DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into on June 1, 2004, by and between Provo City Corporation, a Utah municipal corporation, hereinafter referred to as "City",and C. Selby Herrin, an individual, and Vila J. Herrin, an individual, hereinafter collectively referred to as "Developer".

ENT 70770:2004 PG 1 of 21
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2004 Jun 21 3:39 pm FEE 0.00 BY SDM
RECORDED FOR PROVO CITY CORPORATION

Recitals

A. Developer is the developer of certain property located generally at 910 West 1020 South in Provo, Utah (the "Property"), which is more fully described in Exhibit "A". As part of the development of the Property, Developer desires to have the Property placed in the R1.8 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 a subdivision on the Property which meets the development standards of the R1.8 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 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 are consistent with the proposed development on the Property.

F. On March 24, 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 March 24, 2004, after a duly noticed public hearing, the Provo City Planning Commission approved Developer's application to subdivide the Property subject to certain findings and conditions as set forth in Exhibit "C", attached hereto and incorporated herein.

H. On June 1, 2004, 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, Developer, and city officials and (ii)

recommendations of the General Plan regarding the Property.

I. On June 1, 2004, the Municipal Council reviewed the subdivision development plan for the Property, attached hereto as Exhibit "D", and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

J. To allow development of the Property for the benefit of Developer, to ensure City that the development of the Property will conform to applicable policies set forth in the General Plan, and address concerns of property owners in proximity to the Property, Developer and City desire 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 R1.8 zone. Land uses allowed pursuant to such zoning designation shall be governed by Title 14 of the Provo City Code as constituted on the effective date of this Agreement, except to the extent this Agreement is more restrictive.

3. Applicable Code Provisions. All provisions of the Provo City Code as constituted on the effective date of this Agreement shall be applicable to the project proposed on the property except to the extent this Agreement is more restrictive. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement, Titles 14 and 15 of the Provo City Code, and other requirements generally applicable to development in Provo City. In particular, and not by way of limitation, Developer shall conform to the requirements of Chapter 14.10 (R1.8 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 development plans and specifications (including site and building design plans) (the "Plans") to be prepared for the Project.

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

(1) Be in sufficient detail, as reasonably determined by City, to enable City to ascertain whether the Project will be of high quality design (including the size, scope, composition of the primary exterior components, on and off-site vehicular and pedestrian access, and general Project design) and in accordance with the terms and conditions of this Agreement.

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

(3) Comply with the standards and requirements of Chapter 15 of the Provo City Code.

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

B. Developer shall:

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

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

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

6. Standard for Approval. City, on recommendation of its Planning Commission, shall

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

7. Commencement of Site Preparation. Developer shall not commence site preparation or construction of any Project improvement on the Property until such time as the Plans have been approved by City in accordance with the terms and conditions of this Agreement.

8. Project Phasing and Timing. Upon approval of the Plans, Developer may proceed by constructing the entire Project at one time or in approved phases.

9. Changes to Project. No material modifications to the Plans shall be made after approval by City without City's written approval of such modification. Developer may request approval of material modifications to the Plans from time to time as Developer may determine necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which (i) increases the total perimeter size (footprint) of building area to be constructed on the Property by more than ten (10) percent, (ii) substantially changes the exterior appearance of the Project, or (iii) changes the functional design of the Project in such a way that materially affects traffic, drainage, or other design characteristics. Modifications to the Plans which do not constitute material modifications may be made without the consent of City. In the event of a dispute between Developer and City as to the meaning of "material modification," no modification shall be made without express City approval. Modifications shall be approved by City if such proposed modifications are consistent with City's then applicable rules and regulations for projects in the zone where the Property is located, and are otherwise consistent with the standard for approval set forth in Paragraph 6 hereof.

10. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with procedures applicable to the R1.8 zone.

11. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the Ordinance approving the Rezoning Request. In the event a building permit has not been issued within twelve (12) months after approval of the Plans, this Agreement shall expire and shall have no further force or effect and City may initiate a rezoning action. This Agreement shall expire when certificates of occupancy have been for all buildings and/or dwelling units in the Project.

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:	Selby Herrin 920 West 1020 South 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 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 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 ben 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

Sallie Rosebach by Jean Hargis
City Recorder

By: Wayne Parker CAO
Mayor

DEVELOPER

By: C. Selby Herrin
C. Selby Herrin

By: Vila J. Herrin
Vila J. Herrin

State of Utah
County of Utah

On this 10th day of June in the year 2004, before me Juliann Northrop, a notary public, personally appeared C. Selby Herrin, 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.

Notary Public

NOTARY PUBLIC
JULIANN NORTHROP
351 W. CENTER
PROVO, UT 84601
MY COMMISSION EXPIRES
JULY 9, 2006
STATE OF UTAH

On this 10th day of June in the year 2004, before me Juliann Northrop, a notary public, personally appeared Vila J. Herrin, 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.

Notary Public

NOTARY PUBLIC
JULIANN NORTHROP
351 W. CENTER
PROVO, UT 84601
MY COMMISSION EXPIRES
JULY 9, 2006
STATE OF UTAH

Exhibit "A"
Legal Description of Property
910 West 1020 South, Provo, Utah

Beginning at a point which is South 882.62 ft and East 80.01 ft from the East 1/4 corner of Section 11, T7S, R2E, SLB&M; thence N89°25'11"E, 326.50 ft; thence S00°22'13"W, 455.26 ft; thence N89°44'22"W, 129.31 ft; thence S00°05'02"W, 81.68 ft; thence S00°40'32"W, 91.12 ft; thence S89°48'47"E, 8.00 ft; thence S00°11'13"W, 28.00 ft; thence N89°48'47"W, 66 ft; thence N00°11'13"E,28.00 ft; thence S89°48'47"E, 8.00 ft; thence N00°40'32"E, 91.19 ft; thence N00°05'02"E, 72.40 ft; thence N89°19'33"W, 149.08 ft; thence N00°40'27"E, 244.10 ft; thence N00°31'31"E, 214.58 ft to the point of beginning. Area - 3.673 Acres

Exhibit "B"
Planning Commission Report of Action
Rezoning - March 24, 2004
910 West 1020 South, Provo, Utah

Provo City Planning Commission

Report of Action

March 24, 2004

ITEM 2* Selby Herrin requests approval for rezoning of approximately 4 acres located generally at 910 West 1020 South from the RA (Residential Agricultural) zone to the R1.8 (Single Family Residential) zone. *Sunset Neighborhood* 02-0012R ***Continued from December 10, 2003***

The following action was taken by the Planning Commission on the above described item at its regular meeting of March 24, 2004.

RECOMMEND APPROVAL

On a vote of 3:1, the Planning Commission recommended to the Municipal Council that the requested rezoning from Residential Agricultural (RA) to One-Family Residential (R1.8) be approved, based on the findings that the lot sizes are consistent with the R1.10 zone and that the Planning Commission has consistently approved zoning consistent with R1.10 densities on the west side of Provo. The applicant has proffered a development agreement.

Motion By: Ron Madsen
Second By: Gene Libutti
Votes in Favor of Motion: Ron Madsen, Leonard Mackay, Gene Libutti
Votes Opposed to Motion: Pam Boshard
Todd Roach was present as chair.

Staff Presentation:
This rezoning request is in association with a preliminary subdivision approval for a 12-lot development of one-family dwellings on 3.67 acres. Most information was presented with the project plan application considered by the Planning Commission (Item 1 of this agenda) and conditionally approved by the Planning Commission, subject to the requested rezoning to R1.8 and subject to approval of a Conditional Use Permit for flag lots prior to final plat approval. A public hearing was conducted on the related subdivision application on December 10, 2003. The subdivision and the request to rezone the property were continued to allow additional time for study of west side development issues. The December 10, 2003, Reports of Action (Items 6 and 7) document the issues discussed at that time.

Staff recommended denial of the subdivision and requested rezoning, citing inconsistencies with the recommendations of the General Plan. The plan, as adopted in 1997, recommends limiting development to R1.10 densities or lower; the proposed five-year update to the General Plan recommends maintaining the Residential designation with one-family residential development, but does not specify a zone district that would be appropriate. Staff noted that the R1.10 subdivision could be developed without the need for flag lots, which require a conditional use permit. Staff also noted that the additional traffic generated with the new subdivision would further exceed the environmental traffic threshold of 1,800 trips per day on 1020 South; there is no mitigation proposed that would bring this street into compliance with the environmental capacity with the additional lots proposed with this rezoning.

*Planning Commission Report of Action, Item 2**
March 24, 2004, Page 2

Neighborhood Issues:
The neighborhood is happy with this subdivision in the R1.8 format. The neighborhood expressed concern with the 1,300 square-foot rambler style homes proffered through a development agreement and requested that the development have two-story homes with a minimum footprint of 1,600 square feet.

Planning Commission:
Concerns were expressed in relation to the R1.8 zone, rather than the R1.10 zone, for the West side; but the majority of the Planning Commission members present concluded that the lot sizes consistent with the R1.10 requirements brought this development into compliance with the recommendations of the 1997 General Plan and the recommendations of the five-year update to the General Plan, which is before Council for consideration. The traffic from a 12-lot subdivision was not felt to be an impact sufficient to recommend denial of the project, and the project received support from neighboring property owners.

Planning Commission Chair

**See 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 a $100 fee to 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"
Planning Commission Report of Action
Preliminary Subdivision - March 24, 2004
910 West 1020 South, Provo, Utah

Provo City Planning Commission

Report of Action

March 24, 2004

ITEM 1 Selby Herrin requests preliminary subdivision approval for the 12-lot Herrin Haven Subdivision for property located generally at 910 West 1020 South in the RA (Residential Agricultural) zone. *Sunset Neighborhood* 03-0001SP ***Continued from December 10, 2003***

The following action was taken by the Planning Commission on the above described item at its regular meeting of March 24, 2004.

CONDITIONAL APPROVAL

On a vote of 3:2, the Planning Commission approved the preliminary subdivision for Herrin Haven, a 12-lot subdivision, with the following conditions and subject to the Council's approval of rezoning to R1.8 (Item 2* of this agenda):

1. An agreement is to be executed for piping of the irrigation ditch along the North side of the property and for resolving any concerns or issues with the ditch prior to final plat approval.
2. An agreement must be in place for maintenance of the planter strip area prior to final plat approval.
3. If the water table does not allow for basements to be installed, house sizes must be adjusted to compensate for the additional floor space.
4. A Conditional Use Permit for flag lots shown on the Preliminary Plat (Lots 5 & 8) must be applied for and obtained and requirements of the CUP addressed prior to the final plat being approved.
5. The final plat must meet all applicable City ordinances, including any additional concerns raised by various City Departments which may or may not have been previously addressed.
6. The property owners that abut the project as described must either sign the final plat granting dedication of right-of-way and installation of improvements or complete a boundary line agreement prior to final plat approval.
7. The applicant is required to pay for street trees and bond for landscaping and sprinkler installation along the planter strip on the proposed 890 South Street, that abuts the property owners to the east and west, prior to final plat approval.

This approval was based on the findings that the lot sizes are consistent with the R1.10 zone and that the Planning Commission has consistently approved zoning consistent with R1.10 densities on the west side of Provo.

Motion By: Gene Libutti
Second By: Ron Madsen
Votes in Favor of Motion: Todd Roach, Ron Madsen, Gene Libutti
Votes Opposed to Motion: Leonard Mackay, Pam Boshard
Todd Roach was present as chair and voted due to the 2:2 vote of the Commission members.

Staff Presentation:

- A public hearing was conducted on the subdivision application on December 10, 2003. The subdivision and the request to rezone the property were continued to allow additional time for study of west side

development issues. The December 10, 2003, Reports of Action (Items 6 and 7) document the issues discussed at that time.

- Reviewed issues with General plan and previous approvals for R1.10 zoning for the west side.
- The area has a history of problems related to a high water table, which may prevent some homes from being constructed with basements; this may affect the home sizes proposed.
- An irrigation ditch on North side of property will need to be addressed prior to final plat approval.
- 1020 South traffic environmental threshold concerns were reviewed.
- Possible use of a connecting street, versus the proposed cul-de-sac, was discussed.
- Staff recommended denial for this project.

Developer:

- Neighborhood is in favor of the project as submitted with the cul-de-sac and no common park area (discussed at the December 10 hearing). Have a signed petition by a high percentage of the neighborhood.
- The desire for R1.8 zoning is to keep the width of the lots smaller, yet the depth will still give the size lot desired for R1.10 zoning. The house size will also follow R1.10 sizes.
- Developer felt that, due to the configuration of the property, the additional lot width for the R1.10 would leave lots too large for maintenance and that the resulting increase in the cost of homes, in comparison to other homes in the area, would adversely affect the potential sale of lots.
- Has been informed that the current irrigation in the area is being planned for removal.
- Addressing street with threshold concerns, feel that this road has been used as a collector for many years. Do not see any trouble with adding the small traffic impact from this subdivision. Gave the argument that, with the convalescent center located at the end of the street, that street could be labeled as commercial.

Planning Commission:

- Concerns of high water table. Applicant presented that a hydrologic study had been done and presented to Engineering. This report was not available for this meeting. Developer intends to put piping in front of the house to connect to the storm water system if pumps are needed in the basement.
- Flag lot concerns for access to lots, smaller size of adjoining lots, and parking issues. Want to make sure that maintenance of the driveway area is done.
- Discussion of house size with and without basements. If water table becomes an issue, need to ensure house size is increased for the above ground area.
- Discussion for potential to make the subdivision R1.10. Commission still has concerns for the lack of available open space for the West side and the impact of additional homes on available park space.

Neighborhood comments:

- Neighborhood in favor of the proposal with the cul-de-sac street and lot depth the meet the R1.10 lot size. The staff report noted that the development agreement proferred is for one-story homes at 1,300 square feet, which is 100 square greater than the minimum one-story home in the R1.10 zone. The neighborhood had expressed a desire for two-story homes with a minimum footprint of 1,600 square feet.

Planning Commission Chair

**See 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 a $100 fee to 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 "D"
Herrin Haven Subdivision Development Plan
910 West 1020 South, Provo, Utah

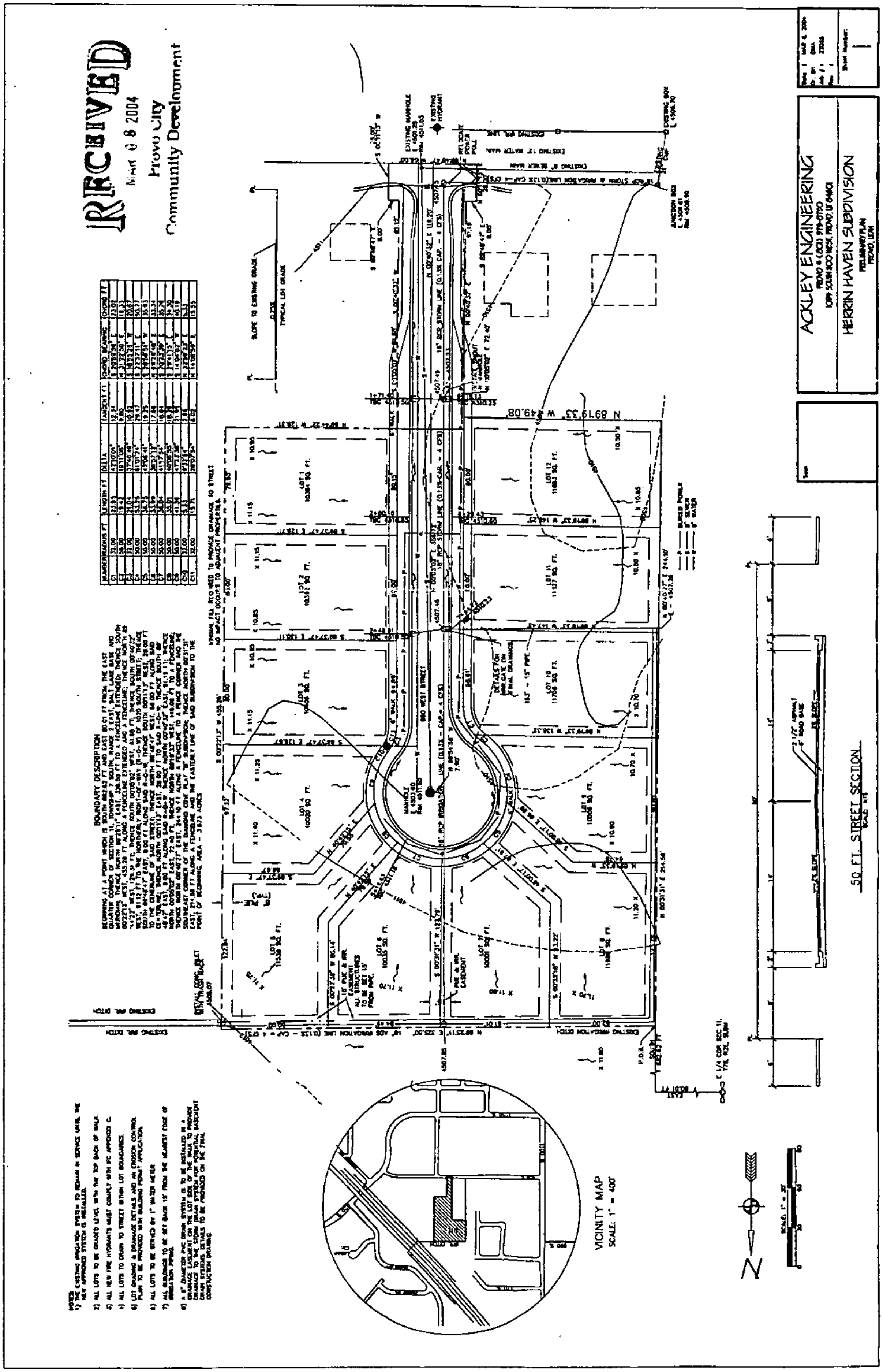
RECEIVED
MAR 0 8 2004
Provo City
Community Development
BOUNDARY DESCRIPTION
ACKLEY ENGINEERING
HERRIN HAVEN SUBDIVISION
50 FT. STREET SECTION
VICINITY MAP
SCALE: 1" = 400'

Exhibit "E"
Special Conditions
Herrin Haven Subdivision
910 West 1020 South, Provo, Utah

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

1. Developer shall obtain a conditional use permit for the flag lots shown on Exhibit D of this Agreement (Lot 5 and Lot 8) and agrees to comply with the conditions of such permit.

2. Development of lots in the Herrin Haven Subdivision (the "Property") shall be subject to the following conditions. All final subdivision plats for the Property shall note these conditions on the body of the plat along with all other notes required by Provo City. For the purpose of these notes the term "Subdivision" shall mean the Property as described in the within Agreement.

A. Each home built on a lot within the Subdivision shall have a minimum floor area as follows:

(i) One-story home: One thousand three hundred (1,300) square feet of finished floor area.

(ii) Two-story home: One thousand six hundred (1,600) square feet of finished floor area, with at least one thousand (1,000) square feet on the main floor.

(iii) The area within a garage or a basement shall not be included in the calculation of finished floor area, even if the area is finished.

B. Each home shall have an attached garage for at least two (2) cars. Carports shall be prohibited.

C. The front of each home shall consist of brick, stucco, rock or a combination thereof. No vinyl siding shall be permitted on the front of a home.

D. Each home shall have a roof pitch of at least 4:12 or greater.

E. The front yard of each lot shall be landscaped (trees, grass, shrubs, etc.) by the property owner within thirty (30) days after issuance of an occupancy permit. Provided, however, that installation of landscaping may be reasonably delayed due to weather conditions so long as:

i. Landscaping is completed within six (6) months after issuance

of an occupancy permit;

ii. The owner escrows funds sufficient to install landscaping as reasonably determined by the City; and

iii. City and the owner execute an escrow and landscaping improvement agreement consistent with this special condition.

3. Prior to recording of a final plat for the Subdivision, Developer shall pay to Provo City a traffic mitigation fee of seven hundred fifty dollars ($750) per lot as shown of Exhibit D of this Agreement.