement Amount"). The City agrees to give one of the Applicants, as designated by the Applicants, a credit against the payment of Pressurized Irrigation Company Impact Fees described on the attached Exhibit B in the amount of the Reimbursement Amount. The Applicant holding the credit may assign it in writing to builders or others for use in offsetting the payment of Pressurized Irrigation Company Impact Fees and Applicant shall inform City of any such assignment of the credit, or portion thereof.

4.3 Use of Eminent Domain. The City agrees that if the Applicants cannot, after reasonable efforts, acquire the rights of way for off-site road improvements, off-site water infrastructure or off-site sewer infrastructure that the City will be willing to use its power of eminent domain to acquire such rights of way subject only to the Applicants reimbursing to the City the full costs incurred, including land acquisition costs. If the City chooses not to use its powers of eminent domain then the Applicants shall be relieved of and released from any obligation created by this Agreement for those off-site improvements. For purposes of this provision the term off-site means off of the Property.

5. Applicant's Obligations. Subject to the performance by the City of its obligations hereunder, Applicant agrees as follows:

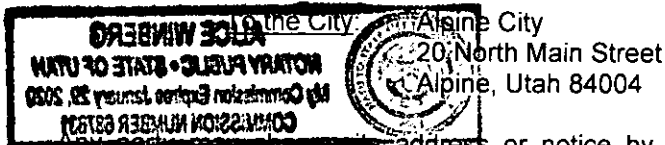
- 5.1 Annexation Fee.** Applicants have previously paid the annexation application fees in the amount of \$500.00 to the City. As additional consideration for the annexation of the property, and to reimburse the City for the City's existing infrastructure capacity that will be used for the future development, and to pay for the annexed property's proportionate share of the future cost of new City infrastructure that will be necessary to provide services to the future development on the Property, the Applicants agree that they shall pay to the City an amount equal to the existing Alpine City impact fees even though these impact fees were calculated prior to the Property being annexed into the City. Applicants specifically agree that these fees are being paid as a bargained for contractual obligation in consideration of the annexation of the Property and not as an impact fee and that such fees are not subject to the appeal, accounting, or other provisions of the Utah Impact Fee Act. The amount of fees shall be in the amounts as set out in Exhibit B hereto.
- 5.2 Timing of Payment of Annexation Fees.** The annexation fees paid in lieu of impact fees shall be due and payable at the same time and contingent on the same event as if they were an impact fee.
- 5.3 Future Impact Fees.** The City agrees that the payment of the annexation fees paid in lieu of impact fees provided for in this agreement shall relieve the Applicants of any obligation to pay any of the City's impact fees existing at the date of this Agreement. However Applicant agrees that if the City should raise its impact fees or create a new impact fee in the future that is applicable to the City as a whole, that Applicants shall be responsible to pay the net increase in the impact fee or the new fee in the same manner that any other new development in the City would pay the fee.
- 5.4 Grove Drive Improvements.** Applicants hereby agree that they shall acquire and dedicate to the City the right of way for Grove Drive parcels labeled Parcels 1-4 and described and depicted on the attached Exhibit C-1. This dedication shall be provided to the City prior to the City approving any new development on the Property. Applicants further agree to pay the City the costs to construct the Grove Drive improvements within the area depicted in the color "light blue" labeled as "Zol(e)man" on the attached Exhibit C-2, in accordance with the construction standards shown on the cross section for Grove Drive depicted in Exhibit D hereto. Applicants further agree to pay for the costs to construct the Grove Drive improvements within the area depicted in the color "purple" labeled as "Russon" and "Walz", if the Applicants do not install the Elk Ridge Lane connection described in Section 5.5 below. City shall be responsible for the costs to construct within the areas shown in "blue" and labeled "Josh James" on Exhibit C-2 Applicants shall as a condition of any development on the Property pay to complete and install the other improvements described in this Section 5.4 as Applicants' responsibility.
- 5.5 Elk Ridge Lane.** The Applicants agree to connect any development on the Property to Elk Ridge Lane. This connection shall be completed prior to the development on the Property exceeding 30 platted lots. If Applicants elect to install Elk Ridge Lane prior to Grove Drive being completed, Applicants' obligation to pay the amount referenced in section 5.4, and relating only to the "purple" segment of road, shall be waived.
- 5.6 Water Policy.** The Applicants shall dedicate to the City shares of Alpine Irrigation Company shares, to meet the City's water policy. The water shall be provided for the Property at the time that the Applicants, or one of them, seek to record each subdivision plat for lots within the Property at the rate of 0.45 acre feet per residence and 1.66 acre feet per acre for outdoor usage.

- 5.7 Off-site Water Infrastructure.** Applicants shall be responsible to build and dedicate to the City any culinary and secondary water infrastructure necessary to extend the services to the Property. The necessary infrastructure shall be as determined by the Alpine City Culinary and Secondary Water master plans and as required by the Alpine City Engineer. Applicants shall dedicate such infrastructure, rights of way and easements to the City at no cost to the City or rights of reimbursement from the City
- 5.8 Sewer.** The Applicants shall be responsible to build all off-site sewer mains and facilities necessary to provide service to the Property and to acquire any rights of way and easements necessary for such facilities. Applicants shall dedicate such facilities constructed and rights of way and easements to the City at no cost to the City or rights of reimbursement from the City.
- 6. Construction Standards and Requirements.** All construction shall be conducted and completed by a licensed contractor in accordance with the Existing City Laws and the terms of this Agreement. All required public improvements within the Property shall be constructed in accordance with the City's construction standards in effect at the time of construction and shall be dedicated to the City to the extent provided in the Existing City Laws. Prior to commencing any construction or development of any structures or other work of improvements to the Property, Applicants shall secure any and all permits to the extent required by the City under the Existing City Laws or by any other governmental entity having jurisdiction over the work. Applicants shall construct, or cause to be constructed, all improvements in conformity with all applicable federal, state and/or local laws, rules and regulations.
- 7. Miscellaneous.**
- 7.1. Interpretation.** The fact that one party or the other may have drafted the provisions of this Agreement shall not affect the interpretation of its provisions.
- 7.2. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.
- 7.3. Merger; Amendment.** This Agreement (together with all Exhibits hereto, which exhibits are hereby incorporated herein by reference) constitutes the entire agreement between the City and Applicants concerning the Property and supersedes all prior understandings, agreements or representations, verbal or written, concerning the Property. Except as expressly provided herein, this Agreement shall not be amended except in a writing signed by an officer of Applicant and by the Mayor of the City.
- 7.4. Severability.** If any part or provision of this Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such adjudgement shall not affect any other part or provision of this Agreement except that part or provision so adjudged to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provisions shall be deemed valid to the extent of the scope or breadth permitted by law.
- 7.5. Force Majeure.** Neither party hereto shall be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time, and to the extent that any such failure is due to causes beyond the control and without the fault or negligence of the party affected, including, acts of God, acts of the United States Government or the State of Utah, fires, floods, strikes, embargoes or unusually adverse weather conditions. Upon the occurrence of any such cause, the party affected thereby shall promptly give written notice (setting forth full particulars) to the other party and shall promptly resume the keeping and performance of the affected obligations after such cause has come to an end. During the existence of such an event, each party shall bear its own cost resulting there from and the Term or any extension of the Term shall be extended on a day-for-day basis. Each party shall make every reasonable effort to keep delay in performance as a result of such cause to a minimum.

- 7.6. **Agreement to Run with Land; Binding Effect.** This Agreement shall be recorded against the property and shall deem to run with the Property. This Agreement shall be binding upon and inure to the benefit of the City and Applicants, and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.
- 7.7. **Attorney's Fees.** In the event either party shall default in the performance of its obligations hereunder or litigation is commenced, the no breaching party, in addition to its other rights and remedies at law or in equity, shall have the right to recover all costs and expenses incurring by such no breaching party in connection with such proceeding, including reasonable attorney's fees.
- 7.8. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for who intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

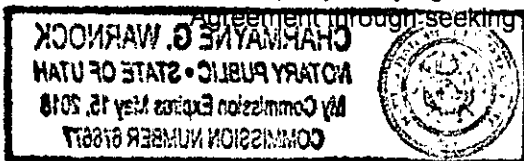
To: Oberre Alpine Farms LLC
 Zolman Holdings LLC
 Steve Zolman
 c/o Paul Kroff
 185 N. Pfeifferhorn Dr.
 Alpine, UT 84004

With a copy to: John Barlow, Esq.
 Mitchell, Barlow & Mansfield
 Boston Building
 9 Exchange Place
 Suite 600
 Salt Lake City, UT 84111



Any party may change its address or notice by giving written notice to the other party in accordance with the provisions with this section.

- 7.9. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
- 7.10. **No Third Party Rights.** The obligations of Applicants set forth herein shall not create any fights in and/or obligations to any person or parties other than Applicant and the City unless otherwise specifically set forth herein.
- 7.11. **Further Documentation.** This Agreement is entered into by all parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provisions of this Agreement may be necessary. The parties agree to negotiate in good faith with respect to all such future agreements.
- 7.12 **Enforcement.** The Applicants specifically agree that the City may enforce the terms of this agreement by denying the Applicants, or their successors or assigns, development approval for the Property. City agrees that Applicants may enforce the benefits and other provisions of this Agreement through seeking an injunction, writ of mandamus or specific performance.



IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives effective as of the date first above written.

"City"

Alpine City, a Utah municipal corporation

Sheldon Wimmer
Mayor

ATTEST:

Charmayne G. Warnock
Charmayne G. Warnock, City Recorder

State of Utah
County of Utah

This instrument was acknowledged before me on June 16, 2016 (date of acknowledgment) by Sheldon Wimmer as Mayor, of Alpine City, a Utah Municipal Corporation, and by Charmayne G. Warnock, City Recorder, on behalf of said corporation.

Alice Winberg
Notary Public in and for the State of Utah

(Notary's stamp here)

Approved as to form:

David L. Church
David L. Church, City Attorney



Applicant:

By:

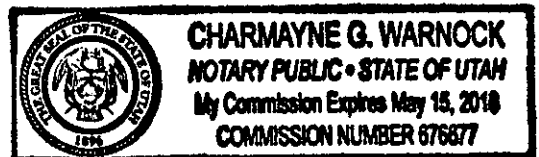
Steve Zolman

State of Utah
County of Utah

This instrument was acknowledged before me on June 16, 2016 by Steve Zolman.

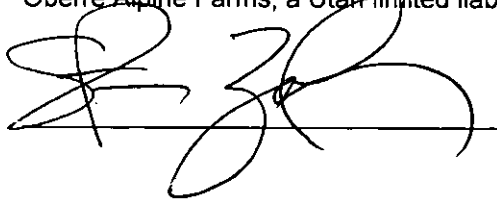
Charmayne G. Warnock
Notary Public in and for the State of Utah

(Notary's stamp here)



"Applicants"

Oberre Alpine Farms, a Utah limited liability company

A handwritten signature in black ink, appearing to be 'S. Zolman', written over a horizontal line.

Steve Zolman

Zolman Holdings LLC, a Utah limited liability company

A handwritten signature in black ink, appearing to be 'S. Zolman', written over a horizontal line.

EXHIBIT A

DESCRIPTION OF THE PROPERTY

<u>Parcel #</u>	<u>Acres</u>
11:006:0001	29.75
11:045:0044	29.42
11:045:0243	103.71
11:045:0182	2.858
11:045:0136	6.671
11:045:0057	1
11:045:0242	4.997
11:045:0138	1.11
11:045:0181	0.063
	<u>179.579</u>

EXHIBIT B

LIST OF FEES

Impact Fees	Per Unit	Per SF	
Pressurized Irrigation		\$ 0.095	paid at building permit
Storm	\$ 800		paid prior to recordation
Street	\$ 1,183		paid prior to recordation
Park/Trail	\$ 2,688		paid prior to recordation
Current TSSD impact fee at time of building permit	\$ 2,475		paid at building permit
Water	\$ 1,123		paid at building permit
Sewer	\$ 493		paid at building permit
Sewer Fee	\$ 125		paid at building permit
Water Fee (3/4")	\$ 150		paid at building permit

EXHIBIT C-1

GROVE DEDICATION

NOTE: GROVE DRIVE DEDICATIONS SHALL BE APPROXIMATELY AS SET FORTH BELOW, PENDING FINAL DEIGN OF GROVE DRIVE.

Parcel 1 - Josh James

Commencing at a point located South 00°47'44" West along the quarter Section line 2134.31 feet from the North quarter corner of Section 4, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 78°35'00" East 83.57 feet; thence South 10°20'51" East 3.32 feet; thence South 79°34'32" West 25.60 feet; thence along the arc of a 29.00 foot radius curve to the left 39.87 feet (chord bears South 40°11'08" West 36.81 feet); thence South 00°47'44" West 145.52 feet; thence along the arc of a 541.00 foot radius curve to the right 72.24 feet (chord bears South 04°37'16" West 72.19 feet), thence along the arc of a 459.00 foot radius curve to the left 61.29 feet (chord bears South 04°37'16" West 61.25 feet); thence South 00°47'44" West 76.50 feet; thence South 78°17'22" West 25.56 feet more or less to the quarter Section line; thence North 00°47'44" East along the quarter Section line 379.71 feet to the point of beginning.

Area = 11,857 SQ.FT.

Parcel 2 - Josh James

Commencing at a point located South 00°47'44" West along the quarter Section line 2514.02 feet from the North quarter corner of Section 4, Township 8 South, Range 2 East, Salt Lake Base and Meridian; North 78°17'22" East 25.56 feet; thence South 00°47'44" West 34.89 feet; thence along the arc of a 490.00 foot radius curve to the right 121.58 feet (chord bears South 07°54'13" West 121.27 feet); thence South 89°41'52" West 9.95 feet more or less to the quarter Section line; thence North 00°47'44" East along the quarter Section line 149.88 feet to the point of beginning.

Area = 3,206 SQ.FT.

Parcel 3 - Corinne and Michael Russon

Commencing at a point located South 00°47'44" West along the quarter Section line 2159.62 feet from the North quarter corner of Section 4, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence South 00°47'44" West along the quarter Section line 268.70 feet; thence North 89°36'59" West 16.04 feet; thence along the arc of a 500.00 foot radius curve to the right 63.23 feet (chord bears North 04°49'26" East 63.19 feet); thence along the arc of a 500 foot radius curve to the left 66.77 feet (chord bears North 04°37'16" East 66.72 feet); thence North 00°47'44" East 129.74 feet; thence along the arc of a 29.00 foot radius curve to the left 9.55 feet (chord bears North 08°38'23" West 9.51 feet); thence South 89°50'46" East 8.71 feet to the point of beginning.

Area = 2,486 SQ.FT.

Parcel 4- Steve Zolman

Commencing at a point located South 00°47'44" West along the quarter Section line 2428.32 feet from the North quarter corner of Section 4, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence South 00°47'44" West along the quarter Section line 263.44 feet; thence South 28°20'05" West 168.39 feet; thence South 61°32'40" East 8.24 feet; thence South 28°52'59" West 18.74 feet; thence North 60°40'00" West 41.00 feet; thence North 28°52'59" East 98.69 feet; thence along the arc of a 449.00 foot radius curve to the left 220.11 feet (chord bears North 14°50'21" East 217.91 feet); thence North 00°48'06" East 114.93 feet; thence South 89°36'59" East 16.04 feet more or less to the point of beginning.

Area = 11,468 SQ.FT.

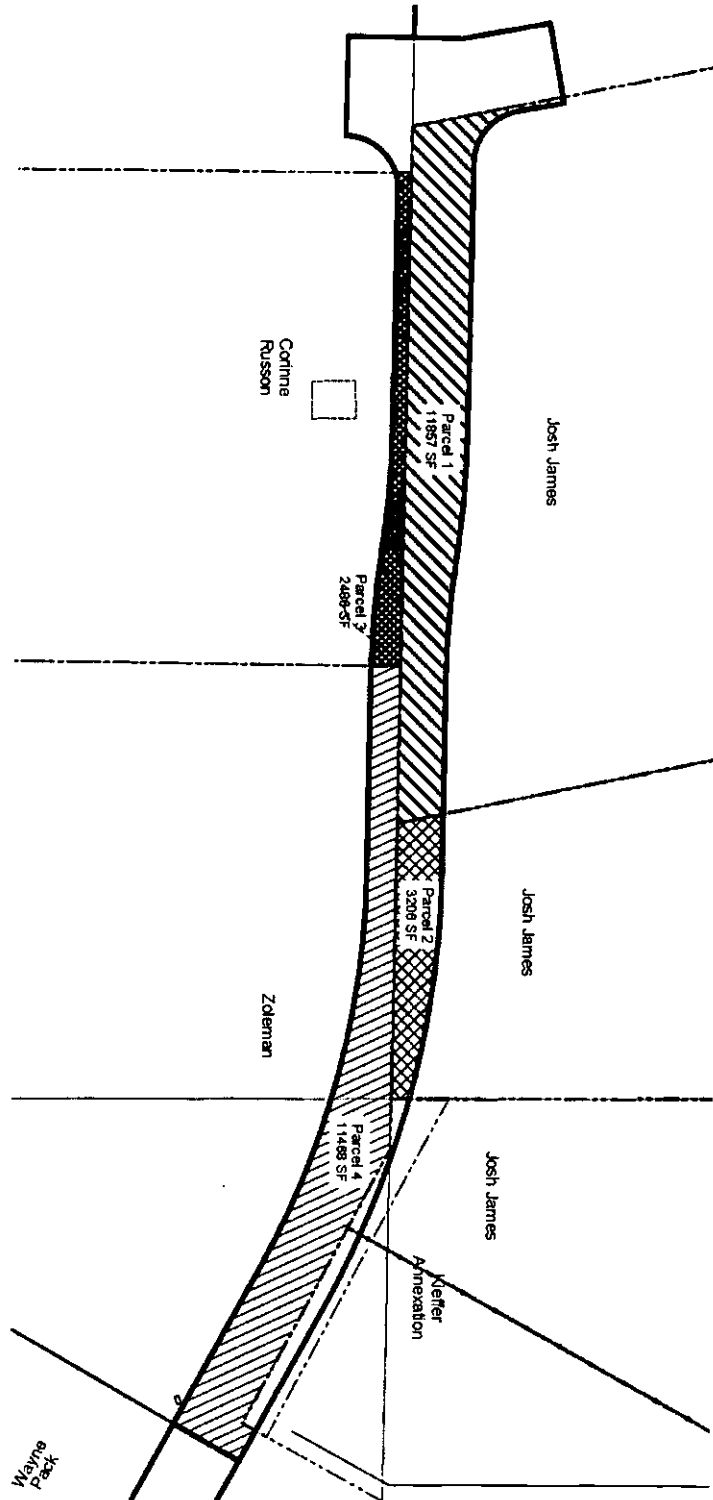
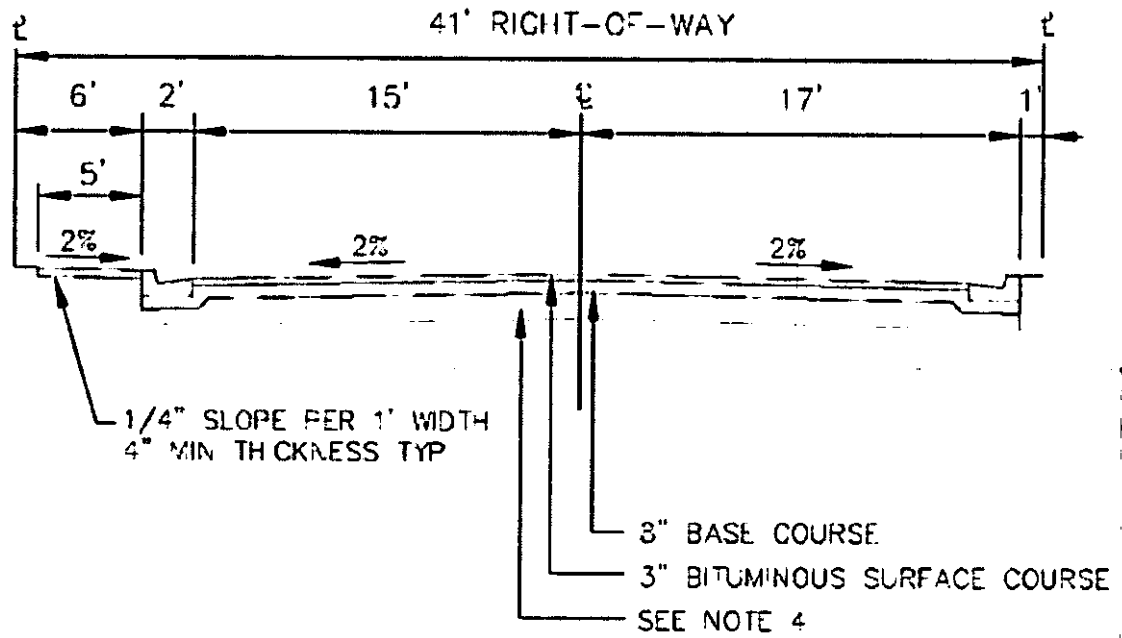


EXHIBIT D

GROVE DRIVE CROSS SECTION



GROVE DRIVE MIN. REQ'D R.O.W.

EXHIBIT E

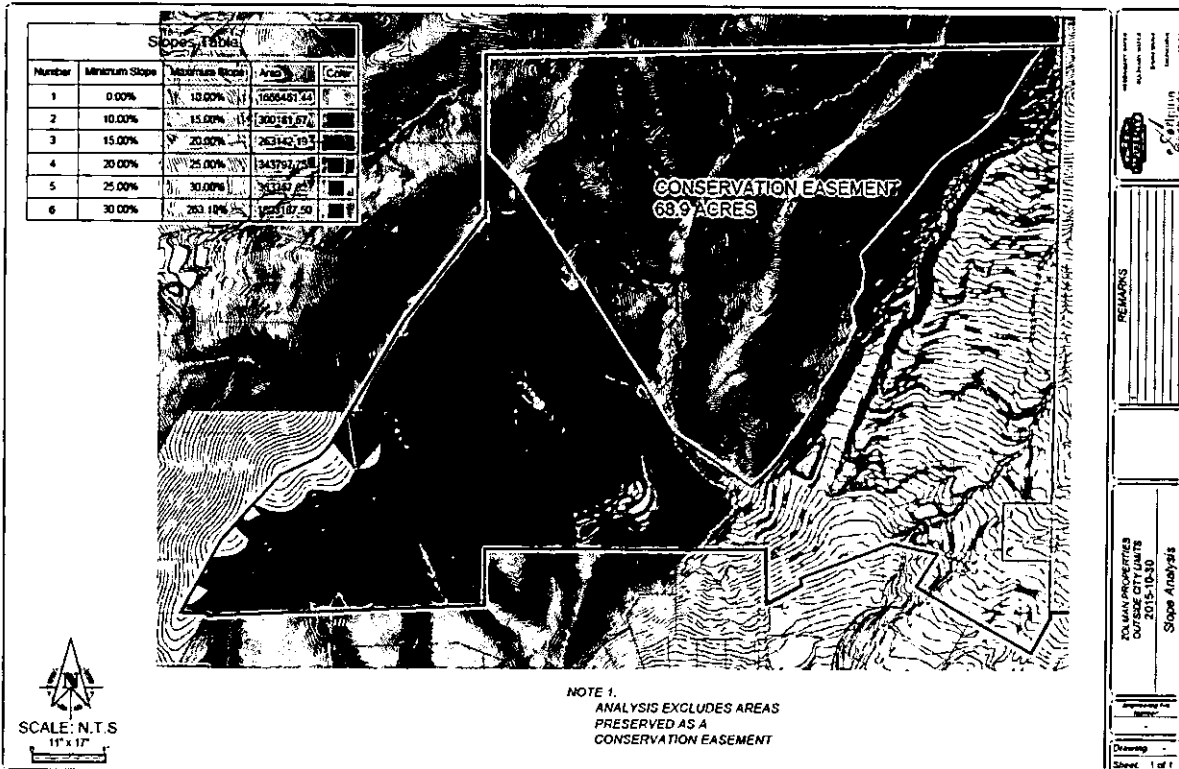
SLOPE ANALYSIS



SLOPE ANALYSIS (BASED ON PRD FORMULA 19.5)

Name: Zolman Annexable Properties (Conservation Easement Area Excluded)
 Date: October 30, 2015
 Contours Used: 1999 Aerial flow contours

CR-40,000 Zone						
Acreage	Acres	Total Square Feet				
Property	110.88	4,830,128.17				
Zone Total Acreage	110.88					
Slope Percentages	Percent Acres Within that range	SF within slope range	Acres within slope range	Required Acres per Lot	Allowed Lots for this range	
0-9.99%	34.5%	1,666,461.44	38.26	1.00	38.26	
10-14.99%	8.1%	390,181.67	8.96	1.50	5.97	
15-19.99%	5.4%	263,142.19	6.04	2.00	3.02	
20-24.99%	7.1%	343,797.75	7.89	3.00	2.63	
25-29.99%	7.5%	363,357.62	8.34	4.00	2.09	
30%+	37.3%	1,803,187.50	41.40	5.00	8.28	
Totals	100.0%		110.88			
					Base Density, Non-PRD	60
					Private Open Space (10% Max Bonus), PRD	66
					Public Open Space (25% Max Bonus), PRD	75



Surveyor's Certificate

I HEREBY CERTIFY THAT THIS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO _____ Alpine _____ CITY, UTAH COUNTY, UTAH.

Boundary Description

Commencing at a point located South 00°47'39" West along the quarter Section line 11.14 feet from the North quarter corner of Section 18, Township 4 South, Range 2 East, salt Lake Base and Meridian: thence South 00°47'39" West along the quarter Section line, said line also being the Westerly Boundary line of Plats "A", "C" Amended, and Plat "D", Alpine Cove Subdivision as shown on record in the office of the Utah County Recorder 2123.07 feet; thence North 78°35'00" East along the Southerly boundary line of Plat "A", Alpine Cove Subdivision as shown on record in the office of the Utah County Recorder 601.96 feet; thence North 71°19'00" East partially along the Southerly boundary line of Plat "A", Alpine Cove Subdivision as shown on record in the office of the Utah County Recorder 145.84 feet; thence South 00°47'43" West along the Westerly boundary line of Plat "E" Amended, Alpine Cove Subdivision as shown on record in the office of the Utah County Recorder 691.76 feet; thence South 89°41'52" West along the Northerly boundary line of the Keiffer Annexation Plat 726.07 feet more or less to the center of section 18; thence along said boundary line as follows: South 00°18'08" East 26.89 feet, South 28°33'59" West 199.33 feet more or less to the Northeast corner of the Pack Annexation Plat, thence along the Pack Brothers, Keystone, and Lindsay Addition annexations as follows: North 60°40'00" West 626.25 feet, North 33°39'00" East 194.56 feet, North 78°13'00" West 226.80 feet, South 69°35'00" West 460.80 feet, South 12°33'00" East 32.91 feet; South 62°21'26" West 185.51 feet; thence South 00°05'00" East 0.26 feet; thence South 62°15'00" West 5.88 feet; thence along Grant Addition Annexation Plat as follows North 00°34'23" West 256.91 feet, South 89°26'28" West 421.56 feet, South 01°07'19" East 0.89 feet; thence West 907.16 feet; thence South 263.11 feet; thence South 87°43'29" West 1291.12 feet; thence along the Fort Canyon (Borcherds) Annexation Plat as follows: North 87°58'36" West 141.05 feet, North 29°42'37" East 392.48 feet, North 42°16'47" East 242.22 feet, North 43°08'11" East 169.04 feet, North 65°25'08" East 176.95 feet, North 58°50'08" East 29.39 feet, North 43°32'14" East 58.34 feet, North 30°50'29" East 532.08 feet, North 30°07'04" East 148.90 feet, North 37°30'55" East 618.98 feet, South 89°58'05" East 10.73 feet, North 00°07'18" West 770.17 feet, North 88°47'14" East 2716.50 feet to the point of beginning.

Area = 8,311,812 SF 190.81 Acres