


DEVELOPMENT AGREEMENT

 THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on May 19, 2005, by and between Provo City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and Castlewood Timpanogos-Gateway, LLC, a Utah limited liability company, hereinafter referred to as "Developer".

Recitals

A. Developer is the developer of certain property located generally at 1901 North Canyon Road in Provo, Utah (the "Property"), which is more fully described in the Exhibit "A" attached hereto and incorporated herein. As part of the development of the Property, Developer desires to have the Property placed in the R4 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 residential condominiums on the Property which meets the development standards of the R4 zone (the "Project").

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

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

E. On November 9, 2004, City adopted a comprehensive update to its General Plan, pursuant to Utah Code Annotated §§ 10-9-301, et seq. A portion of the General Plan establishes development policies for the Property. Such development policies are consistent with the proposed development on the Property.

F. On March 23, 2005, 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 23, 2005, after a duly noticed public hearing, the Provo City Planning Commission approved a preliminary project plan for the Property subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein.

H. On May 3, 2005, the Provo City 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 May 3, 2005, the Provo City Municipal Council reviewed the preliminary project plan for the Property, attached hereto as Exhibit "C", and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

J. To allow development of the Property for the benefit of Developer, to ensure City that the development of the Property will conform to applicable policies set forth in the General Plan, and address concerns of property owners in proximity to the Property, Developer and City desire voluntarily 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 R4 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 14.13 (R4) 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 Provo 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 Report of Action as set forth in Exhibit B attached hereto and made a part hereof.

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

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

6. Standard for Approval. City, on recommendation of its Planning Commission, shall approve the Plans if such Plans meet the standards and requirements enumerated in Paragraph 3 and if, as determined by City, the Plans are consistent with commitments made to City that the Project will be a high quality development that will be designed in a manner to minimize adverse impacts to the neighborhood and, in particular, conforms to the Special Conditions set forth in Exhibit "D" attached to this Agreement.

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

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

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

10. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with procedures applicable to the R4 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 issued for all buildings and/or dwelling units in the Project, provided, however, that any provision expressly intended to survive this Agreement shall continue in force according to the terms of such provision.

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.

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 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 "D" 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:

Jeffrey A. Duke

6925 S. Union Park Ave., Suite 355
Midvale, UT 84047

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 full power and

exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

P. Annual Review. City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 13 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

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

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

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

[signature page follows]

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

Attest:

PROVO CITY, a political subdivision of the State of Utah

Lalacie Grossbeck
City Recorder

By: [Signature]
Mayor



CASTLEWOOD TIMPANOGOS-GATEWAY, LLC

By: Jeffrey A. Duke
Jeffrey A. Duke, Managing Member

State of Utah
County of Utah

On this 3 day of May in the year 2005, before me Lisa Marie Tomlin, a notary public, personally appeared Jeffrey A. Duke, 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.

Lisa Marie Tomlin
Notary Public

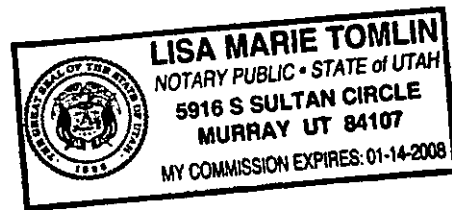


Exhibit "A"
Legal Description
Timpanogos Gateway Condominiums-Phase II
1901 North Canyon Road, Provo, Utah

Commencing South 00°39'35" East along the Section line 186.34 feet and West 7.25 feet from the Northeast corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 00°38'23" West 102.66 feet; thence South 87°40'32" East 216.79 feet; thence South 00°34'00" West 238.40 feet; thence North 89°39'00" West 314.70 feet; thence North 00°30'30" West 54.44 feet; thence West 3.15 feet; thence North 00°41'57" West 65.14 feet; thence North 88°21'48" West 228.46 feet; thence North 00°52'02" East 230.48 feet; thence South 88°30'16" East 331.00 feet to the point of beginning.

AREA = 140,949 square feet or 3.24 acres

Exhibit "B"
Planning Commission Report of Action
Preliminary Project Plan and Rezoning - March 23, 2005
Timpanogos Gateway Condominiums-Phase II
1901 North Canyon Road, Provo, Utah

Provo City Planning Commission

Report of Action

March 23, 2005

- ITEM 1* Castlewood Development Co. requests approval for Timpanogos Gateway Condominiums Phase II, on 3.10 acres located generally at 1901 North Canyon Road and currently in a RC (Residential Conservation) zone. *Pleasantview Neighborhood 04-0007PRO This item was continued from the March 9, 2005*
- (a) Preliminary Project Plan approval for the construction of 15 new residential condominiums.
 - (b) Rezone of 3.10 acres from the RC (Residential Conservation) Zone to the High Density Mixed-Use Project Redevelopment Option Zone or the R4 (High Multiple Residential) Zone.

The following action was taken by the Planning Commission on the above described item at its regular meeting of March 23, 2005.

- (a) Preliminary Project Plan approval for the construction of 15 new residential condominiums.

CONDITIONAL APPROVAL

On a vote of 5:0, the Planning Commission gave approval for the project plan for the above item, subject to the following conditions of approval:

1. Based on the Municipal Council approving the rezone, the final project plan approval will be administratively approved by staff prior to the issuance of any building permits.
2. That the conditions imposed by the Design Review Committee be addressed prior to the issuance of a building permit.
3. That any technical concerns raised by the City Departments be addressed prior to the issuance of a building permit.
4. That a development agreement is entered into by the developer restricting parking, occupancy, density and land uses within the development as proposed.

Motion By: Leonard Mackay

Second By: Gene Libutti

Votes in Favor of Motion: Pam Boshard, Leonard Mackay, Gene Libutti, Kathy Froerer

Votes Opposed to Motion: None

Todd Roach was present as chair.

- (b) Rezone of 3.10 acres from the RC (Residential Conservation) Zone to the High Density Mix-Use Project Redevelopment Option Zone.

REZONE TO THE R4 (HIGH MULTIPLE RESIDENTIAL) ZONE

On a vote of 5:0, Planning Commission forwarded a recommendation of approval to the Municipal Council for the rezone of the above item from the RC (Residential Conservation) zone to the R4 (High Multiple Residential) zone, rather than rezoning to a PRO Zone as requested by the applicant.

Motion By: Leonard Mackay

Second By: Gene Libutti

Votes in Favor of Motion: Pam Boshard, Leonard Mackay, Gene Libutti, Kathy Froerer

Votes Opposed to Motion: _____

Todd Roach was present as chair.

*Planning Commission Report of Action, 04-0007 PRO
March 23, 2005, Item 1 (a) and (b)* – Page 2*

STAFF PRESENTATION

The applicant had worked with a previous staff member toward the development of a high-density PRO for this project. In further reviewing the development proposal, staff feels that the R4 (High Multiple Residential) Zone is the most appropriate for this project, rather than creating a new PRO zone. The preliminary project plan is for the second phase of a project for which phase I was constructed under the multiple residential zone structure previously in place in Provo. The project was later rezoned through a City-wide change of the R2 through R5 properties to the RC (Residential Conservation) Zone. Rezoning the entire project to R4, in conjunction with the approved preliminary project plan and a development agreement addressing occupancy and parking for the project, is recommended for approval. The preliminary project plan is recommended with the conditions as stated in the Staff Report. Staff finds that the zone change meets the criteria of 14.02.020 to amend the Zoning Map.

NEIGHBORHOOD ISSUES

Neighborhood concerns from the February 19, 2005, neighborhood meeting included overall support for the improvements, some concern with parking and traffic in relation to the additional density, shielding of project lighting, and aesthetics with the fencing. The minutes were included with the Staff Report. No issues were raised with the rezoning of the property.

The Neighborhood Chair was not present or did not comment during the Planning Commission meeting, and no other public comment was received during the hearing.

APPLICANT RESPONSE

Curtis Miner, project architect, answered questions about the review by the City's Design Review Committee (DRC) and changes to the building. Final review of changes required by the DRC will be accomplished with the staff review of the final project plan prior to issuance of a building permit.

PLANNING COMMISSION DISCUSSION

It was stated that this is a good project, that the parking needs of the development appear to be met, and that the conditions of approval for the preliminary project plan appear to cover any concerns with occupancy and parking.

FINDINGS OF FACT

1. The zoning map indicates that the project is in an RC (Residential Conservation) zone.
2. Summary of the PRO request:

Existing Project	Proposed Project
Number of Units—42 units and one existing single family home.	15 new units to be constructed, bringing the total of units to 57.
Occupancy—family or three singles per unit	Occupancy—family or three singles per unit.
Parking—151 spaces required. This equates to 3.5 parking spaces per unit	Parking—42 new parking spaces will be added for a total of 193 spaces. This equates to 3.5 parking spaces per unit.
Building Height: 30 feet as measured by Code	Building Height: 30 feet as measured by Code

3. As required by Code, a neighborhood meeting was held on February 19, 2005, and the minutes of the meeting are as follows:

“Mr. Miner and Mr. Duke presented both the Site and Elevation plans—indicating that Provo City had requested improvements on the east end of the 15-plex that will face Canyon Road. Mr. Duke described the development’s history including being bound to the original plans when the project was bought.

*Planning Commission Report of Action, 04-0007 PRO
March 23, 2005, Item 1 (a) and (b)* – Page 3*

Mr. Harrison indicated several neighbors were happy that the current developers, Castlewood Development, had responded positively to the following concerns: 1) Dealing with the lighting problem by installing light shields. 2) Upgrading what was to have been a chain-link fence to a much more attractive, rock-looking fence.

Mr. Chaston shared a neighborhood concern regarding increased density and traffic and wanted assurance of sufficient parking.

Mr. Miner pointed out the redesigned and improved access to the North and that the finished project would provide 3.5 parking spaces per 3 bedroom unit."

4. The following is a summary of issues received from Provo City Departments involved in the project review:

Engineering Division

- a. A final condominium plat will be required for this project. This plat should look to make sure that all street dedication along Canyon Road has been included, and if street dedication is required that it be shown on the plat. In addition, an 8' sidewalk and PUE needs to be shown along Canyon Road. The plat will be checked by An Cooper of the Engineering Department. Any corrections or modifications will need to be coordinated by the developer's engineer with An.
- b. Water and sewer related items for this project will need to be reviewed and approved by the Water Resources Department. Their signature will be required on final engineering plans.
- c. Storm drain and irrigation related items for this project will need to be reviewed and approved the Storm Water Department. Their signature will be required on the final engineering plans.
- d. A traffic mitigation fee in the amount of \$14,790 will be required for this project. This fee will need to be paid prior to final project approval.
- e. After all corrections and changes have been made to the improvement plan, a 24" x 36" mylar original of all improvement plan sheets with the engineer's stamp and signature will need to be submitted for review and approval.
- f. Bonding will be required for this project. We will determine the amount of this bond prior to final project approval.

Storm Water Division

Submit a Storm Water Pollution Prevention Plan with specific reference to the following:

- a. Vehicle tracking control
- b. Onsite runoff control
- c. Inlet protection
- d. Concrete washout
- e. Construction material / debris

Water Resource Division

- a. Water: On the proposed fire line, the engineer needs to show how he is going to connect to the existing 12" main. He needs to label using the tapping tee and valve. No other concerns with the water.
- b. Sewer: The engineer has proposed installing a new 8" sewer main to service this project. There are no concerns with this design. The only thing I will require is that, on the main to be abandoned, the sewer main is plugged in the 2 existing manholes with either a sewer ball or a concrete cap.

*Planning Commission Report of Action, 04-0007 PRO
March 23, 2005, Item 1 (a) and (b)* – Page 4*

Community Development Department

- a. Final conditional approval was granted by the Design Review Committee on February 24, 2005 with the following conditions:
 1. The landscaping berm needs to be addressed.
 2. The pop out on the east side of the building needs to be wider.
- b. The project has been redesigned to address the number of units and the parking issues. The number of units has been reduced from 18 to 15 and the parking has been increased to 3.5 spaces per unit.

Staff Note: The verified legal description of the property determined that the overall project site is 3.24 acres, rather than 3.10 acres. The corrected acreage for noticing will be forwarded in the Request for Council Action.


Todd A. Brooks
Planning Commission Chair

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

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

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

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit "C"
Preliminary Project Plan
Timpanogos Gateway Condominiums-Phase II
1901 North Canyon Road, Provo, Utah



TIMPANOGOS GATEWAY SITE PLAN

ALTA APARTMENTS
48 UNITS

18-PLEX BUILDING

12-PLEX BUILDING

12-PLEX BUILDING

NEW PARKING

15-PLEX BUILDING

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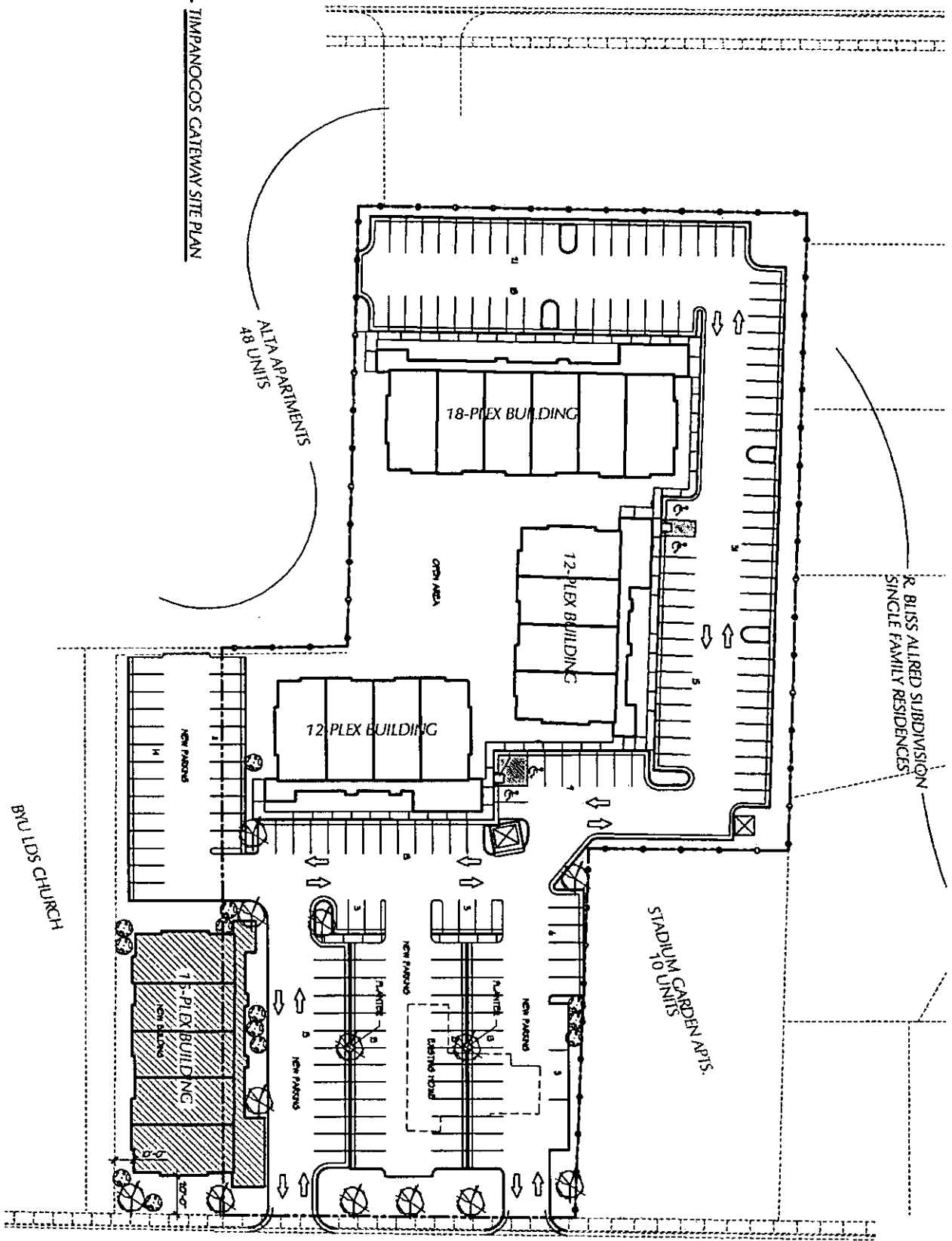
NEW PARKING

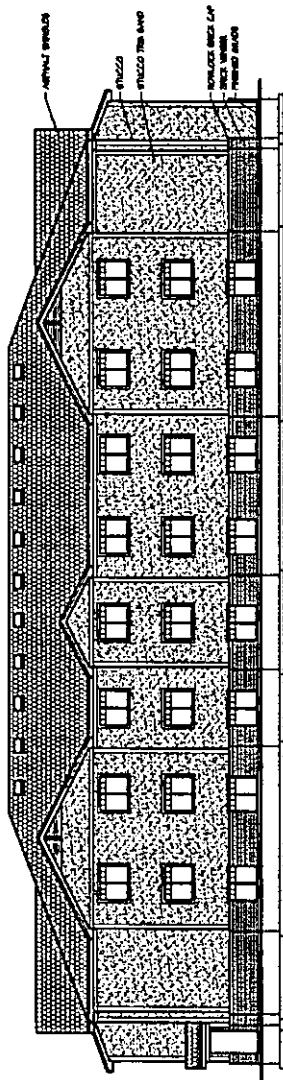
BLISS ALLED SUBDIVISION
SINGLE FAMILY RESIDENCES

STADIUM GARDEN APTS
10 UNITS

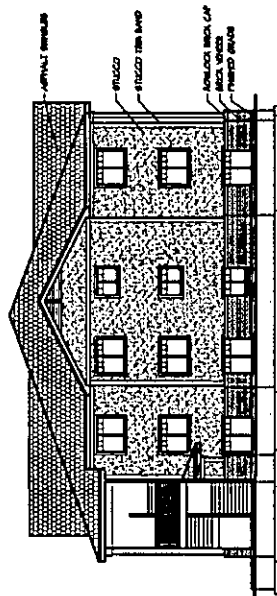
BLISS CHURCH

PROVO CANYON ROAD

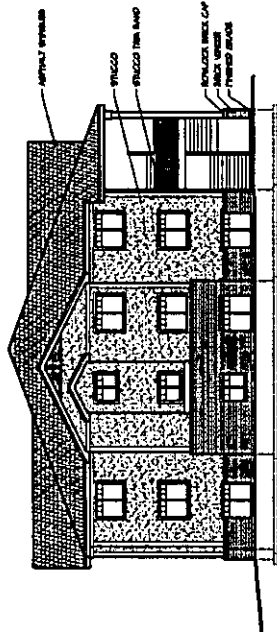




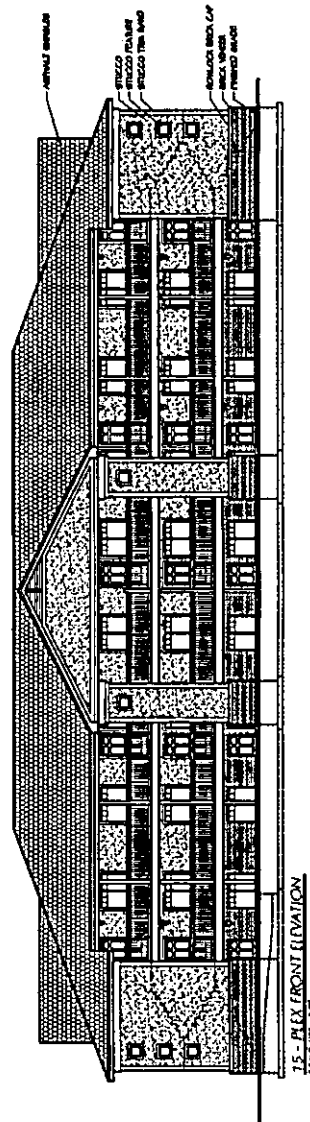
15 - PLEX REAR ELEVATION
 SCALE: 1/8" = 1'-0"



15 - PLEX SIDE ELEVATION
 SCALE: 1/8" = 1'-0"



15 - PLEX SIDE ELEVATION
 SCALE: 1/8" = 1'-0"



15 - PLEX FRONT ELEVATION
 SCALE: 1/8" = 1'-0"

Exhibit "D"
Special Conditions
Timpanogos Gateway Condominiums-Phase II
1901 North Canyon Road, 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.

Development of land in the Timpanogos Gateway Condominiums-Phase II (the "Project") shall be subject to the following conditions. All final plans for the Project shall note these conditions on the body of the plan along with all other notes required by Provo City; provided, however, that a condition need not be placed on the final plans as a note if such plans clearly illustrate the substance and requirements of the requirement.

1. The total area of Timpanogos Gateway property shall be increased to approximately 3.12 acres.

2. Phase II of the Timpanogos Gateway (the "Project") shall consist of 15 additional three-bedroom, two-bath condominium units (replacing an existing one-family dwelling).

3. Prior to the issuance of any building permit, covenants, conditions and restrictions ("CCRs") shall be recorded for the Project which shall run with the land. Alternatively, the Project may be incorporated as part of a homeowners association presently existing with respect to the already developed portion of the Timpanogos Gateway condominiums located adjacent to the Project. Regardless of the alternative selected, City shall have the right to approve the CCRs, which approval shall not be unreasonably withheld. Such CCRs shall include provisions that:

A. Establish a homeowners association for the Project.

B. Require the homeowners association to manage common area within the Project, including the collection of necessary management fees.

C. Limit occupancy in the Project to not more than three (3) unrelated persons or one family. For the purpose of this special condition "family" means a group or persons related by blood or by marriage, adoption or other legal relationship who live and cook together as a single housekeeping unit. This special condition shall run with the land and shall survive the within Agreement as provided in Paragraph 11 thereof. Provided, however, that the parties to the within Agreement may elect to modify or remove the foregoing use limitation on the Property. Such modification or removal shall be in written form mutually agreed to and signed by each of the parties, shall constitute an amendment to the within Agreement, and shall be undertaken pursuant to a vote of the Municipal Council as provided in Section 14-I of the within Agreement.

4. The total unit count in Timpanogos Gateway shall be increased from 42 condominium units and a one-family dwelling to 57 condominium units.

5. Total density in the Timpanogos Gateway condominiums shall be 18.27 units per acre.

6. The total parking count in Timpanogos Gateway (both existing and with the Project) shall be increased to provide a total of 199 stalls, for an overall ratio of 3.5 stalls per dwelling unit.