PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Agenda

5:30 PM, Tuesday, December 15, 2020
Electronic meeting: https://www.youtube.com/provocitycouncil

This meeting will be conducted entirely via electronic means. The meeting will be available to the public for live broadcast and on-demand viewing on YouTube and Facebook at: youtube.com/provocitycouncil and facebook.com/provocouncil. If one platform is unavailable, please try the other. If both services are down or unavailable, after a reasonable (but short) time waiting to see if the services resume, the remainder of the meeting will be postponed to the next week, with appropriate public notice given of the rescheduled date. If you do not have access to the Internet, you can join via telephone following the instructions below about making public comments.

For more information regarding the City Community Safety Plan for COVID-19 and related City facility closures, please visit: provo.org/covid19

TO MAKE A PUBLIC COMMENT:
To participate in the public comment portion(s) of the meeting, call in as an audience member as the presentation is wrapping up. Be sure to mute/silence any external audio on your end to reduce feedback (if you are viewing the live proceedings on YouTube, mute the YouTube video; you will be able to hear the meeting audio through the phone while you are on the line).

Press *9 from your phone to indicate that you would like to speak. When you are invited to speak, the meeting host will grant you speaking permission, calling on you by the last four digits of your phone number. Please begin by stating your first and last name, and city of residence for the record. After you have shared your comment, hang up. If you wish to comment on a later item, simply re-dial to rejoin the meeting for any subsequent comment period(s).

December 15 Council Meeting: Dial 346 248 7799. Enter Meeting ID insert Zoom meeting ID and press #. When asked for a participant ID, press #.

Decorum

The Council requests that citizens help maintain the decorum of the meeting by turning off electronic devices, being respectful to the Council and others, and refraining from applauding during the proceedings of the meeting.

Opening Ceremony

Roll Call

Prayer

Pledge of Allegiance

Presentations, Proclamations, and Awards

1. A presentation of the Comprehensive Annual Financial Report (CAFR) by the Provo City Finance Division and HBME. (20-251)

Public Comment

Fifteen minutes have been set aside for any person to express ideas, concerns, comments, or issues that are not on the agenda:

Please state your name and city of residence into the microphone.
Please limit your comments to two minutes.
State Law prohibits the Council from acting on items that do not appear on the agenda.

Consent Agenda

Approval of Minutes

- July 7, 2020 Council Meeting Minutes
- October 6, 2020 Council Meeting Minutes

Action Agenda

2. A resolution appropriating a combined $134,000 in the General Fund for a wildland mitigation program, a behavioral-health services provider, and a continuity of operations plan. (20-252)

3. A resolution transferring $235,000 from the General Fund to the Golf Fund. (20-245)

4. An ordinance amending Provo City Code to allow more options for conducting Neighborhood Chair elections. (20-253)

5. An ordinance amending the Zone Map classification of approximately 8.5 acres, generally located at 1724 South State Street, from CM, RA, R1.6, R1.10, and A1.5 to the MDR Zone. Spring Creek Neighborhood. (PLRZ20190356)

6. *CONTINUED* An ordinance amending the zone map classification of approx 5.33 acres of property, generally located at 1724 S State St, from Agricultural (A1.5) and Residential (R1.6) to Community Shopping Center (SC2). Spring Creek Nbd. (PLRZ20190426)

Redevelopment Agency of Provo

7. A resolution authorizing the Chief Executive Officer to sign a lease agreement with PEG Development for office space in Downtown Provo. (20-248)

8. A resolution authorizing the Chief Executive Officer to sign a joint development agreement with PEG Development for the development of office space in Downtown Provo. (20-249)

Adjournment

Provo City Municipal Council
Chair's Statement re Open and Public Meetings Act

In accordance with Utah Code 52-4-207(4)* I have determined that conducting meetings of the Municipal Council with an anchor location, such as the Municipal Council Chamber, presents a substantial risk to the health and safety of those who may be present there. These are the facts upon which I have made this determination:

- The World Health Organization has classified novel coronavirus disease (aka COVID-19) as a pandemic.
- The US Centers for Disease Control and Prevention state that COVID-19 is easily spread from person to person between people who are in close contact with one another.
- Utah is currently subject to Utah Public Health Order 2020-26** which limits the size of public gatherings, and which requires people to wear face coverings and follow social distancing guidelines.
- Utah County is currently listed as having a HIGH level of coronavirus transmission.
- Physical distancing measures will be difficult to set up and maintain in the Provo City Municipal Council Chamber and other meeting rooms.

Therefore, for the next 30 days, all meetings of the Municipal Council will be conducted entirely via electronic means:

- Council meetings are broadcast live and available later on demand at youtube.com/provocitycouncil.
- Agendas and support materials are available at agendas.provo.org.
- To make a public comment or to join a meeting via telephone, follow the instructions provided on public notices of each meeting.
- To send comments to the Council or weigh in on current issues, visit opencityhall.provo.org or email the Council at council@provo.org.

-George Handley, Chair, December 10, 2020

I have determined that conducting meetings of the Governing Board of the Redevelopment Agency of Provo City is subject to the same risks identified above based on the facts stated herein. Therefore, I adopt the same procedures listed above for meetings of the RDA Governing Board.
-David Sewell, RDA Chair, December 10, 2020

* As amended by HB5002, *Open and Public Meetings Act Amendments,* (2020 Fifth Special Session), Utah Code Annotated (UCA) 52-4-207(4) provides that a public body may convene and conduct an electronic meeting without an anchor location if the chair of the public body:

(a) makes a written determination that conducting the meeting with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location;
(b) states in the written determination described in Subsection (4)(a) the facts upon which the determination is based;
(c) includes in the public notice for the meeting, and reads at the beginning of the meeting, the information described in Subsections (4)(a) and (b); and
(d) includes in the public notice information on how a member of the public may view or make a comment at the meeting.

UCA 52-4-207(5) states that a written determination described in Subsections (4)(a) and (b) expires 30 days after the day on which the chair of the public body makes the determination. https://le.utah.gov/~2020S5/bills/static/HB5002.html

** Utah Public Health Order 2020-26, effective December 9, 2020, can be viewed at https://coronavirus-download.utah.gov/Health/UPHO-2020-26-Updated-Statewide-COVID-19-Restrictions.pdf

If you have a comment regarding items on the agenda, please contact Councilors at council@provo.org or using their contact information listed at: provo.org/government/city-council/meet-the-council

Materials and Agenda: agendas.provo.org
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To send comments to the Council or weigh in on current issues, visit OpenCityHall.provo.org.

The next Council Meeting will be held on Tuesday, January 5, 2021. The meeting will be conducted virtually. Work Meetings generally begin between 12 and 4 PM. Council Meetings begin at 5:30 PM. The start time for additional meetings or retreats may vary. All meeting start times are noticed at least 24 hours prior to the meeting.

Notice of Compliance with the Americans with Disabilities Act (ADA)
In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Provo Council Office at 351 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email evanderwerken@provo.org at least three working days prior to the meeting. Council meetings are broadcast live and available for on demand viewing at youtube.com/ProvoCityCouncil.

Notice of Telephonic Communications
One or more Council members may participate by telephone or Internet communication in this meeting. Telephone or Internet communications will be amplified as needed so all Council members and others attending the meeting will be able to hear the person(s) participating electronically as well as those participating in person. The meeting will be conducted using the same procedures applicable to regular Municipal Council meetings.

Notice of Compliance with Public Noticing Regulations
There will be no anchor location for this meeting; it will be conducted exclusively using online means and will be available to view on YouTube at youtube.com/ProvoCityCouncil. This meeting was noticed in compliance with Utah Code 52-4-207(4), which supersedes some requirements listed in Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at agendas.provo.org. Council meeting agendas are available through the Utah Public Meeting Notice website at utah.gov/pmn, which also offers email subscriptions to notices.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: DMORTENSEN
Department: Finance
Requested Meeting Date: 12-15-2020

SUBJECT: A presentation of the Comprehensive Annual Financial Report (CAFR) by the Provo City Finance Division and HBME. (20-251)

RECOMMENDATION: Presentation only.

BACKGROUND: HBME has completed their audit work of the City's fiscal year 2020 and has worked with Provo City Finance Division to prepare the Comprehensive Annual Financial Report (CAFR).

FISCAL IMPACT: The presentation of the CAFR is not anticipated to have any fiscal impact, but it will likely influence future financial policy decisions.

PRESENTER'S NAME: John Borget and Jeff Miles

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-251

General Fund Balance

	Audited 2011	Audited 2012	Audited 2013	Audited 2014	Audited 2015	Audited 2016	Audited 2017	Audited 2018	Audited 2019	Audited 2020
Revenues	40,330,795	44,020,846	46,390,629	50,323,846	48,883,712	53,002,161	55,114,223	55,801,159	57,920,850	63,299,246
Subsidy transfers	7,087,281	7,976,106	8,565,303	9,549,272	9,619,798	10,403,410	10,976,451	11,820,682	11,437,661	12,119,877
Revenues and subsidy transfers	47,418,076	51,996,952	54,955,932	59,873,118	58,503,510	63,405,571	66,090,674	67,621,841	69,358,511	75,419,123
Assigned and unassigned										
Unassigned	8,547,405	7,639,116	8,977,109	8,338,392	8,633,582	11,170,908	9,882,260	13,128,183	12,274,382	15,289,176
Assigned	640,160	1,433,306	2,135,314	2,211,242	1,968,150	2,001,787	3,716,456	3,074,233	4,596,810	2,015,279
	9,187,565	9,072,422	11,112,423	10,549,634	10,601,732	13,172,695	13,598,716	16,202,416	16,871,192	17,304,455
Fund Balance (assigned and unassigned)	19.38%	17.45%	20.22%	17.62%	18.12%	20.78%	20.58%	23.96%	24.32%	22.94%

Comprehensive Annual Financial Report

For the Year Ending June 30, 2020

City of Provo, Utah

provo
WELCOME HOME

ADMINISTRATIVE SERVICES
TEL 801 852 6504
351 W CENTER ST
PO BOX 1849
PROVO, UT 84603

LETTER OF TRANSMITTAL

November 30, 2020

To the Honorable Mayor, members of the Municipal Council, and the Citizens of the City of Provo:

State law and local ordinance require that all general-purpose local governments publish within six months of the close of each fiscal year a complete set of financial statements presented in conformity with Generally Accepted Accounting Principles (GAAP) and audited in accordance with generally accepted auditing standards by a firm of licensed certified public accountants. In conformance with that requirement, we issue the Comprehensive Annual Financial Report (CAFR) of the City of Provo for the fiscal year ended June 30, 2020.

This report consists of management's representations concerning the finances of the City of Provo. Management assumes full responsibility for the completeness and reliability of all information presented in this report. In order to provide a reasonable basis for making these representations, management of the City of Provo has established an internal control framework-designed to ensure the assets of the government are protected from loss, theft or misuse, and to ensure adequate accounting data is compiled to allow for the preparation of financial statements in conformity with generally accepted accounting principles. The internal control structure is designed to provide reasonable, but not absolute, assurance that these objectives are met. The concept of reasonable assurance recognizes (1) the cost of a control should not exceed the benefits likely to be derived, and (2) the valuation of costs and benefits requires estimates and judgments by management. As a recipient of federal, state, and local financial assistance, the City is also responsible for ensuring that an adequate internal control structure is in place to ensure and document compliance with applicable laws and regulations related to the appropriate programs. This internal control structure is subject to periodic evaluation by management.

HBME, LLC, a firm of licensed certified public accountants selected by the Municipal Council, has audited the City of Provo's financial statements. The goal of the independent audit is to provide reasonable assurance that the financial statements of the City of Provo for the fiscal year ended June 30, 2020, represent an accurate portrayal of the City's financial position in all material respects. The independent audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. HBME, LLC concluded, based upon the audit, that there is reasonable basis for rendering an unmodified opinion that the City of Provo's financial statements for the fiscal year ended June 30, 2020, were fairly presented in conformity with GAAP. The independent auditors' report is presented as the first component of the financial section of this report.

The independent audit of the City of Provo's financial statements was part of a broader, federally mandated Single Audit Act of 2004 and the U.S. Office of Management and Budget's Circular A-133, Audits of State and Local Governments. Information related to this single audit, including a schedule of federal financial assistance, the independent auditors' report on internal

ECONOMIC CONDITION

The City has a diverse manufacturing and industrial base. Major industries include retail business, light manufacturing, software development, and a university community. This diversity stabilizes the unemployment rate and offers a broad range of employment opportunities.

The local economy was impacted by the COVID-19 Pandemic that occurred during the year, but not at the level the national economy was affected. The largest impact to the City was user fees at its Parks and Recreation programs due to closures and operations being limited by pandemic restrictions issued by the state. The local (Provo-Orem) unemployment rate was 3.3% and the national average was 6% during the year. The City's total tax revenue of $50.8M increased by $6.6M or by 14.9 percent. Property taxes of $17.5M increased by $5.4M or by 44.4 percent above the prior year due to the approval of a GO Bond by the voters of Provo to construct a new City Hall and Fire Station. Franchise taxes of $9.8M increased by $50K or by .5 percent over the prior year. Sales tax revenue of $20.7M increased by $1.1M or 5.6 percent versus the prior fiscal year. As the uncertainty of outcome of the pandemic continues, the City is cautious, but optimistic, that sales tax revenues will continue to show increases during the next fiscal year, the City sales tax revenues received during the first two months of fiscal year 2021 are consistent with this assumption.

The City is closely monitoring the current economic environment. As the City plans for the future, we are being very cautious to align the commitment of City resources with the anticipated revenues for the City. Other major revenue sources, such as property tax and franchise taxes, showed moderate increases in comparison to previous years. The City enterprise funds reflected an increase in sales and expenses due to growth, a water rate increase, weather conditions, and overall increased demand as reflected in the overall economy.

The governmental funds revenues for fiscal year ending June 30, 2020 are $97.4M. Tax revenue made up 52.2 percent of the total governmental funds revenue. Tax revenue consists of property, vehicle, sales, RAP, franchise and other taxes. Grant revenue accounts for 27.6 percent of the total. The remaining 20.2 percent is composed of charges for services, licenses and permits, fines and forfeitures, investment earnings, loan repayments/write-offs, lease income, and miscellaneous revenues.

While striving to control expenditures, the City is committed to maintaining infrastructure and delivering services at sufficient levels. The City will also continue to work on a variety of economic development projects with the intent of creating jobs and stimulating the economic growth and stability of the City.

LONG-TERM FINANCIAL PLANNING

In an effort to improve the City's financial position for the current and future years, the following adjustment has been made. The City maintains a 5-Year Capital Project/Budget Plan. This plan is updated each year and allows the City to make projections into the future regarding the infrastructure and other long-term capital projects that need to be initiated or completed. This plan helps to prioritize projects, estimate costs, and determine the most advantageous way to fund projects.

The City continues to refine a ten-year budget that examines all revenues and expenses. The focus is to establish a sustainable budget and place more attention on the long-term impact of decisions.

MAJOR INITIATIVES

In November 2018 the residents of Provo approved a general obligation bond to construct a new Public Safety/City Hall and a Fire Station on Canyon road. The Fire Station was demolished and reconstructed. The new station replaces the previous one, built in 1958 as a home and

remodeled into a fire station. Demolition and construction began in August 2019, and the station was dedicated on September 11, 2020. Construction for the Public Safety/City Center is under construction and planned to be completed in the spring of 2022.

The City is in the process of constructing a new Airport Terminal. The groundbreaking ceremony took place on November 6, 2019. The City received $9M in funding from the State and commitments of $4.3M in funding from the County, $23.4M from the FAA and 15M in local funding to fully fund the new terminal building and the associated parking lots, access roads, apron and deice pads. The newer and larger terminal will include four gates with the ability to expand to ten gates.

The City is in the process of implementing a city-wide software system. The project has been named Provo 360. The goal of the new system is to provide our residents, businesses, students and our visitors with a 360 degree view of their business with the city at any time, from anywhere and from any device. The system will enhance customer experience, improve efficiency, increase transparency, empower stewardship and promote innovation. The Finance Division went live on its application of Provo 360 on June 26, 2017 and Community Development applications went live during fiscal 2018. The implementation of Phase II (Customer Service and Work Order Management) started on October 1, 2018 and went live in July 2020. The City selected a vendor for its Human Capital Management System and is in the middle of the implementation of the system and plans to go live in July 2021.

SIGNIFICANT EVENTS

AIRPORT

Twenty-nine acres of property was purchased immediately north of, and adjacent to, the existing airport to be used for future expansion of the airport as well as a means of providing the required local match on FAA federal grants.

Construction was completed on 4 corporate hangars, each in excess of 15,000 square feet.

The Duncan Aviation Office Building was opened for business.

DEVELOPMENT SERVICES

An account has been established with a local engineering company to provide building plan review and approval for those citizens who want to fast-track their building permit.

The Development Services Department started holding virtual meetings beginning in March 2020 for Coordinators Review Committee meetings, Planning Commission Hearings, Planning Commission Administrative Hearings, Landmarks Commission Hearings, Design Review Committee Hearings, and various other meetings. This has been successful in preventing the spread of COVID-19, while still allowing the public to view and participate in public hearings.

The Development Services Department became a “One Stop Shop” beginning in October 2019. When the public comes in with development questions, they have representatives from Planning, Building, Engineering, Public Works, Zoning, Business Licensing, Housing, Parking, Redevelopment, and Economic Development all in one building to help them. The public no longer has to travel between the City Center building, Community Development building, and Public Works building.

The Development Services Department took inspiration from Mayor Kaufusi’s “Year of Communication” resolution by creating social media accounts starting in January 2020. Public hearing information can be found on the Development Services Department’s Facebook,

WATER RESOURCES

Design of Reclamation Plant proceeding towards 60%, making design changes to meet budget requirements.
Reclamation Plant package 1A contract awarded to Alder Construction to begin site preparation.

Westside sewer and water improvements designs completed and ready for bid this coming year

4800 North well and pumphouse completed and on-line with backup generator.

AWARDS AND ACKNOWLEDGMENTS

The Government Finance Officers Association (GFOA) of the United States and Canada awarded a Certificate of Achievement for Excellence in Financial Reporting to Provo City Corporation for its CAFR for the fiscal year ended June 30, 2019. The Certificate of Achievement is a prestigious national award and recognizes conformance with the highest standards for preparation of state and local government financial reports.

In order to be awarded a Certificate of Achievement, a government unit must publish an easily readable and efficiently organized Comprehensive Annual Financial Report, with contents conforming to program standards. As such, the CAFR must satisfy both Generally Accepted Accounting Principles and applicable legal requirements.

A Certificate of Achievement is valid for a period of one year only. The City has received a Certificate of Achievement for the last several years. We believe our current report continues to meet the Certificate of Achievement program requirements and is being submitted to GFOA to determine its eligibility for another certificate.

The preparation of the Comprehensive Annual Financial Report on a timely basis could not have been accomplished without the efforts and dedication of the staff of the City of Provo, Division of Finance. I would like to express my appreciation to my staff and other personnel from various departments, agencies, and authorities who assisted in its preparation.

Also, I would like to thank the Mayor and the Municipal Council for their interest and support in planning and conducting the financial operations of the City of Provo in a dedicated and responsible manner.

Respectfully submitted,

John D. Borget
Director of Administrative Services

General Fund Balance

	Audited 2011	Audited 2012	Audited 2013	Audited 2014	Audited 2015	Audited 2016	Audited 2017	Audited 2018	Audited 2019	Audited 2020
Revenues	40,330,795	44,020,846	46,390,629	50,323,846	48,883,712	53,002,161	55,114,223	55,801,159	57,920,850	63,299,246
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Assigned and unassigned										
Unassigned	8,547,405	7,639,116	8,977,109	8,338,392	8,633,582	11,170,908	9,882,260	13,128,183	12,274,382	15,289,176
Assigned	640,160	1,433,306	2,135,314	2,211,242	1,968,150	2,001,787	3,716,456	3,074,233	4,596,810	2,015,279
	9,187,565	9,072,422	11,112,423	10,549,634	10,601,732	13,172,695	13,598,716	16,202,416	16,871,192	17,304,455
Fund Balance (assigned and unassigned)	19.38%	17.45%	20.22%	17.62%	18.12%	20.78%	20.58%	23.96%	24.32%	22.94%

MANAGEMENT'S DISCUSSION AND ANALYSIS

As management of the Provo City Corporation (the "City"), we offer readers of the City's financial statements this narrative overview and analysis of the financial activities for the year ended June 30, 2020. The Management's Discussion and Analysis (MD&A) is designed to provide an overview of the City's financial activity. It is also intended to assist the reader in focusing on significant financial issues including identifying changes in the City's financial position (its ability to address the next and subsequent years' challenges), identifying any material deviations from the approved budget, and identifying individual fund issues or concerns. Please read the MD&A in conjunction with the Transmittal Letter and the City's financial statements.

HIGHLIGHTS

Financial Highlights

The City's net position increased by $59,492,646. The governmental net position increased by $28,370,423 and the business-type net position increased by $31,122,223.

At the close of the current fiscal year, the assets and deferred outflows of resources of the City exceeded its liabilities and deferred inflows of resources by $706,710,647. Of this amount; $129,087,906 (unrestricted net position) may be used to meet the government's ongoing obligations to citizens and creditors.

As of the close of the current fiscal year, the City's governmental funds (reflected on a current financial resource basis) reported combined ending fund balances of $145,674,165, an increase of $4,289,713 in comparison with the prior year. The increase is primarily the result of higher fund balances in the General Fund related to increases in cash and accounts receivable balances.

The General Fund (the primary operating fund), also reflected on a current financial resource basis, reported an increase of $6,722,970 in fund balance. This increase is primarily the result of higher property tax revenue and lower general government expenses.

At the end of the current fiscal year, assigned and unassigned fund balance for the general fund was $17,304,455 (or approx. 22.94 percent) of 2020 general fund revenues and transfers.

USING THIS ANNUAL REPORT

The financial statements focus on both the City as a whole in the government-wide statements, and on the major individual funds in the fund financial statements. (An explanation of major and nonmajor funds can be found in the Note 1 of the financial statements of this report). Both perspectives allow the user to address relevant questions, broaden a basis for comparison (year-to-year or government-to-government) and enhance the City's accountability.

Government-Wide Financial Statements

There are two basic statements in the ***government-wide financial statements***: the *statement of net position* and the *statement of activities*. These statements report information about the City as a whole using accounting methods similar to the full accrual method used by private sector companies. These statements also provide both long-term and short-term information about the overall financial status of the City.

The ***statement of net position*** presents information on all assets, deferred outflows of resources, liabilities, and deferred inflows of resources of the City. The difference between the two is reported as *net position*. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the City is improving or deteriorating.

Changes in Net Position

Governmental Activities

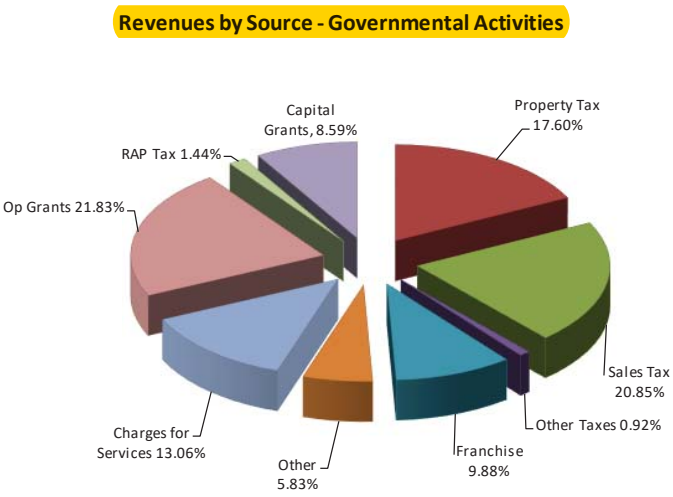
As shown below in Table 2 – Changes in Net Position governmental activities increased the City's net position by $28,370,423.

Governmental funds report capital outlays as expenditures. However, in the Statement of Activities, the cost of these assets is allocated over the estimated useful lives and reported as depreciation expense. The amount that the capital outlays exceeded depreciation in fiscal year 2020 is $15,831,670.

Table 2 - Changes in Net Position

	Governmental Activities		Business-type Activities		Total	
Revenues						
	2020	2019	2020	2019	2020	2019
Program revenues:						
Charges for services	$ 12,961,516	$ 13,244,777	$ 119,606,245	$ 119,256,826	$ 132,567,761	$ 132,501,603
Operating grants and contributions	21,664,085	8,485,241	50,000	50,000	21,714,085	8,535,241
Capital grants and contributions	8,520,320	7,859,934	17,348,919	7,274,196	25,869,239	15,134,130
General revenues:						
Property taxes	17,463,263	12,090,421	-	-	17,463,263	12,090,421
Other taxes	33,566,693	32,306,868	-	-	33,566,693	32,306,868
Other	5,048,829	3,355,605	10,366,570	6,919,288	15,415,399	10,274,893
Total revenues	99,224,706	77,342,846	147,371,734	133,500,310	246,596,440	210,843,156
Expenses:						
General government	11,529,737	18,401,939			11,529,737	18,401,939
Public safety	37,990,332	36,263,547			37,990,332	36,263,547
Public services	5,165,268	4,817,070			5,165,268	4,817,070
Community revitalization	6,612,903	8,273,032			6,612,903	8,273,032
Culture and recreation	18,472,769	18,438,144			18,472,769	18,438,144
Interest on long-term debt	4,598,372	4,153,417			4,598,372	4,153,417
Golf course			1,524,659	1,575,803	1,524,659	1,575,803
Water			12,175,512	11,266,122	12,175,512	11,266,122
Wastewater			6,511,771	7,559,952	6,511,771	7,559,952
Energy			64,944,421	67,460,174	64,944,421	67,460,174
Airport			4,705,001	3,284,400	4,705,001	3,284,400
Utility Transportation			3,894,913	1,994,134	3,894,913	1,994,134
Sanitation			4,498,386	4,355,800	4,498,386	4,355,800
Storm drain			2,335,090	2,431,569	2,335,090	2,431,569
Ice Sheet			2,144,660	1,644,985	2,144,660	1,644,985
Total expenses	84,369,381	90,347,149	102,734,413	101,572,939	187,103,794	191,920,088
Increase in net position before transfers	14,855,325	(13,004,303)	44,637,321	31,927,371	59,492,646	18,923,068
Transfers	13,515,098	14,998,527	(13,515,098)	(14,998,527)	-	-
Change in net position	28,370,423	1,994,224	31,122,223	16,928,844	59,492,646	18,923,068
Net Position:						
Net position beginning	348,026,876	346,032,652	299,191,125	282,262,281	647,218,001	628,294,933
Net position ending	$ 376,397,299	$348,026,876	$ 330,313,348	$ 299,191,125	$ 706,710,647	$ 647,218,001

Sales and use taxes, which increased from the prior year, are generally the single greatest source of revenue for the City. In the current fiscal year, 20.85 percent of the City's revenues from governmental activities were derived from sales and use tax.



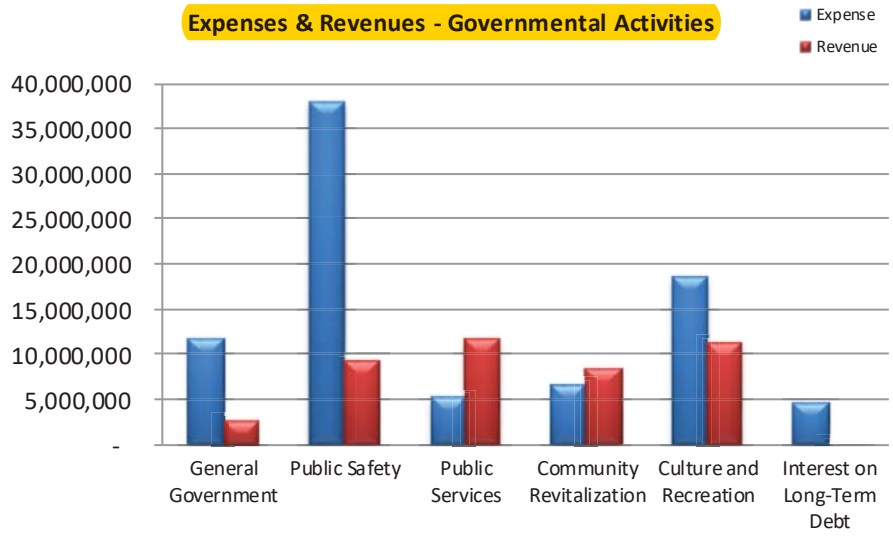
Another 17.60 percent of the City's revenue was derived from property taxes.

From the prior fiscal year, the revenue from sales, property and other taxes increased $6,632,667 or 14.94 percent. The increase is the result of higher property tax revenue, higher sales and use tax revenue, higher vehicle tax revenue, higher franchise tax revenue and higher Recreation Arts and Park (RAP) tax revenue.

The General Government category includes expenses for the following departments; Municipal Council, Mayor's Office, Community Development, Economic Development, Administrative Services, Legal and Non-departmental.

The Public Services category includes Road Projects, Engineering and Streets. The Public Safety category includes Police, Fire, and Emergency Response. The Community Revitalization category includes all fund expenses in the Commercial Rehabilitation, Rental Rehabilitation, Community Development Block Grant, Housing Rehabilitation, Tax Increment, Housing Consortium and the Provo Business Development Fund.

As reported on the statement of activities in the government-wide statements, net cost of services provided by governmental activities totaled $41,223,460. Public Safety, which includes fire and police, reports program expenses of $37,990,332; while program revenues were $9,218,552. The result is a net cost of services for Public Safety totaling $28,771,780.

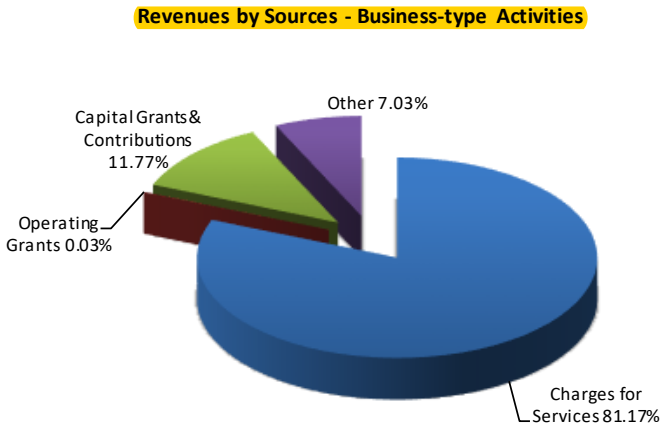


The net amount of revenue and expenses from Public Safety is 69.8 percent of the total net cost of services provided by the City for governmental activities.

Transfers between the governmental activities from the business-type activities totaled $13,515,098.

Business-type Activities

Business-type activities increased the City's net position by $31,122,223. The primary elements of this change are as follows.



For the business-type activities, program and general revenues were $44,637,321 greater than expenses (before transfers) and transfers of $13,515,098 resulted in the net increase of $31,122,223.

For business-type activities, 81.17 percent of the revenue came from charges for services.

FINANCIAL ANALYSIS OF THE GOVERNMENT'S FUNDS

As noted earlier, the City uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental Funds

The focus of the City's governmental funds is to provide information on near-term inflows, outflows and balances of spendable resources. Such information is useful in assessing the City's financing requirements. In particular, unreserved fund balance may serve as a useful measure of the City's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the City's governmental funds reported combined ending fund balances of $145,674,165; an increase of $4,289,713 from the prior year. The General Fund's portion of the total fund balance is $29,550,239; an increase of $6,722,970, of which $15,289,176 is unassigned. The General CIP Fund's portion of the total balance is $63,476,826: a decrease of $7,081,023 which is restricted for the construction of the Public Safety and City Facilities buildings. Other governmental funds and Debt Service comprise the remainder of the total fund balance in the amount of $49,257,300 and $3,389,800 respectively which is restricted, assigned or nonspendable.

The amounts that are unassigned represent funds not designated for a specific purpose. The remainder of fund balance is non-spendable, restricted, or assigned to indicate that it is not available for new spending. These amounts represent funds that are already committed to liquidate contracts and purchase orders of the prior period, pay debt, or a variety of other restricted purposes. See governmental fund detail beginning on page 31 of this report.

Proprietary Funds

The City's proprietary fund statements use basically the same accounting methods (full accrual) as those used in the government-wide statements. Because the accounting methods are similar, both statements provide the same types of information. However, the fund financial statements do present more detailed information about individual proprietary funds. See proprietary fund detail beginning on page 36 of this report. The internal service funds primarily benefit the governmental funds. Therefore, the internal service funds revenues that exceed expenses are eliminated in the government-wide statements. The activity of the internal service funds is grouped with the governmental funds on the government wide statements.

The City's Energy Department generates 52.4 percent of the Program Revenues (before operating transfers) for business-type activities.

Please Note – These minutes have been prepared with a timestamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, July 07, 2020

Electronic meeting: https://www.youtube.com/user/provocitycouncil

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor Shannon Ellsworth
Councilor George Handley
Councilor Travis Hoban
Councilor David Shipley
Council Executive Director Cliff Strachan
Council Attorney Brian Jones
Councilor Bill Fillmore
Councilor David Harding
Councilor David Sewell
Mayor Michelle Kaufusi
Chief Administrative Officer Wayne Parker

Conducting: Council Chair George Handley

Prayer

Councilor Bill Fillmore

Pledge of Allegiance

Council Chair George Handley

Presentations, Proclamations, and Awards

1. A presentation regarding the Arbor Day Foundation naming Provo a 2019 Tree City USA. (20-100) (0:14:01)

Chaz Addis, City Forrester, presented. He spoke about the requirements that had to be met to achieve this award. Provo has been named a 2019 Tree City USA by the Arbor Day Foundation to honor Provo's commitment to effective urban forest management.

Cities must meet four requirements to receive this honor:

1. Have a tree board or department;
2. Have a tree care ordinance;
3. Have an annual community forestry budget of at least $2 per capita; and
4. Have an Arbor day observance and proclamation.

To learn more about Provo's urban forest, including a tree tour, please refer to the Tree Selection Guide & Tour at this link: https://www.provo.org/home/showdocument?id=1482

The excellent work being done by this division was helping to reduce the number of power outages caused by trees and helped to improve the environment.

Councilor Harding and Chair Handley commended Mr. Addis and his team's work on this accomplishment.

Consent Agenda

Approval of Minutes

The following minutes were approved by unanimous consent:

- **March 31, 2020 Council Meeting Minutes**
- **June 16, 2020 Council Meeting Minutes**

Public Comment

Chair Handley opened public comment, there was no response.

Action Agenda

2. Resolution 2020-21 appointing individuals to various boards and commissions. (20-003) (0:23:26)

Motion: An implied motion to adopt Resolution 2020-21, as currently constituted, has been made by council rule.

Mayor Michelle Kaufusi presented. The following individuals were being recommended to serve on various boards and commissions:

- Provo City Housing Authority Board
  - Beth Alligood
  - Doug Gale
- Library Board
  - Allyson Condie
  - Jennifer Bruton
- Arts Council
  - Margaret Weber
  - Emilie Campbell

The Mayor and Council were appreciative of those who were willing to serve.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

3. Ordinance 2020-25 amending Provo City Code Section 14.33a.100 regarding terracing requirements (Critical Hillside Zone Only). (20-099) (0:29:46)

Motion: An implied motion to adopt Ordinance 2020-25, as currently constituted, has been made by council rule.

Brandon Larsen, Planner, explained the Planning Commission had recommended shifting authority to grant permission to increase the number or height of terrace walls from the Planning Commission to the

Development Services Director or their designee. This change was not included in the zone text (Provo City Code 14.33A) that the Council adopted on June 16, 2020.

Chair Handley opened public comment, there was no response. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

4. Ordinance 2020-26 Provo City Code to amend the list of Permitted Uses in the Community Shopping Center (SC2) Zone. Citywide application. (PLOTA20200137) (0:33:57)

Motion: An implied motion to adopt Ordinance 2020-26, as currently constituted, has been made by council rule.

Dustin Wright, City Planner, explained that earlier this year, the applicant applied for a business license to operate a business event center from a property located at 1440 N Moon River Drive in the SC2 zone. The business license was not granted because the use was not listed as a permitted or conditional use in the zone. The applicant has now requested an ordinance text amendment to add SLU #7230 to the list of permitted uses in the SC2 zone in Provo City Code 14.19.020.

Councilor Ellsworth asked if there was a sound ordinance to prohibit loud music after certain hours, as this was adjacent to a residential area. Mr. Wright explained the City's existing sound ordinance would apply and he thought this was enough.

Councilor Harding recalled that one of the Planning Commissioners said there were more intense uses that were conditional, and they asked if this should also be a conditional use, rather than permitted. Mr. Wright explained this was more for corporate and private events that would be held indoors, so it seemed to make sense in this zone.

The applicant, Mr. Herman, offered to answer any questions, there were none.

Chair Handley opened public comment, there was no response. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

5. Ordinance 2020-27 amending Provo City Code to add Bicycle Parking Ratios to Residential Developments that seek off-street parking reductions. Citywide Application. (PLOTA20200142) (0:42:23)

Motion: An implied motion to adopt Ordinance 2020-27, as currently constituted, has been made by council rule.

Austin Taylor, Parking and Sustainability Coordinator, explained bike parking ratios for projects seeking a parking reduction were added in September 2019. At that time, car parking reductions for residential projects were not allowed, thus the Council asked that residential bike parking ratios be taken out until car parking reductions for residential properties were adopted. In November 2019, provisions to allow

for off-street automobile parking reductions for residential properties were adopted. This amendment would replace the ratios that were taken out in September 2019. Planning Staff recommended approval.

Chair Handley opened public comment. There was no response. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

6. Ordinance 2020-28 amending Provo City Code regarding landscape buffers. Citywide application. (PLOTA20200143) (0:46:19)

Motion: An implied motion to adopt Ordinance 2020-28, as currently constituted, has been made by council rule.

Austin Taylor, Parking and Sustainability Coordinator, explained that Provo City Community and Neighborhood Services was requesting amendments to Provo City Code Section 15.20.110(3)(d) to legalize mulch and stone in landscaped buffers. This would allow developers to use less water in their landscaping.

Chair Handley opened public comment, there was no response.

Councilor Hoban asked if there had been any feedback from developers or businesses who would be impact. Mr. Taylor said there had been no pushback, but in fact, this had been requested by some developers.

There were no other questions from the Council. Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

7. Ordinance 2020-29 amending the Zone Map Classification of approximately 137.45 acres of real property across Provo from R2.5, R3, and R4 to Low Density Residential, Medium Density Residential, and High Density Residential, respectively. (PLRZ20190427) (0:54:24)

Motion: An implied motion to adopt Ordinance 2020-29 as currently constituted, has been made by council rule.

Items 7 and 8 were both read into the record by Chair Handley and presented by Javin Weaver, Planner. Mr. Weaver explained when the LDR, MDR, HDR and CMU zones were adopted by the Municipal Council in 2013 it was the Planning Department's intention to transition existing properties zoned R2.5-R4 to the zones. The proposed rezone would serve three objectives:

- It would allow for allow for the Low Multiple Residential Zone (R2.5), Medium Multiple Residential Zone (R3), (High Multiple Residential Zone (R4), Very High Multiple Residential Zone (R5) and Campus High Density Residential Zone (CHDR) zones to be removed from Provo City Ordinance;

- The LDR, MDR, and HDR zones require that the Residential Design Guidelines Standards (Provo City Code 14.34.285) are followed so therefore as properties are redeveloped the end product is more desirable;

- When the LDR, MDR, HDR, and Campus Mixed Use (CMU) zones were adopted it was the intent of planning staff that the R2.5, R3, R4, R5 and CHDR zones would be removed from the Provo City code. R5 and CHDR zones have not been used and no property is designated either zone. The CMU zone has accomplished the purpose and intent of the CHDR zone.

Chair Handley opened public comment, there was no response.

Councilor Ellsworth noted one of the reports said higher density was appropriate downtown; she asked how that integrates into this proposal. Mr. Weaver said the downtown area was the only place where these taller types of buildings are permitted. It was also noted that the R2.5, R3, R4, R5 and CHDR zones did not have design standards, whereas LDR, MDR, HDR, and Campus Mixed Use zones do.

With no other comments from the Council, Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

8. Ordinance 2020-30 amending Provo City Code to remove the Low Multiple Residential Medium Multiple Residential (Res), Medium Multiple Res, High Multiple Res, Very High Multiple Res, and Campus High Density Res Zones. Citywide application. (PLOTA20190428) (0:54:24)

Motion: An implied motion to adopt Ordinance 2020-30 as currently constituted, has been made by council rule.

Refer to item 7 above.

Chair Handley called for a vote on the implied motion to adopt Ordinance 2020-31.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

There was some discussion about the text that was adopted with Ordinance 2020-28 regarding landscape buffers. (1:04:38) It was determined this could be addressed in a future meeting; no motion was made.

9. ***CONTINUED* A Zone Change request from R1.10 to Low Density Residential for 1.07 acres for a townhome development, located at 50 E 3900 N. Riverbottoms Neighborhood. PLRZ20190265**

10. ***CONTINUED* Ord. Text Amendment to Code Sections 14.06.020 & 14.34.060 to add definition for "utility trailer" & provide clarification on the location of boats, boat trailers, & travel trailers in res. zones. Citywide application. PLOTA20200136**

11. ***CONTINUED* An Ordinance Text Amendment to add the Open Space (OS) zone to the Provo City Code (PCC) as Ch. 14.33 and to amend PCC Sec.15.20.080(2)(c) relating to supplemental landscape requirements. Citywide application. (PLOTA20200140)**

The Provo City Municipal Council recessed and reconvened as the Redevelopment Agency of Provo. Redevelopment Agency Chair Sewell presided.

Redevelopment Agency of Provo

12. Resolution 2020-RDA-07-07-1 of The Redevelopment Agency of Provo City authorizing the Chief Executive Officer to sign a Letter of Intent for the lease of office space in Downtown Provo. (20-097) (1:11:45)

Motion: An implied motion to adopt Resolution 2020-RDA-07-07-1 as currently constituted, has been made by council rule.

Keith Morey, Economic Development Director, presented. In May 2020, PEG came to the council to ask for help in reaching their prebuild lease of 60 percent, in order to get their funding released so they could start construction on the Freedom Commons Building. At that time, the Council assigned a subcommittee to discuss with PEG what they needed from the city and how to hold the city harmless. After two meetings the subcommittee returned to the Work Meeting on June 16, 2020, to present the details of the lease and why PEG needed the RDA to sign the lease. The Council voted to move forward with the letter of intent to lease space in the Freedom Commons Building from PEG.

Chair Sewell opened public comment, there was no response.

Councilor Fillmore had been part of several meetings regarding this matter and said the primary concern was to negotiate the letter of intent to reduce liability to the City. He felt confident Mr. Morey and Mr. Walter had done everything possible to accomplish this. Mr. Morey responded they had followed the recommendations of the City and Council.

Chair Sewell called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell, and Shipley in favor.

Adjournment

The meeting was adjourned by unanimous consent at approximately 6:40 p.m.

Please Note – These minutes have been prepared with a timestamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, October 06, 2020
Room 200, Municipal Council Chambers
Electronic meeting:
https://www.youtube.com/user/provocitycouncil

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor Shannon Ellsworth
Councilor George Handley
Councilor Travis Hoban
Councilor David Shipley
Chief Administrative Officer Wayne Parker
Council Executive Director Cliff Strachan
Councilor Bill Fillmore
Councilor David Harding
Councilor David Sewell
Mayor Michelle Kaufusi
Council Attorney Brian Jones

Conducting: Council Chair George Handley

Prayer – Bill Fillmore

Pledge of Allegiance – David Sewell

Presentations, Proclamations, and Awards

Chair Handley recognized Wayne Parker, Provo City Chief Administrative Officer, for receiving the 2020 Local Government Excellence Award from the International City/County Management Association. Chair Handley said that Provo City's form of government relied heavily on certain administrators to facilitate communication between the council and administrative offices. It was not an easy balance to maintain, especially with changes in elected officials over time. Mr. Parker had been exemplary in maintaining that balance and in his service to Provo. All who knew him appreciated his institutional knowledge and calming demeanor.

1. A presentation by Counselor Shannon Ellsworth commemorating the ratification of the 19th Amendment of the United States Constitution. (20-236) (0:15:52)

Ms. Ellsworth wanted to recognize the centennial anniversary of the Nineteenth Amendment, which gave women the constitutional right to vote. She shared a history of this important event with the council.

"The centennial anniversary of the Nineteenth Amendment gives us the opportunity to celebrate 100 years of women's constitutional right to vote. In this uncommon year we can honor the women who fought for women's suffrage and who promoted women's full and equal exercise for their right to vote and to participate in our democracy.

In 1848, one year before Provo was founded, the Seneca Falls Convention was held. This was the first women's rights convention. One participant declared that one-half of the moral and intellectual power was missing from government as long as women could not participate.

Decades later the Utah Territory first extended suffrage to women on February 12, 1870, and just two days later Salt Lake City held a municipal election. On her way to work as a schoolteacher, 24-year-old Seraph Young stopped by city hall. She walked into the building, cast her ballot, and made history as the first woman in the United States to vote under a women's equal suffrage law. However, seventeen years later, a federal act disallowed the enfranchisement of the women residents within the Utah Territory.

At a territorial suffrage meeting in 1894, Martha Hughes Cannon advocated for women's rights in Utah arguing that "one of the principal reasons why women should vote is that all men and women are created free and equal." When the Utah constitutional convention was approved and included women's suffrage in the new state constitution the following year, Martha was the first woman in Salt Lake City to register to vote. Then in 1896 Martha Hughes Cannon ran as a candidate for state senate, and swept the election.

In August of 1900 women of Utah County urged the county council to reconsider its plan to nominate only men for county offices, and they held a Provo Ladies Protest.

Alice Paul was a Quaker and a vocal leader of the twentieth century women's suffrage movement in Washington DC. In January 1917, Paul and over 1,000 protesters began the unprecedented practice of picketing outside of the White House. Alice Paul and her colleagues stood each day at the gates with signs. They endured verbal attacks and physical assaults, and eventually the local police arrested them on flimsy charges. Alice Paul and others were sentenced to jail for seven months because of their protesting methods. In jail, Alice Paul organized a hunger strike but doctors force-fed her and threatened to send her to an insane asylum. Alice Paul´s resolve never wavered, she said, "When you put your hand to the plow, you can't put it down until you get to the end of the row."

After media coverage and public outcry over her treatment, President Woodrow Wilson finally announced his support for women's suffrage. But it took two more years for the Senate, the House, and 36 states to approve the amendment that guarantees women the right to vote. Achieving this milestone required a long and painful struggle. This victory took several decades of protest and agitation. Few early supporters lived to see the final victory in 1920.

The early campaign for women's suffrage lasted more than 70 years, but ratification did not ensure full enfranchisement. Many American women were unable to vote long into the 20th century based on discriminatory state laws. Decades of struggle were necessary to include African Americans and minority women in the promise of voting rights.

We can all honor these women and their sacrifices by encouraging women in our homes, our schools, and our communities to register to vote and to participate in every single election. Justice Ruth Bader Ginsberg said, "Women belong in all places where decisions are being made." And in Provo, we need women making decisions in legislative and administrative offices, in board rooms, and especially in the voting booths. Women's votes can change the outcome of elections and women's votes can change the future."

Public Comment

Chair Handley invited public comment. There was no response to his request.

Consent Agenda (0:22:38)

Motion: An implied motion to approve the Consent Agenda, as currently constituted, has been made by council rule.

Approval of Minutes

- **March 10, 2020 Council Meeting Minutes**
- **August 18, 2020 Council Meeting Minutes**
- **September 1, 2020 Council Meeting Minutes**

2. Ordinance 2020-40 granting Qwest Corporation d/b/a CenturyLink QC a Franchise Agreement (20-091)

3. Resolution 2020-33 of the Provo City Municipal Council outlining support for the Provo School District General Obligation Bond. (20-115)

Seeing no objections or requests to remove items from the consent agenda, Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

The Municipal Council adjourned the council meeting and reconvened as the Redevelopment Agency by unanimous consent.

Redevelopment Agency of Provo

4. Resolution 2020-RDA-10-6-1 authorizing the Redevelopment Agency of Provo City to enter into interlocal agreements with several local governmental agencies to authorize the use of tax increment in the Center Street Community Development Project Area. (20-229) (0:25:40)

Motion: An implied motion to approve Resolution 2020-RDA-10-6-1, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, presented. The City Council recently approved the creation of a Center Street Community Development Project Area to help continue the revitalization of downtown Provo. McKay Christensen, a developer, had proposed a mixed-use development at the corner of Center Street and 100 East. The ground floor would be commercial and the remaining floors would be a mix of studio, one-bedroom, and two-bedroom apartments. Required parking would be provided in a parking structure in the center of the complex.

Mr. Christensen is requesting tax increment financing from the RDA to help bridge the gap between his equity financing and construction loans. This would be the first tax increment financing in this project area.

If approved, the resolution would authorize the RDA to sign interlocal agreements with the taxing entities affected by the tax increment financing. Those entities included Provo City, Utah County, the Provo School District, and the Central Utah Water Conservancy District.

Chair Sewell invited public comment.

Mr. Christensen, project developer, said he was available to answer any questions.

There were no further public comments. Chair Sewell invited board discussion.

Board Member Harding expressed his concern regarding overuse of tax increment financing. However, he thought this was a good example of when this tool should be used.

Board Member Fillmore felt this was the very reason the City had a Redevelopment Agency. He wanted to see more of this type of development on west Center Street, all the way to the freeway.

Chair Sewell reiterated these comments and called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Board Members Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

5. Resolution 2020-RDA-10-6-2 authorizing Provo City to enter into an interlocal agreement with the Redevelopment Agency of Provo City to authorize the use of tax increment in the Riverwoods Community Reinvestment Area. (20-230) (0:39:05)

Motion: An implied motion to approve Resolution 2020-RDA-10-6-2, as currently constituted, has been made by council rule.

Mr. Walter reported that the City Council had approved the creation of the Riverwoods Community Reinvestment Area. This was in response to Qualtrics announcing expansion of their corporate headquarters, located in Riverwoods. Qualtrics was a significant member of the Provo Community. They would be adding at least 150,000 square feet of office space and two parking structures, each with 500 parking spaces. This would help house more than 1,000 additional employees they expect to hire over the next ten years. Qualtrics would make some of the parking available to other visitors to the Riverwoods Business Park. Qualtrics would also use some of the financing to provide additional parking on a remnant lot they will be improving.

Mr. Walter said the tax increment (for both areas) was not available until after the projects were completed. There would not be any other funds contributed by the City or the RDA. It was an opportunity for us to help reimburse some of the costs associated with the projects. The tax increment generated by the expansion would be used to help pay for construction of parking in Riverwoods.

If approved, the resolution would authorize the RDA to sign interlocal agreements with the separate taxing entities. Mr. Walter noted that the council would approve its own interlocal agreement with the RDA.

In response to a question from Chair Sewell, Mr. Walter noted that when the state provided incentives they encouraged local participation also, but it was not mandated.

Ms. Ellsworth was concerned about giving away money to build parking next to the river. Mr. Walter said he could ask them to look at their plans and see if they could reverse their design and have the office space closer to the river. He noted that the parking structures, while not creating jobs themselves, provided parking for the additional employees that would work at Qualtrics.

Mr. Handley said he would like to know more about their transportation plans and how we could work with them to ensure better public transportation options as they grow. That area along University Avenue, heading up to the mouth of the canyon, was pretty congested during certain parts of the day. Anything we could do to reduce that traffic was a positive. Mr. Walter said they would like to see additional public transportation options at this location because it was a highly desirable area for businesses.

Chair Sewell invited public comment. There was no response to the request. He invited board discussion.

Ms. Ellsworth said she was not excited about this project. She felt uncomfortable allowing parking structures next to one of our greatest community assets. If this was approved, she felt we needed to reevaluate our city ordinances and understand what was allowed within proximity to the river.

Mr. Harding said he was uncomfortable with this proposal. While Qualtrics was an important part of our community, we should be giving our gratitude and not our tax dollars as a thank you. Property taxes would be better put to use paying for schools and public safety. Their new building would be built over their existing parking lot. In order to meet parking requirements, they would have to build parking structures, which were far more expensive, but more efficient. He felt that we were not paying for parking so much as facilitating their building expansion. He said there would be temporary parking across the street on vacant property adjacent to the river trail. Once the expansion was completed, that area could be redeveloped. However, because the state liked to see local buy-in if they were going to contribute, he was not opposed to the request.

Mr. Handley asked if the parking lot design would come back to the council for approval. In addition, could Qualtrics build some type of recreational amenities next to the river that would be available for their employees and the public?

Mr. Walter did not think the design plans would come back for approval because they were building to the standards in the Riverwoods Business Park. They could speak with the developers to see how far along they were in the design process and if it would be feasible for them to make a design change.

Ms. Ellsworth said the designs were approved by the Planning Commission. If we were not careful, it might end up looking like the river by the Macey's parking lot.

Chair Sewell supported the request but was open to suggesting that they look at the parking arrangement as it related to fronting the Provo River.

With no further board discussion, Chair Sewell called for a vote on the implied motion.

Vote: The motion was approved 6:1 with Board Members Ellsworth, Fillmore, Handley, Harding, Hoban, and Sewell in favor and Board Member Shipley opposed.

The Redevelopment Agency meeting was adjourned and the Municipal Council was reconvened by unanimous consent.

Action Agenda

6. Resolution 2020-34 authorizing Provo City to enter into an interlocal agreement with the Redevelopment Agency of Provo City to authorize the use of tax increment in the Center Street Community Development Project Area. (20-230) (1:02:17)

Motion: An implied motion to approve Resolution 2020-34, as currently constituted, has been made by council rule.

Mr. Walter said this was the companion item to the resolution just approved by the RDA board.

Chair Handley invited public comment. There was no response to the request.

Seeing no council discussion, Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

7. Resolution 2020-35 authorizing Provo City to enter into an interlocal agreement with the Redevelopment Agency of Provo City to authorize the use of tax increment in the Provo Riverwoods Community Reinvestment Area. (20-231) (1:04:04)

Motion: An implied motion to approve Resolution 2020-35, as currently constituted, has been made by council rule.

Mr. Walter said this was the companion item for the City to approve an interlocal agreement with the RDA.

Chair Handley invited public comment. There was no response to the request.

With no council discussion, Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 6:1 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, and Sewell in favor and Councilor Shipley opposed.

8. Resolution 2020-36 authorizing the issuance of Wastewater Revenue Bonds of Provo City, Utah. (20-102) (1:05:47)

Motion: An implied motion to approve Resolution 2020-36, as currently constituted, has been made by council rule.

Dave Decker, Public Works Director, presented. In late 2018, the City applied for a loan from the State Department of Environmental Quality for construction/remodeling of our wastewater treatment plant. This was necessary in order to meet phosphorous discharge regulations required by the state by the end of 2020. To give us time to make improvements to the treatment plant, the state gave Provo City a variance until 2025 to meet those regulations. Terms of the agreement included a $2 million principle forgiveness and loan of $75.8 million with an interest rate of 0.5% repayable over 20 years. We would pay interest only until the project was completed and the principle payments would not exceed $50,000 per year until 2027. This was not a general revenue bond, it was a utility revenue bond repaid by wastewater user fees paid each month by the residents. The last step to approving the loan was a public hearing and resolution authorizing the issuance of the bonds associated with the loan.

Eric Hunter, bond counsel for Provo City, reviewed the bond documents with the Council. The item included a public hearing required by state law and a resolution establishing the parameters for the bonds, as presented by Mr. Decker. The main bond document was a supplemental indenture, which would solidify and finalize the bond terms pursuant to the existing wastewater general indenture. If approved, the resolution would authorize publication of a 30-day bond issuance notification.

Chair Handley opened the public hearing. There was no response.

Mr. Harding thanked those that had worked on this and the state for their favorable loan parameters. This was not easy to do but it was critical for our community that we address the issues.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

9. Ordinance 2020-41 amending the zone map classification of approximately 2.31 acres at 4100 N Canyon Road and 3.42 acres at 3956 N Canyon Road from Residential Agriculture (RA) to Residential (R1.10). North Timpview Neighborhood. (PLRZ20200217) (1:19:08)

Motion: An implied motion to adopt Ordinance 2020-41, as currently constituted, has been made by council rule.

Aaron Ardmore, Provo City Planner, presented. This item was continued from the previous meeting in order to address some questions the council had concerning the zoning and the development layout. Mr. Ardmore reported that the majority of the proposed development was already in the R1.10 zone. The proposed ordinance would change the zone for the remaining portion of the development. The applicant had submitted an amended conceptual plan showing connections to the property on the north. The development still included three cul-de-sacs, typically discouraged by planning. However, several of the vacant parcels were surrounded by established homes so cul-de-sacs were the best way to connect through the lots.

Chair Handley invited public comment.

Kim Rubacado, living on property adjoining the proposed development, said her neighborhood had already seen the effect of high-density housing on University Avenue. She supported the planned proposal to rezone the land to R1.10. She asked that they do not change the zone to high density because it would change the historic feel of the neighborhood.

Dan Clark, Provo, lived in the area marked RA that would be rezoned to R1.10. He represented the trustee that owned his property and supported the change. The developer worked with Bill

Anderson, the owner, putting the plan together. The proposal was in keeping with the master plan – high density in that area was not wanted. The developer had been great to work with and had earned their trust.

(Name illegible) expressed concern that there had been a conversation about high density along Canyon Road. The residents were interested in finally getting a neighborhood plan for the North Timpview area. She hoped that the proposed update to the General Plan would be forward thinking and a much-needed diagram for the city's future needs. A well-balanced city needed a healthy mix of housing. There was already a lot of high density around the neighborhood. High density did not equal affordability.

Araceli Ngatuvai, North Timpview Neighborhood, supported the developers plan for R1.10 zoning. High density housing should not even be considered in this area.

Lucy Beutler, North Canyon Neighborhood, supported the R1.10 zoning. Loved their neighborhood because there were places to walk along Canyon Road and Timpview Drive. She felt strongly about preserving the nature of the community.

Sandra Chamberlain, North Timpview Neighborhood, just moved in the area two years ago. They appreciate the neighborhood feeling where you know your neighbors and their children, and they know yours. They lived for 14 years in south Provo but moved because the zoning was changed and a log of high-density housing was built. Slate Canyon had hundreds of town homes and condominiums, which was the result of changing the zoning. She supported the R1.10 zoning.

Kirk Tyler, North Timpview Neighborhood, supported the R1.10 zoning agreed with the other callers.

Brian Morrow, resident of Provo since 1987, just across the street from the proposed development. There were quite a few homes in poor condition when they moved to their current home. Over the past two decades they had purchased some of the homes, removed them, and built new homes. They had always anticipated this would be an R1.10 zone. This was the third time the vacant properties had been discussed, and every time the neighborhood supported keeping it R1.10.

Allie Conger, North Timpview Neighborhood, supported leaving the development as an R1.10 zone. Canyon Road was not equipped to handle increased traffic and parking if it was high density. There were already several high-density units being constructed along North Canyon Road. The proposed park, just south of this area, would also increase the amount of parking and traffic. The area also had a mix of residential housing.

Bonnie Morrow, North Timpview Neighborhood Chair, said their neighborhood was deceptive. It started at Edgemont Elementary and went all the way north to the canyon and included Canyon Road and Timpview Drive. There was a mix of homes in the neighborhood including

smaller 800 – 1200 square foot homes, all the way up to 3,000 square feet. Several condos in Three Fountains had been for sale all summer long. The neighborhood was a mix of all ages and demographics. For the first time in the history of the neighborhood, the stars had aligned. They had a property owner, a developer, and the residents all excited about the proposed plan. She asked that the council approve the R1.10 zone.

Megumi Matsuzawa said she had lived in the neighborhood for more than 20 years. She supported the R1.10 and against high density housing. The neighborhood was well established with a lot of different demographics.

Chris Pafford, living two blocks from the proposed development, supported the R1.10 zone. Lived in the area for 25 years and raised their children there. He worked in northern California and saw high density areas built where he worked. It was the fastest way to destroy a sense of community by packing in bodies.

No name given - was born and raised in the area and wanted to see it stay the same. They were already getting a lot of high-density housing – which was not necessarily cheaper. Wanted to see the land developed as proposed.

Cindy Reed lived near 3950 North Canyon Road and said there was a lot of traffic on Canyon Road and high density would increase that traffic. The only main roads were Canyon Road, Timpview Drive, and University Avenue. There were already many residential homes along Canyon Road. She requested a traffic study for 3950 North and Canyon Road if a high-density housing project was developed. She did not understand how the city council could deny this request since everyone agreed to the plan.

There were no more public comments. Chair Handley invited council discussion.

Mr. Fillmore felt a false alarm was sounded a couple of weeks ago. A couple of council members suggested the developer might reconsider and put in a higher medium density project. The developer had indicated that he had no interest in that and would not pursue the possibility. Mr. Fillmore felt this was a very good project and a nice fit for the community. The current proposal had total support from the neighborhood.

Ms. Ellsworth agreed with Mr. Fillmore's remarks. She was not sure where the idea of high density came from. She was interested in diverse housing types throughout Provo. It was healthy and sustainability for the entire city to have inclusive and diverse housing. She would be interested in a little more innovation, broader thinking, and a little more open mindedness when it came to housing projects in this area. She understood the neighbors had very specific desires and hoped they would not see people living in low, medium, or high-density housing as a threat. They were important individuals in the city. There might be different kinds of affordable or attainable entry level housing solutions such as accessory dwelling unit overlays, R1.8 or R1.6. She hoped we would not continue to do what we have always done but genuinely look for innovation and diversity.

Mr. Sewell loved to see it when the stars aligned. The property owner, developer, and the neighborhood were 100 percent in agreement. This development had staff support and unanimous recommendation from the Planning Commission. He fully supported the proposal.

Mr. Harding said people have different definitions of high density. An R1.8 zone was not his definition of high density. Many of the comments expressed fear based on the possibility of high density. What did they think it meant? If it was zoned R1.8, it was not forcing the developer to do anything, just broadened what was allowed. Earlier this year the council approved a PD zone a little further south on Canyon Road with some of the single-family houses connected. He said that all but two of the units had been sold. He hoped the community would see projects like that and realize it was not in conflict with the neighborhood. They could integrate nicely and get the housing type diversity (not demographic diversity) and benefits it would bring to a neighborhood. The council could consider rezoning to an R1.10 with an accessory overlay.

Mr. Jones said the council could approve something different from what the Planning Commission considered if it was more restrictive. If it was less restrictive, it would need to go back to the Planning Commission. Adding an accessory overlay would open up the permitted use, was less restrictive, and would need to go back to the Planning Commission before the Council could act on it.

Mr. Peperone, Development Services Director, agreed with Mr. Jones. It was consistent with previous discussions held on this exact issue.

Mr. Harding did not feel he could vote for the implied motion. He was interested in discussing whether an accessory overlay would be appropriate for this neighborhood. It did not force people to have an accessory unit; it just opened up the possibility.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 5:2 with Councilors Fillmore, Handley, Hoban, Sewell and Shipley in favor and Councilors Ellsworth and Harding opposed.

10. Ordinance 2020-42 amending Provo City Code relating to condominiums. Citywide Application. (PLOTA20200228) (2:08:27)

Motion: An implied motion to adopt Ordinance 2020-42, as currently constituted, has been made by council rule.

Robert Mills, Planning Supervisor, presented. A few years ago, in an effort to improve the overall development process, the city council changed the way they approved subdivisions. As long as the subdivision met all the requirements of the Coordinator's Review Committee (CRC), they could be approved administratively. They would not have to go to the Planning

Commission. In reviewing the current code, condominium approval was still required to go to the Planning Commission. The proposed ordinance would streamline approval of condominium plots, which would go through the same process as subdivision approval. The Planning Commission reviewed and approved the request. They said it actually helped housing because it would streamline the process for condominium conversion of apartments to actual units that could be sold and held privately.

Chair Handley invited public comment. There was no response to the request.

Chair Handley said this was the first time this item had been heard by the council. The item could be continued at the request of any councilor. Seeing no request for continuance, he called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

11. Ordinance 2020-43 amending the Zone Map classification of approximately 0.5 acres Of real property, generally located at 2022 W Center Street, from Residential Agricultural (RA) To General Commercial (CG). Fort Utah Neighborhood. (PLRZ20200275) (2:13:03)

Motion: An implied motion to adopt Ordinance 2020-43, as currently constituted, has been made by council rule.

Brandon Larsen, Provo City Planner, presented. The application included a half-acre parcel at the intersection of Center Street and Geneva Road. The request was to change the zoning from Residential Agricultural (RA) to General Commercial (CG). The parcel was surrounded by the CG zone on the west and south and on the east, it was the Shopping and Neighborhood Community zone. The applicant had not submitted a concept plan. He wanted to have it rezoned and then see what kind of offers he would receive from potential suitors. This proposal was in harmony with the policies of the neighborhood plan and the future land use plan.

Chair Handley invited public comment. There was no response to the request.

Mr. Shipley said he drove by that location quite often and it was basically an empty parking lot. It would not be a good location for a residential or agricultural use. The neighborhood was fully supportive of this action. Mr. Shipley supported taking this legacy parcel and making it consistent with the rest of the block.

Chair Handley asked if any councilor wanted to continue this item. Without such a request, he called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

12. An ordinance amending Provo City Code regarding swimming pool fencing and covering. Citywide Application. (PLOTA20200286) (2:18:43)

Motion: An implied motion to adopt the ordinance, as currently constituted, has been made by council rule.

Aaron Ardmore, Provo City Planner, presented. The proposed ordinance would delete the current code that limited protection for a swimming pool to a six-foot fence. The new proposal would reference and match the international building code. Our swimming pool section would automatically change in the future to match any changes to the international building code. The new code gave more options to residents and provided different barriers that people could use in order to meet building code. The Planning Commission recommended approval.

Chair Handley invited public comment. There was no response to the request.

Ms. Ellsworth asked if it should be more restrictive. Was this new code above and beyond the minimum? Mr. Ardmore said they were following the international building code regulations. Ms. Ellsworth was curious to know if any other councilors were interested in doing a little more homework to see what other cities have done. In some cities in Arizona, it was required to have a fence around the entire perimeter of the pool or have a certain type of lock on your door. There are better and safer restrictions that would keep people from having accidents with swimming pools. She said it was not a formal request to continue the item, but it was a request to do more homework. This was good but there might be better.

Mr. Harding believed that having a pool fully enclosed, along with other restrictions, were part of the international standards.

Ms. Ellsworth said there were different kinds of enclosures. There were some around the yard and some around the pool. In some cities, you had to have two locks on the back door going out to the pool if your back yard was fenced but there was not a fence around the pool.

Mr. Sewell asked if staff could pull up a description of what the international standard said about the safety requirements.

In response to a question from Mr. Hoban, Mr. Ardmore stated that pools already in place would be grandfathered in.

Mr. Hoban asked to continue this item. No one could say what the international standards for swimming pools were so they should take some time and do a little research. He did not want to vote on something that none of them were really educated on or knew what they were voting on.

Chair Handley said they would continue this item to their next meeting. In the meantime, they would look for more information about the international code and any discrepancies there might be with other cities.

13. Ordinance 2020-44 amending the Low Density Residential (LDR) and Very Low Density Residential (VLDR) Zones. Citywide Application. (PLOTA20200274) (2:28:13)

Motion: An implied motion to adopt Ordinance 2020-44, as currently constituted, has been made by council rule.

Mr. Ardmore said the proposed amendment was initiated by staff to address issues that had arisen with the LDR and VLDR zones. They found there were more rooftops than anticipated and developments did not fit with the character of the adjacent single-family residential neighborhoods. The proposal would make the following changes in the LDR and VLDR zones:

- LDR Zone
  - Reduce the maximum density from 15 units to 12 units.
  - Reduce the number of attached townhomes in a row from eight to six.
  - Reduce the minimum lot size for a single-family dwelling (on infill sites) from 5,000 square feet to 4,000 square feet.
- VDLR Zone
  - Reduce attached dwellings from seven to six.
  - Reduce the minimum lot size for a single-family dwelling (on infill sites) from 5,000 square feet to 4,000 square feet.

Chair Handley invited public comment. There was no response to the request.

Mr. Harding said he understood the request to reduce the LDR zone requirements but was a little confused about why the VLDR zone was being reduced. He asked staff what the rationale was behind the request.

Mr. Ardmore said that it was to address some of the lots in the older neighborhoods, such as the Pioneer Neighborhood. Many of those homes have deep lots but they are narrow. By reducing the required square footage, it would allow more infill development in those areas. It provided plenty of building space for a single-family home and allowed the setbacks to occur without variances.

Chair Handley reopened public comment.

Cindy Reed, Provo, said when they take a lower level of required space for spots, any developer would build as many homes as they could.

Public comment was closed, and Chair Handley invited council discussion.

Mr. Sewell had the same concerns as Mr. Harding. It felt we were aiming for a different density between the two zones and so he leaned toward not lowering the minimum lot size on the VLDR. Staff had brought back some good suggestions for the LDR, to make it more useful based on good experience with the zone. We don't have much experience with the VLDR zone yet so we should wait on those changes.

Ms. Ellsworth felt this was a good proposal and liked where it was going. She could support all the changes. It was smart to reduce the number of townhomes in a row. It would change the massing and make it more compatible instead of a big, long row of townhomes. She was fine with the smaller lot size for the VLDR. By allowing smaller lot sizes, it would allow developers to better subdivide lots. She said this was trying to facilitate smarter infill.

Mr. Harding shared Ms. Ellsworth's position on almost all of her points except one. He felt there should be a difference between the LDR and VLDR. Why have a separate zone if they were going to be similar. There should be a point at which a lot should not be subdivided because the acreage was too small. It was reasonable for lot size to be different in LDR and VLDR zones.

Mr. Harding requested that the item be continued since this was the first hearing. He wanted to discuss not changing the VLDR acreage requirement. The next item was asking for the VLDR zone but perhaps an LDR would be appropriate for that lot.

Chair Handley asked if there was any further discussion on this item or if staff had any questions about their concerns.

Mr. Ardmore said staff was confused about the next item. It came to the council a couple of months ago with some odd lot lines and council asked them to find a way to make it work. He felt this change to the VLDR zone would make the next proposal possible. If we do not want that change, staff needs to be informed on what direction they should go.

Brandon Larson, Provo City Planner, said the application for the next item had not been presented to the council before. An associated text amendment was approved last August. The concept plan for the upcoming item was looked at closely to facilitate the discussion of that text amendment. It seemed as though there was support for trying to facilitate a smarter configuration, to the point of considering reducing the square foot minimum.

Mr. Harding appreciated the clarification. One way to move forward would be to reduce the minimum lot size for single-family lots in the LDR zone from 5,000 to 4,000 and leave the VLDR zone at 5,000 with the understanding the difference was less density. For the lot in Franklin Neighborhood, they could rezone it as LDR, and it would accommodate what they wanted to accomplish.

Mr. Larsen said this item would need to go back to the Planning Commission because it was changing the VLDR zone to a less restrictive zone.

Mr. Harding said that both of the items were first hearings for the council so they had the ability to continue them. He would hate to change a zone in a way that he did not think made sense in order to accommodate one proposal.

Mr. Harding proposed the following motion, which would reduce the minimum lot size in the LDR zone from 5,000 to 4,000 square feet but keep the minimum lot size in the VLDR size at 5,000 square feet. Mr. Sewell agreed saying it made sense to keep the two zones a little distinct in the way they handled density.

Motion: Councilor Harding made a motion to amend the ordinance to remove the proposed lot size reduction from 5,000 to 4,000 in the VLDR zone but keep the lot size reduction in the LDR zone. The motion was seconded by Councilor Sewell.

Chair Handley asked staff if this was a good idea. Mr. Ardmore said they were fine with the change, but it would complicate the next item. That might be a separate issue if they were just looking at this language right now.

Ms. Ellsworth asked about the next item. If the applicant applied when the zone looked different, would we go by what the zone was when they applied? If we changed the parameters of a zone, would it impact their application? Mr. Ardmore said that if the VLDR zone were not changed, the applicant would have to submit a new application requesting a rezone to the LDR zone because of the lot size they were proposing.

Mr. Jones clarified that the motion, if it were to pass, would delete the reference to 14.14f.030 in the ordinance and then the second half of exhibit B would be deleted. The entire part of Exhibit B referring to the lot standards for the VLDR zone would just be deleted because nothing in that section would be changed.

Mr. Shipley had a hard time understanding the reasoning behind the change, other than to help the applicant with his project. Making this change citywide did not make sense. He was not ready to make a decision.

Mr. Peperone said the Planning Commission felt like reducing lot size to 4,000 square feet made sense if the city was trying to achieve infill development in the Pioneer neighborhoods. It was similar to a discussion about an accessory apartment. It was a way to increase density in a single-family area without having to upgrade infrastructure.

Mr. Harding supported that effort and logic but felt we already had a tool for that in the LDR zone. The VLDR was just recently created with less density than the LDR – we did not want to make the two zones match. It was good to have both tools. He suggested using the LDR zone for infill.

Chair Handley called for a vote on Mr. Harding's motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Mr. Jones made the approved changes to the ordinance. The implied motion was applied to the amended ordinance.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

14. An ordinance amending the zone map classification of approximately 0.25 acres of real property, generally located at 189 S 500 W, from Residential Conservation (RC) to Very Low Density Residential (VLDR). Franklin Neighborhood. (PLRZ20200124) (3:01:53)

Motion: An implied motion to adopt the ordinance, as currently constituted, has been made by council rule.

Brandon Larsen, Provo City Planner, presented. He asked for a continuance on this item so they could work on revising the application with the applicant.

In response to a question from Mr. Sewell, Mr. Larsen said the applicant originally submitted an application to split his lot into two 5,000 square foot lots. The plan included an oddly shaped lot, so the Planning Commission and Council asked to see something more straightforward. After the configuration issue, the applicant revised his plan based on the proposed VLDR text amendment the council just denied.

Chair Handley invited Jeffrey Rands, project developer, to comment.

Mr. Rands asked if there was a mechanism for him to change the application from the VLDR to an LDR zone. It would facilitate the application process rather than going through the application process all over again. The LDR zone, with a 4,000 square foot lot requirement would work with the development.

Mr. Jones said that made sense, but there was a problem because the LDR zone was more permissive than the VLDR and it was not what the Planning Commission considered. It was possible that planning staff could put this item on the next Planning Commission meeting without having to submit a new application.

Mr. Larsen said it would be easy to change the staff reports and re-notice the item.

Mr. Harding asked if we could argue that the Planning Commission already approved the 4,000 square foot lot, based on the recommended reduction of the VLDR lot size.

Mr. Peperone said he would like to see it approved, with that rationale, and move this item forward. He just pointed out that the minimum lot size for townhouses in the LDR zone was 10,000 square feet. This property was that size. He was comfortable that the applicant wanted to keep his home, but that was one nuance to the LDR zone they needed to consider.

Mr. Rands said his intent was to create a lot out of his large backyard. He had no intention of tearing down the existing house. It was an historic home that was about 107 years old.

Mr. Jones said he understood the applicant's desire and understood what Mr. Peperone was saying. The chances of something going wrong were very slim but there was always the possibility the plan could change once the rezone was approved.

Ms. Ellsworth said we should go through the proper steps. She was in favor of doing anything they could for the developer to speed up the process.

Mr. Rands said that, because of his full-time job with the federal government, he was used to procedures that needed to be followed. If it could not be approved that night, they would just need to amend his application to request an LDR zone.

Mr. Jones said they had a request from staff to continue the item and have staff work with the applicant. Staff could help him prepare a simple development agreement that stated he would be building one single-family home on the lot.

The easiest way to go forward would be for a council member to make a motion to continue this item and vote on it without opening up for public comment. The council could ask for public comment if they wanted.

Mr. Sewell made a motion to continue this item to the next meeting and ask for a simple development agreement. The motion was seconded by Mr. Harding.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

15. ***CONTINUED* D. R. Horton, Inc. requests a Zone Change from A1.20 to the Low Density Residential (LDR) zone for approximately 18 acres, located at 1920 S 500 W. Lakewood Neighborhood PLRZ20190182**

16. ***CONTINUED*The Development Services Dept. requests a Zone Change from Neighborhood Shopping Center (SC2) to Medium Density Residential for approximately 11 acres, located at 1920 W Center Street. Fort Utah Neighborhood PLRZ20200282**

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Adjourn

The meeting adjourned at 8:46 p.m. by unanimous consent.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: DMORTENSEN
Department: Finance
Requested Meeting Date: 12-15-2020

SUBJECT: A resolution appropriating a combined $134,000 in the General Fund for a wildland mitigation program, a behavioral-health services provider, and a continuity of operations plan. (20-252)

RECOMMENDATION: Approval of the appropriation resolution.

BACKGROUND: The Provo City Fire Department requests that an appropriation to the General Fund be approved for a combined $134,000. The appropriation includes $45,000 for a wildland mitigation program, $79,000 for public safety behavioral-health services, and $10,000 for a continuity of operations plan. The appropriations would be funded using fiscal year 2021 wildland fire response revenues.

FISCAL IMPACT: $134,000 in the General Fund - Funded by wildland fire response revenues

PRESENTER'S NAME: David Mortensen and Chief Jim Miguel

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-252

RESOLUTION 2020-.

A RESOLUTION APPROPRIATING A COMBINED $134,000 IN THE GENERAL FUND FOR A WILDLAND MITIGATION PROGRAM, A BEHAVIORAL-HEALTH SERVICES PROVIDER, AND A CONTINUITY OF OPERATIONS PLAN. (20-252)

WHEREAS, the Municipal Council of Provo City Corporation has received a recommendation from the Provo City Fire Department that a combined $134,000 be appropriated in the General Fund, consisting of $45,000 for a wildland mitigation program, $79,000 for a public safety behavioral-health services provider, and $10,000 for a continuity of operations plan; and

WHEREAS, the funding source for the appropriations is wildland fire response revenues; and

WHEREAS, on December 15, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, all persons for and against the proposed appropriation were given an opportunity to be heard; and

WHEREAS, after considering the Mayor's recommendation, and facts and comments presented to the Municipal Council, the Municipal Council finds the proposed appropriation reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah as follows:

PART I:

The Mayor is hereby authorized to appropriate $134,000 in the General Fund for a wildland mitigation program, a behavioral-health services provider, and a continuity of operations plan, applying to the fiscal year ending June 30, 2021.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

CITY COUNCIL BUDGET REQUEST
DECEMBER 15, 2020

provo
FIRE&RESCUE

2020 WILDLAND DEPLOYMENTS

Utah State Total	**$172,582.88**
EMAC 1	**$200,633.13**
EMAC 2	**$298,197.95**
Reimbursed Expenses	**$13,832.68**
Grand Total	**$685,246.64**
Overtime Costs	**$300,000.00**
Non Reimbursed Expenses	**$10,000.00**
Revenue	**$375,246.64**

Wildland Mitigation and Education Analyst

- Provo presents a significant wildfire threat. The entire eastern wildland/urban interface has the greatest potential for a catastrophic incident.
- Our goal is to achieve a partnership with our community, striving to ensure fire hazards are eliminated.
- Three components
  - Public Education
  - Enforcement
  - Mitigation

- State and Federal Funds and other resources

- Fiscal Impact
- $25, 000: Part time wages for 1000 hours $25.00
- $7,500: Printed materials, public meetings, vehicles expenses, other
- $12, 500: Abatement expenses (Potentially recovered through tax liens.)

Continuity of Operations

- Roadmap for management of major disruptions of City Functions.
- The principles of the COOP include:
  - Essential Functions
  - Succession and Delegations of Authority:
  - Continuity of Facilities
  - Continuity of Communications
  - Vital Records Management
  - Human Capital
  - Tests, Training and Exercises
  - Devolution of Control and Direction
  - Reconstitution

Provo Public Safety Behavioral-Health Services

Provo Fire and Rescue (sworn and civilian employees)

- Provo Emergency Communications
- Provo Police Department (sworn and civilian employees)

Training Resources:

- Provided virtual (and when requested or required live) instruction and training.
- Provide qualified Peer Support training, instruction, and clinical oversight.
- Provide training regarding HIPPA issues and peer support confidentiality.
- Provide both basic and advanced ICISF (International Critical Incident Stress Foundation) instruction and certification.

Counseling and Therapy Services:

- Provide annual "Wellness Visits".
- Provide therapy sessions within 24 to 48 hours when in crisis and in need of immediate support.
- Provide individual and group family sessions.

Peer Support

- Work with the department's Peer Support team.
- Provide a designated therapist for Peer Support team and provide the designated
- Peer Support Coordinator direct cell phone access to a clinician.
- Provide other training for Peer Support team as outlined above.

Critical Incidents:

- Provide CISD (Critical Incident Stress Debriefing) as needed.
- Provide CISD services both in-person and over a virtual platform.

Other Services:

- Provide a 24/7 "Responsive Resource Line".
- Assist individuals with access to higher levels of care.

Funding Request

The proposed contract amount is not to exceed $79,000. This provides services for a calendar year beginning January 2021.

Thank you!

provo

FIRE&RESCUE

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FIRE&RESCUE

DATE: December 1, 2020

TO: David Mortenson

FROM: Jim Miguel, Fire Chief

SUBJECT: Budget Adjustment Request for Wildland Mitigation Analyst

I am requesting $45,000 to be allocated from FY2021 Wildland Fire response revenue to establish a part-time Wildland Mitigation Program in Provo.

Many areas in Provo present a significant wildland fire threat. The entire eastern wildland/urban interface has the greatest potential for a catastrophic incident.

Our program will consist of three components

1. Public Education: We will expand our presence in hazard areas teaching fire safe behaviors.
2. Enforcement: We will survey hazardous areas and work with property owners to mitigate fire hazards on their property
3. Mitigation: We will work with our parks department, public works and Hazard abatement contractors to clean areas deemed a significant rick to adjacent properties. We will work with our code enforcement division to meet noticing requirements.

Our goal is to achieve a partnership with our community, striving to ensure fire hazards are eliminated.

Fiscal Impact

$25, 000: Part time wages for 1000 hours $25.00
$7,500: Printed materials, public meetings, vehicles expenses, other
$12, 500: Abatement expenses (Potentially recovered through tax liens.)

Continuity of Operations Funding Request

Continuity of Operations Plan is a roadmap for management of major disruptions of City Functions. The principles of the COOP include:

- Essential Functions: Critical activities to be performed during the disruption
- Orders of Succession: For City Administration and every department
- Delegations of Authority: Identifies authorities for making policy decisions at all levels
- Continuity of Facilities: Identification of Primary, Alternate, Contingency and Emergency facilities in case of a catastrophic failure
- Continuity of Communications: Restoration of communications that allow the capability to perform essential functions
- Vital Records Management: identification, protections and ready availability of electronic and hard copy documents and records.
- Human Capital: management of emergency and special category employees activated to perform assigned response duties
- Tests, Training and Exercises: Measures to ensure Provo's plan is capable of supporting the continued execution of essential functions throughout the event.
- Devolution of Control and Direction: Capability to transfer statutory control and responsibility for essential functions from primary operations staff and facilities
- Reconstitution: the process toward normal operations

The pandemic is a reminder that significantly impactful events come in many shapes and sizes. The Continuity plan could be activated in response to a wide range of events or situations – from a large fire in a building, to a natural disaster, to the threat or occurrence of a terrorist attack. Any event that makes it impossible for employees to work in their regular facility could result in the activation of the Continuity plan.

Funding Request: $10,000

Proposed Funding Source: FY2021 Wildland Response Revenue.

PROVO PUBLIC SAFETY BEHAVIORAL-HEALTH SERVICES FUNDING REQUEST

PROVO PUBLIC SAFETY – which encompasses Provo Fire and Rescue (sworn and civilian employees) and Provo Police Department (sworn and civilian employees) – is requesting proposals for specialized behavioral-health services from providers with substantial experience working with the first responder population to supplement its existing EAP (Employee Assistance Program).

The role of a public safety officer is physically and mentally demanding and emotionally draining. Public safety officers cannot effectively meet these daily demands and recover from the traumatic events that frequently come with the job, unless they are mentally and emotionally healthy.

Provo Public Safety is searching for a specialized behavioral-health provider who can provide comprehensive "Officer Wellness" services to help our employees develop emotional resilience, overcome strenuous activities and traumatic events, and, through counseling, training, and education, improve the mental and emotional health of its employees and make first responder wellness a top priority.

For providers to be considered, they must be able to provide the following services under the following conditions:

Confidentiality and Strict HIPAA Compliance:

- Provide telehealth counseling and other tele-behavioral-health services via an encrypted, HIPAA-compliant video platform.
- Provide education, training, certifications, instruction, and support using experienced, qualified instructors, clinicians, former first responders and/or other professionals with significant experience working with first responders; all services to be provided via HIPAA-compliant video platform and, where necessary, live (in person).
- Strictly adhere to all HIPAA rules and regulations and all other privacy laws, state and federal, for all behavioral-health sessions and services provided, whether provided to individuals, groups, or the department as a whole.
- Have established billing practices that clearly and rigorously protect the privacy of all individuals receiving services, both to protect the anonymity, privacy, and confidentiality of those who have utilized services but also to encourage otherwise hesitant employees to use services when services are needed.

Training Resources:

- Provided virtual (and when requested or required live) instruction and training on a wide-range of wellness and behavioral health topics for individual first responders, groups, or the department as a whole.
- Provide qualified Peer Support training, instruction, and clinical oversight.
- Provide training regarding HIPPA issues and peer support confidentiality on topics relevant to peer support functions.
- Provide both basic and advanced ICISF (International Critical Incident Stress Foundation) instruction and certification.

Counseling and Therapy Services:

Provide fully-licensed, seasoned, and culturally competent clinicians with years of experience working with the first responder population. All therapists must be trauma-trained/certified with experience treating PTSD and other forms of trauma, grief and loss, chemical dependency and other forms of addiction, depression and anxiety, for individuals, couples, and families.

- Provide annual "Wellness Visits" for each employee within the department. A wellness visit consists of an online session between an individual and a qualified therapist. Wellness visits allow the therapist and individual to become acquainted and allow the individual to discuss any topics or issues they wish to raise or discuss. Wellness checks must be provided by a qualified therapist and take place on an annual basis.
- Have the ability to provide therapy sessions by a qualified therapist within 24 to 48 hours when a member of the department is in crisis and in need of immediate support.
- Provide individual and group family sessions as needed.

Peer Support

- Work with (clinical partnership model) and support the department's Peer Support team.
- Provide a designated therapist to support the Peer Support team and provide the designated Peer Support Coordinator direct cell phone access to a clinician.
- Provide other training for Peer Support team as outlined above.

Critical Incidents:

- Provide CISD (Critical Incident Stress Debriefing) on an as needed basis.

- Have the ability to provide CISD services both in-person as well as over a virtual platform.

Other Services:

- Provide a 24/7 "Responsive Resource Line" for individuals within the department to connect with various resources and talk with former first responders. The Response Resource Line consists of a phone number that is manned 24/7 by an individual that can triage incoming phone calls and assists those calling in to identify and access various support resources.
- Assist individuals within the department when they need to access higher levels of care, such as inpatient, and residential services. If the Provider does not provide these services directly, they must have relationships with vetted, qualified providers.

Funding Need

The proposed contract amount is not to exceed $79,000. This provides services for a calendar year beginning January 2021.

Proposed Funding Source

Revenue from FY 2021 Wildland response.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: DMORTENSEN
Department: Finance
Requested Meeting Date: 12-15-2020

SUBJECT: A resolution transferring $235,000 from the General Fund to the Golf Fund. (20-245)

RECOMMENDATION: Information only. This item is scheduled to be heard in the Council Meeting on December 15, 2020.

BACKGROUND: The Golf Fund suffered operating losses during and as a result of a combination of events that had a negative impact on operations, namely, the golf course hole realignment construction project and the COVID-19 pandemic. State code requires the fund to have an unrestricted fund balance of at least 5% of revenues. A transfer of $235,000 from the General Fund is required to bring the Golf Fund unrestricted fund balance into compliance.

FISCAL IMPACT: $235,000 from General Fund Balance

PRESENTER'S NAME: David Mortensen

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-245

RESOLUTION 2020-.

A RESOLUTION TRANSFERRING $235,000 FROM THE GENERAL FUND TO THE GOLF FUND. (20-245)

WHEREAS, the Municipal Council of Provo City Corporation has received a recommendation from the Provo City Finance Division that $235,000 be transferred from the General Fund to the Golf Fund to compensate for Golf Fund operating losses and to maintain the minimum 5% fund balance in the Golf Fund that is required by the State; and

WHEREAS, the operating losses in the Golf Fund occurred during and as a result of a combination of events that had a negative impact on operations, namely the golf course hole realignment construction project and the COVID-19 pandemic; and

WHEREAS, on December 15, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, all persons for and against the proposed transfer were given an opportunity to be heard; and

WHEREAS, after considering the Mayor's recommendation, and facts and comments presented to the Municipal Council, the Municipal Council finds the proposed transfer reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah as follows:

PART I:

A $235,000 transfer from the General Fund to the Golf Fund is hereby authorized, applying to the fiscal year ending June 30, 2021.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: KTAPHE
Department: Council
Requested Meeting Date: 12-15-2020

SUBJECT: An ordinance amending Provo City Code to allow more options for conducting Neighborhood Chair elections. (20-253)

RECOMMENDATION: Adopt the ordinance amending Provo City Code 2.29.030.

BACKGROUND: Provo City Code 2.29.030 requires that those voting in the election of a Neighborhood Chair and Vice Chair(s) be present in person at the neighborhood meeting where the election is being held. Current pandemic conditions have restricted in-person gatherings in the interest of safety and health. There are some neighborhoods with Neighborhood Chair vacancies and others where the Chair's term has expired. Neighborhood meetings have moved entirely online now that it is too cold for an outdoor meeting option. An adjustment to the City Code is needed to allow the elections to be held in an online meeting. This is also an opportunity to establish a consistent set of rules to guide the elections. The Neighborhood Advisory Board met November 23, 2020, to review the proposed amendment and gave a unanimous recommendation to bring it to the Municipal Council for approval.

FISCAL IMPACT: none

PRESENTER'S NAME: Karen Tapahe, Community Relations Coordinator

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Chapter 1, Land Use, Growth, and Urban Design
1.4.2.4 Provide and publicize a clearinghouse for information about neighborhoods for residents.
1.4.7.1 Use social networking, the Internet, and other communications tools and technology to involve all individuals in neighborhood discussions and activities.
1.4.10 Help neighborhoods become well informed and educated on city-related issues.
1.4.10.1 Have effective communication tools in place to disseminate information to the public.

CITYVIEW OR ISSUE FILE NUMBER: 20-253

ORDINANCE 2020-.

AN ORDINANCE AMENDING PROVO CITY CODE TO ALLOW MORE OPTIONS FOR CONDUCTING NEIGHBORHOOD CHAIR ELECTIONS. (20-253)

WHEREAS, it is proposed that Provo City Code Chapter 2.29.030 (Neighborhood Program Organization) be amended to allow more options for conducting Neighborhood Chair elections; and

WHEREAS, a worldwide outbreak of novel coronavirus disease (COVID-19) has been characterized by the World Health Organization as a pandemic; and

WHEREAS, federal, state, and local authorities have recommended that individuals limit public gatherings; and

WHEREAS, Provo City Code currently requires those voting in a Neighborhood Chair election to be present in person at the meeting where the election is being held; and

WHEREAS, there is currently a need to fill vacancies in the Chair position in several neighborhoods and to address those with expired terms; and

WHEREAS, the Neighborhood Advisory Board met on November 23, 2020 to review the proposed changes and unanimously recommended approval to the Municipal Council; and

WHEREAS, on December 15, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds that (i) Provo City Code should be amended as set forth below, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

Provo City Code Section 2.29.030 is hereby amended as follows:

2.29.030. Organization.

(1) Neighborhood. Each Neighborhood shall be guided by the provisions of this Subsection.

(a) In a meeting held under the direction of the Municipal Council Executive Director, each Neighborhood shall elect its Chair and one (1) to three (3) Vice-Chairs, subject to the availability of residents willing to serve. Vice-Chairs serve in the absence of the Chair and assist with Neighborhood Chair responsibilities. The Chair and each Vice-Chair shall be a resident of the Neighborhood which they are elected to represent and shall be elected, in accordance with rules established by the Municipal Council Executive Director, by a majority of the adult residents of the Neighborhood who are present ~~in person~~ at the election meeting. Chairs are elected to serve approximately four (4) years. Vice-Chairs are elected for a period corresponding with that of the current Chair. If, for whatever reason, a Chair ceases to serve during that period, the current Vice-Chair(s) shall continue to serve until the election of a new Chair, at which point a new election shall also be held for the Vice-Chair positions. Newly elected Neighborhood Chairs shall be formally recognized at an ensuing Municipal Council meeting.

. . .

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

Flexibility in election options

Neighborhood Program

Current situation

- Current City Code requires people to be **in person** at the meeting to elect a Neighborhood Chair
- Health and safety guidelines have prevented in-person meetings
- Online neighborhood meetings have been working well
- We need to fill some vacancies and address expired terms

Current situation

- 6 neighborhoods are overdue for elections (expired terms)
- Franklin and Lakeview North Neighborhoods need to replace Chairs who stepped down.
- Provost South’s Chair is moving in the next month.
- 6 neighborhoods are due for elections in 2021 (4 in the first 4 months)

2.29.030

(1) Neighborhood. Each Neighborhood shall be guided by the provisions of this Subsection.

(a) In a meeting held under the direction of the Municipal Council Executive Director, 44 each Neighborhood shall elect its Chair and one (1) to three (3) Vice-Chairs, subject to the availability of residents willing to serve. Vice-Chairs serve in the absence of the Chair and assist with Neighborhood Chair responsibilities. The Chair and each Vice-Chair shall be a resident of the Neighborhood which they are elected to represent and shall be elected, in accordance with rules established by the Municipal Council Executive Director, by a majority of the adult residents of the Neighborhood who are present ~~in person~~ at the election meeting. Chairs are elected to serve approximately four (4) years. Vice-Chairs are elected for a period corresponding with that of the current Chair. If, for whatever reason, a Chair ceases to serve during that period, the current Vice-Chair(s) shall continue to serve until the election of a new Chair, at which point a new election shall also be held for the Vice-Chair positions. Newly elected Neighborhood Chairs shall be formally recognized at an ensuing Municipal Council meeting.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: NLA
Department: Development Services
Requested Meeting Date: 12-15-2020

SUBJECT: An ordinance amending the Zone Map classification of approximately 8.5 acres, generally located at 1724 South State Street, from CM, RA, R1.6, R1.10, and A1.5 to the MDR Zone. Spring Creek Neighborhood. (PLRZ20190356)

RECOMMENDATION: Information only. This item is scheduled to be heard in the Council Meeting this evening. The Planning Commission has recommended approval (8:1, Dave Anderson opposed).

BACKGROUND: This item was considered, and ultimately continued, at the November 11, 2020 Planning Commission meeting. The Planning Commission asked staff to provide information relative to the following: (1) Commercial development under-performance in the South State area and (2) demographic and housing stock data. The Planning Commission expressed the sentiment that commercial development is not thriving in the South State Street area of the City and request additional information. Speaking of the current commercially zoned property on South State between 900 South and 1860 South, most of it is for heavy commercial (CM Zone) uses. There is approximately 10 acres of land zoned SC2 (Community Shopping Center) and approximately 3.5 acres zoned SC1 (Neighborhood Shopping Center). The property in the SC2 Zone has been in said zone since about 2001 and has yet to development. The property zoned SC1 has been zoned such since 1998 and a portion of it was developed in 2013 for a gas station.

FISCAL IMPACT:

PRESENTER'S NAME: Brandon Larsen (801) 852-6408, jblarsen@provo.org

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: PLRZ20190356

DEVELOPMENT SERVICES

Planning Commission Hearing Staff Report
Hearing Date: December 9, 2020

ITEM # 1* George Bills of Gardner and Associates, requests the rezoning of approximately 8.5 acres from CM (Heavy Commercial), RA (Residential Agricultural), R1.6 (One-Family Residential, 6000 SF), R1.10 (One-Family Residential, 10,000 SF), and A1.5 (Agricultural, 5 acre) to the MDR (Medium Density Residential) Zone, to facilitate the construction of a 204 dwelling units (30 townhomes, 30 studio apartments, 64 2-bedroom apts., 80 1-bedroom apts.), located at approximately 1724 S. State Street. Spring Creek Neighborhood. Brandon Larsen (801) 852-6408, jblarsen@provo.org PLRZ20190356

Applicant: Gardner and Associates

Staff Coordinator: Brandon Larsen

Property Owner: Zions M-13 Development, LLC; et al.

Parcel ID#: 22:046:0169, et al.

General Plan Designation: Mixed Use Development

***Southeast Neighborhoods Plan* – Recommended Future Land Use**: MDR (Medium Density Residential Zone)

Current Zoning: CM (Heavy Commercial), RA (Residential Agricultural), R1.6 (One-Family Residential, 6000 SF), R1.10 (One-Family Residential, 10,000 SF), and A1.5 (Agricultural, 5 acre)

Proposed Zoning: MDR (Medium Density Residential)

Acreage: 8.46 acres

Number of Properties: 14

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is January 13, 2020, 6:00 P.M.*
2. **Recommend Denial** of the proposed zone map amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Current Legal Use: The subject property comprises multiple parcels. Much of the property is vacant; however, there are multiple dwellings and other residential accessory structures on the northwest corner of the property. There are also many structures on the northeast portion of the land, including a dispatch office for dump truck operations for a landscape company.

Relevant History:
Two (2) dwellings have existed on the northwest corner of the subject property since the 1920s. An office building (1960) and an industrial building (1950) are located on the northeast corner of the property. The property was originally platted as Bay view, Plat "H," which included dozens of small lots.

Neighborhood Issues:
A neighborhood meeting was held on October 3, 2020. The neighborhood had questions about drainage and traffic. On Open City Hall (City website), a few issues that were referenced in relation to the proposal are number of high-density units in Provo and lack of one-family homes, traffic impacts, and design standards.

Summary of Key Issues:

- This item was continued from the November 11, 2020 Planning Commission Meeting
- The applicant is proposing to rezone the subject property to the MDR Zone
- Future Land Use Map, Southeast Neighborhoods Plan, calls for MDR zoning for the property
- Associated concept plan proposes 204 dwelling units

Staff Recommendation:
Staff recommends that the Planning Commission forward a positive recommendation to the Municipal Council for a zone change from the CM, RA, R1.6, R1.10, and A1.5 zones to the MDR Zone.

UPDATE

This item was considered, and ultimately continued, at the November 11, 2020 Planning Commission meeting. The Planning Commission asked staff to provide information relative to the following: (1) Commercial development under-performance in the South State area and (2) demographic and housing stock data.

Commercial development

The Planning Commission expressed the sentiment that commercial development is not thriving in the South State Street area of the City and request additional information. Speaking of the current commercially zoned property on South State between 900 South and 1860 South, most of it is for heavy commercial (CM Zone) uses. There is approximately 10 acres of land zoned SC2 (Community Shopping Center) and approximately 3.5 acres zoned SC1 (Neighborhood Shopping Center). The property in the SC2 Zone has been in said zone since about 2001 and has yet to development. The property zoned SC1 has been zoned such since 1998 and a portion of it was developed in 2013 for a gas station.

The areas zoned for shopping center use are in harmony with the Southeast Neighborhoods Plan (SE Plan). A portion of the Neighborhood Shopping Center section of the SE Plan states the following: *"Two commercial nodes are identified as key locations where neighborhood-scale shopping centers could be a valuable enhancement to the quality of life for this neighborhood. These nodes occur at the intersections of 1320 South State Street and 1860 South State Street."* This section of the SE Plan references the importance of rooftops for the viability of the commercial nodes. In the last couple of years, the City has approved approximately 540 units in this area—adding potential customers for businesses. This development would add 204 more units for a total of approximately 740 units.

It appears the development community has responded to the City's beacon for more rooftops in the area. Rooftops is one consideration relative to the viability of commercial development. Another consideration is location. This property is situated on State Street on the southeast end of Provo. It lacks the benefit of a central location and proximity to a freeway interchange, as opposed to the East Bay area. The motoring public or visitors to the area is another consideration for this area. This area is a major connection between Provo and Springville, which receives moderately high amounts of traffic during rush hours. It would seem much of traffic in this area, besides local residents, is due to people commuting between Provo and Springville. Staff believes motorists who are interested in shopping will take other routes to other parts of City.

With the existing population and the approved plans for many additional dwellings, the South State area is a good location for the type of smaller-scale commercial development that is permitted in the Neighborhood Shopping Center (SC1) Zone. When asked about the viability of commercial development in the South State area, Keith Morey, Provo City Economic Development Director, concurs that the South State area is an appropriate location for neighborhood commercial development to serve the local residents, but he believes this area—which is not centrally located and is historically not a place people think of in relation to shopping—would struggle supporting

community or regional shopping centers. He agrees with the idea that the viability of commercial development in the South State Street area is complicated by the income level of the local residents.

A portion of Section 1.2.9 of General Plan states the following regarding the South State Street corridor: "*The intent of this policy is to create a mixed-use corridor with uniform public and private property design and development standards that are conducive to both of the adjacent neighborhoods and that will enhance the character of South State Street*" (see *South State Street Corridor Development Policies paragraph of Section 1.2.9).* The City has adopted a set of corridor design standards for the South State Street area of the City, which will help in the beautification of the area. Mr. Morey believes the beautification of the area will aid in attracting commercial development to the area. Staff acknowledges that it will take some time to see positive outcomes in relation to the design standards for the South State area.

South State is a developing area that has recently added or will be adding a significant number of rooftops. It is an area with design standards that will help to beautify the area. There is a lack of commercial opportunity for local residents in the area. Staff believes the South State area could support neighborhood commercial development at the locations recommended in the SE Plan, as noted above.

Demographics and housing stock

As noted above, the City has approved a significant number of housing units in the South State Street area. Without the proposed development, the City has approved approximately 540 units. Of the approved units, there are 201 townhomes (37% of approved units) and 336 apartments and condominiums (63% of approved units). The proposed development would add an additional 174 apartments and 30 more townhomes, which would increase the total new units for the South State Street area to approximately 740 units (68% apartments and 32% townhomes).

A portion of the Existing Characteristics chapter of the SE Plan states the following: "*The Spring Creek neighborhood . . . is comprised primarily of attached, single-family homes*" (see *Households* paragraph). Attached, single-family residents are townhomes. According to data in the Households section of the Existing Characteristics Chapter of the SE Plan, as of publication (2015), 53-percent (53%) of the housing stock in the Spring Creek Neighborhood is attached, single-family. Apartments are 7-percent (7%) of the stock and single-family detached is 13-percent of the total stock. Other housing types, such as duplexes (8%) and multi-family (2%) round-out the total housing stock. Single-family homes comprise 60-percent (60%) of the housing stock in the Spring Creek Neighborhood. The recently approved units have increased the percentage of apartments and decreased the percentage of other housing types in the Spring Creek Neighborhood.

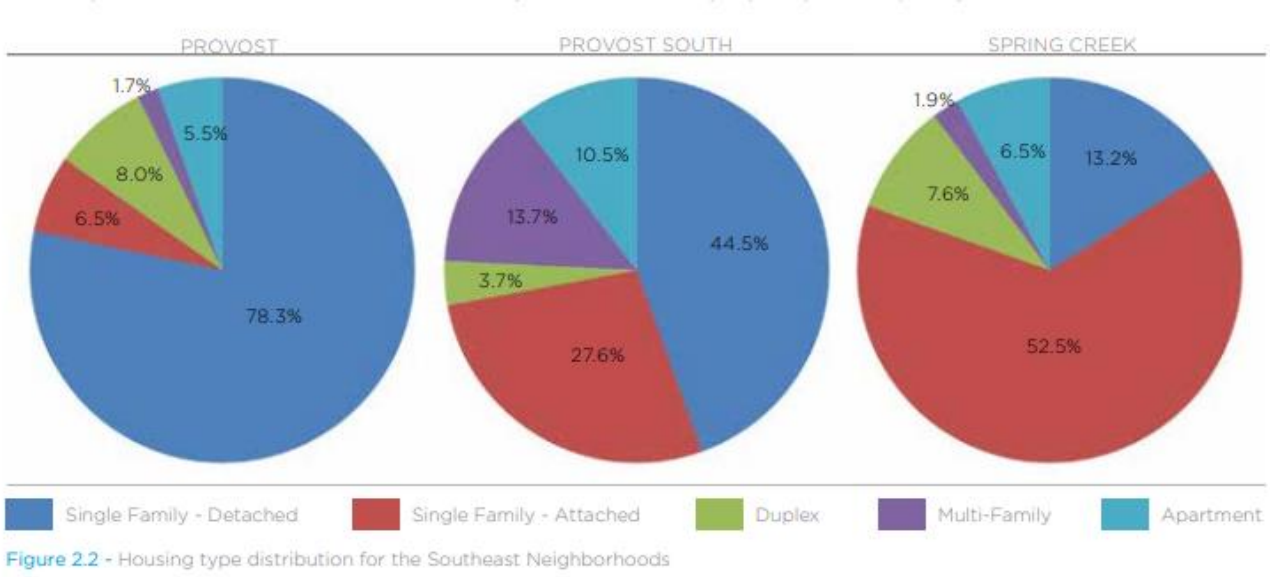


Figure 2.2 - Housing type distribution for the Southeast Neighborhoods

Staff does not have an accurate number of existing dwellings for the Spring Creek Neighborhood. The SE Plan considers the Provost and Provost South neighborhoods, in addition to the Spring Creek Neighborhood. According to the SE Plan, there are 2718 dwelling units among all three (3) neighborhoods, so the potential addition of 740 units to the Spring Creek Neighborhood is very significant. This is a 27-percent increase for the three (3) neighborhood area, and a much higher percentage for the Spring Creek Neighborhood.

Relative to tenure, the SE Plan establishes that approximately 55-percent (55%) of the dwelling units in the Spring Creek Neighborhood are owner-occupied. With the large number of recently approved units, many of which are apartments, it seems this percentage will decrease.

A very significant number of dwelling units has been added to the South State area. This proposal would be another large addition. If you apply the "Average household size[1]" of Provo (3.2) to the possible 740 dwelling-units, you have a population increase in the Spring Creek Neighborhood of 2,368 people.

BACKGROUND

The subject property lies on South State, just north of the intersection of State Street and Lakeview Parkway (1860 South) in the Spring Creek Neighborhood. It is bordered on the north by storage units, State Street on the east, Treeside Charter School (TCS) and a rail line on the west, and vacant land to the south. The *Provo City Transportation Master Plan 2020, Major and Local Street Plan* calls for a future collector to run parallel with, and east of, the railway. Land west of the subject property lies in unincorporated Utah County and has an industrial zoning designation. Some of the land to the south also lies in unincorporated Utah County and has an agricultural/residential designation. A portion of the land to the south lies within the city boundaries and has an A1.5 zoning designation.

[1] QuickFacts, Provo city, Utah. United States Census. <https://www.census.gov/quickfacts/provocityutah>. Accessed on December 2, 2020.

The subject land is in a high-water table area and the National Wetlands Inventory Mapper shows potential wetlands on the property.

Portions of the subject property (new construction, etc., which are located within one hundred [100] feet of South State Street) lies in the South State Street Design Corridor. This Design Corridor has a set of design standards to, among other things, "promote attractive development."

The property is comprised of 14 parcels that total 8.46 acres. There are residential buildings on the northwest portion of the property and commercial/industrial buildings on the northeast. Most of the property is vacant.

The applicant is requesting MDR zoning for the subject property. The closest MDR zoned property lies 750 feet to the north. The zoning of the surrounding property is as follows:

- North: R1.10 (One-Family Residential, 10,000 SF) & PRO-A36 (Spring Creek High Occupancy)
- South: A1.5 (Agricultural, 5 acre)
- East: CM (Heavy Commercial) & PF (Public Facilities)
- West: M2 (Heavy Manufacturing) & I-1 (Industrial, Utah County)

The associated concept plan calls for 204 dwelling units (30 townhomes, 30 studio apartments, 64 2-bedroom apartments, 80 1-bedroom apartments). The subject property is bisected by a driveway that runs west to TCS. The north portion of the property would have 174 units and 30 units would lie on the south portion.

STAFF ANALYSIS

General Plan Policies. The subject property has a Mixed-Use land use designation. A portion of the Mixed-Use Development Areas paragraph of Section 1.2.8 of the General Plan establishes the following policy: "*Determine the appropriate mix and intensity of residential and commercial development near future determined neighborhood centers.*" The Future Land Use Map of the Southeast Neighborhoods Plan proposes a Neighborhood Shopping Center (SC1) Zone just south the subject land.

The recommended zoning for the subject property, as per the *Future Land Use Map* of the *Southeast Neighborhoods Plan*, is MDR. This Southeast Neighborhoods Plan was adopted by the City after going through a public process. It appears the City went through a process to determine "the appropriate mix and intensity of residential and commercial development" for the area surrounding the subject property.

Southeast Neighborhoods Plan recommends locations for the MDR Zone in the Spring Creek and other Southeast neighborhoods. The *Land Use* Chapter of the *Southeast Neighborhoods Plan* outlines the City's policies for those areas recommended for MDR zoning. The *Medium Density Residential (MDR)* Zone paragraph reads, as follows:

> "The MDR zone permits multi-family dwellings as dense as 30 units per acre. Allowing these higher densities west of State Street could encourage appropriate development to accommodate the population needs in the area necessary to incentivize the desired neighborhood

> shopping center. It is recommended that commercial uses also be permitted in this area."

The net density of the proposed development is as follows: North Portion (26.47 units/acre) and South Portion (19.87 units/acre).

The rezone of the subject property to the MDR Zone—particularly with the proposed development detailed on the concept plan—would help support neighborhood shopping center-type development. Residential development provides customers for commercial establishments, and commercial establishments would provide services to this commercially under-served area of the city.

Findings of Fact. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of zoning map amendments:

> Upon receipt of a petition by the Planning Commission, the Commission shall hold a public hearing in accordance with the provisions of Section 14.02.010 of this Title and may approve, conditionally approve, or deny the preliminary project plan. Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan: (responses in bold)

(a) Public purpose for the amendment in question.

To provide additional housing opportunities in the Spring Creek Neighborhood.

(b) Confirmation that the public purpose is best served by the amendment in question.

The proposal will help to facilitate the development of additional dwelling units. It would be good to have additional detached, single-family dwellings constructed in the Spring Creek Neighborhood, and in south Provo generally. However, the location of this property, including its proximity to industrial areas and State Street, suggests that detached, single-family dwelling proposals are not likely. Again, the Southeast Neighborhood Plans recommends the MDR Zone for this property.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

This proposal is in harmony with the *Southeast Neighborhoods Plan* and is compatible with the General Plan.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Staff is not aware of any timing or sequencing issues with this request.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

It does not appear that this proposal will hinder or obstruct attainment of the General Plan's articulated policies.

(f) Adverse impacts on adjacent landowners.

Traffic will increase in an area that already has traffic issues, at certain times of the day, because of TCS. There will be increased traffic around the school.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

The General Plan and zoning have been verified for correctness.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

The General Plan Map and policies appear to support this proposal.

Conclusion. The proposed zone map amendment appears to be in harmony with the General Plan and Southeast Neighborhoods Plan. The Southeast Neighborhoods Plan recommends MDR zoning for the subject property. This amendment could help facilitate additional housing opportunities in the Spring Creek Neighborhood, including the applicant's 204-unit development proposal. These additional dwellings would generate further need/interest for commercial services and development in the South State area of Provo.

ATTACHMENTS

1. Current Zoning

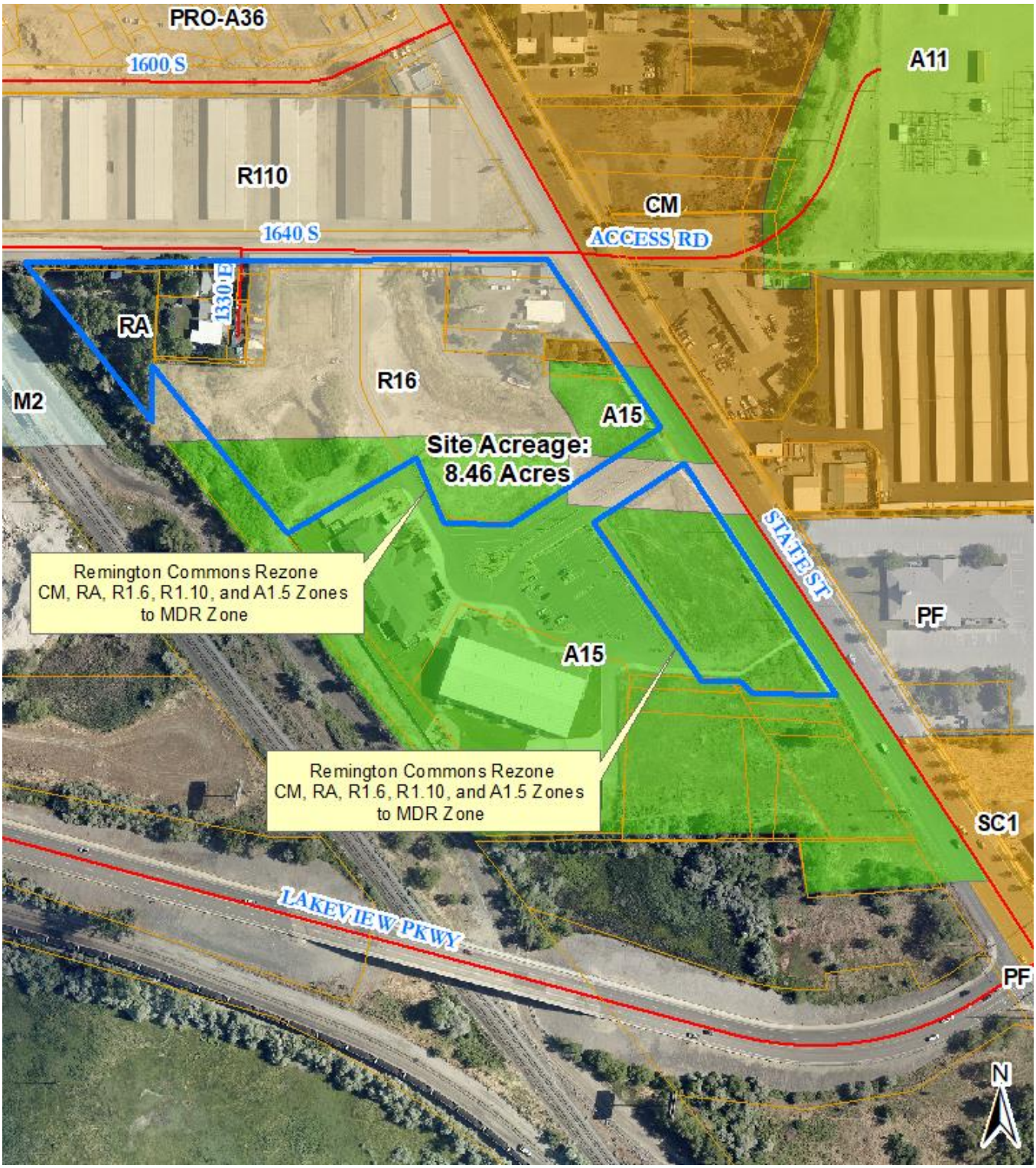
2. Proposed Zoning

3. Potential Use of Property Statement

4. Concept Plan

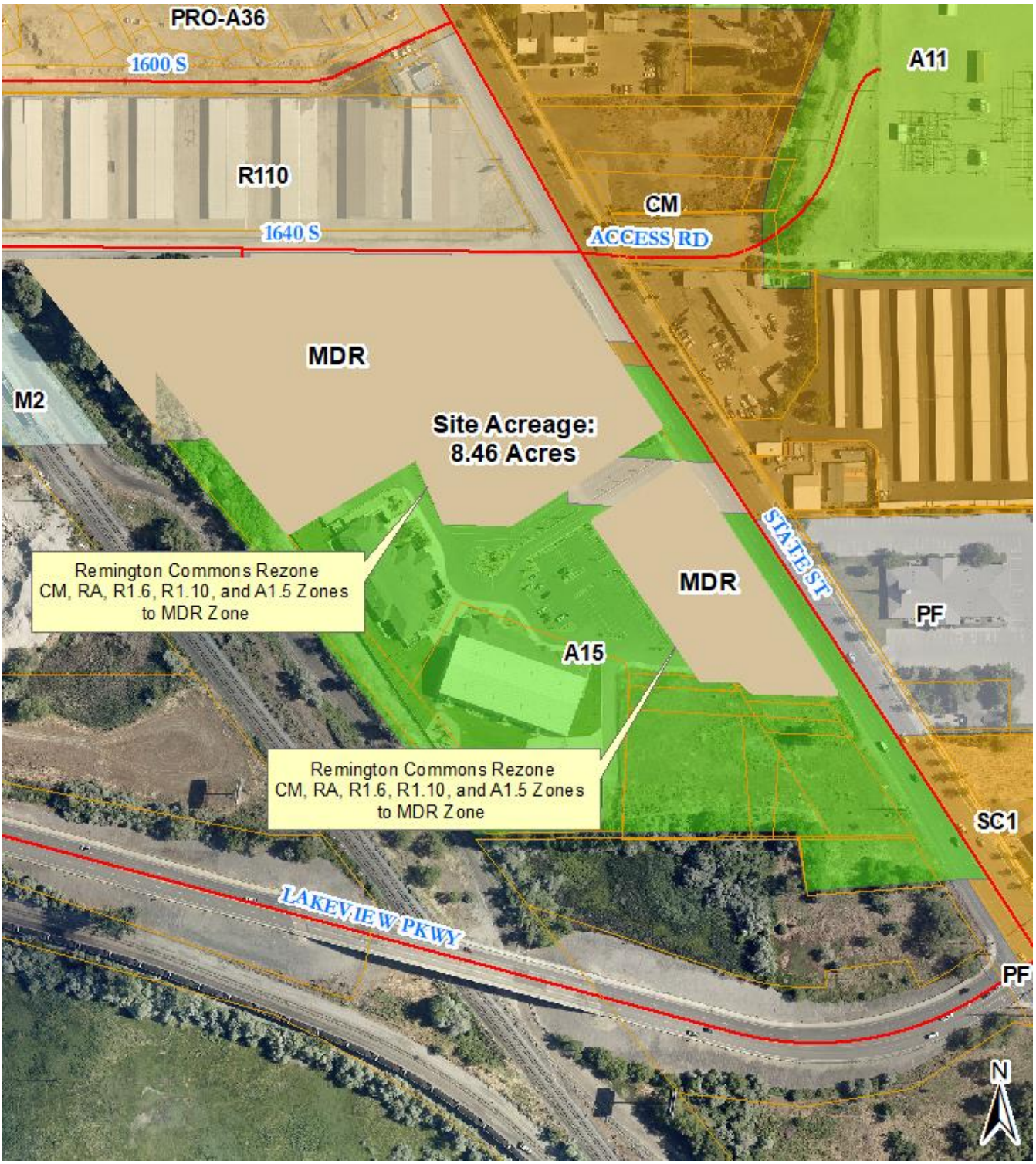
ATTACHMENT 1 – Current Zoning

Current Zoning: CM, RA, R1.6, R1.10, and A1.5



ATTACHMENT 2 – Proposed Zoning

Proposed Zoning: MDR (Medium Density Residential)



ATTACHMENT 3 – Potential Use of Property Statement

Gardner & Associates
DEVELOPMENT CONSULTANTS

October 31, 2019

Provo City Planning Commission
351 West Center
Provo, UT 84601

Dear Planning Commissioners:

We are requesting a rezoning of approximately 8.4 acres of property located at 1700 South State Street. The property is currently in an A1 and R1.6 zone. The master plan calls for MDR in this area. We are proposing to develop 204 four-story stacked unit apartments and condominiums with FHA financing.

We believe the site plan is consistent with the design guidelines and objectives of the South State Street Master Plan and request your favorable recommendation for the zone change and your approval of the site plan.

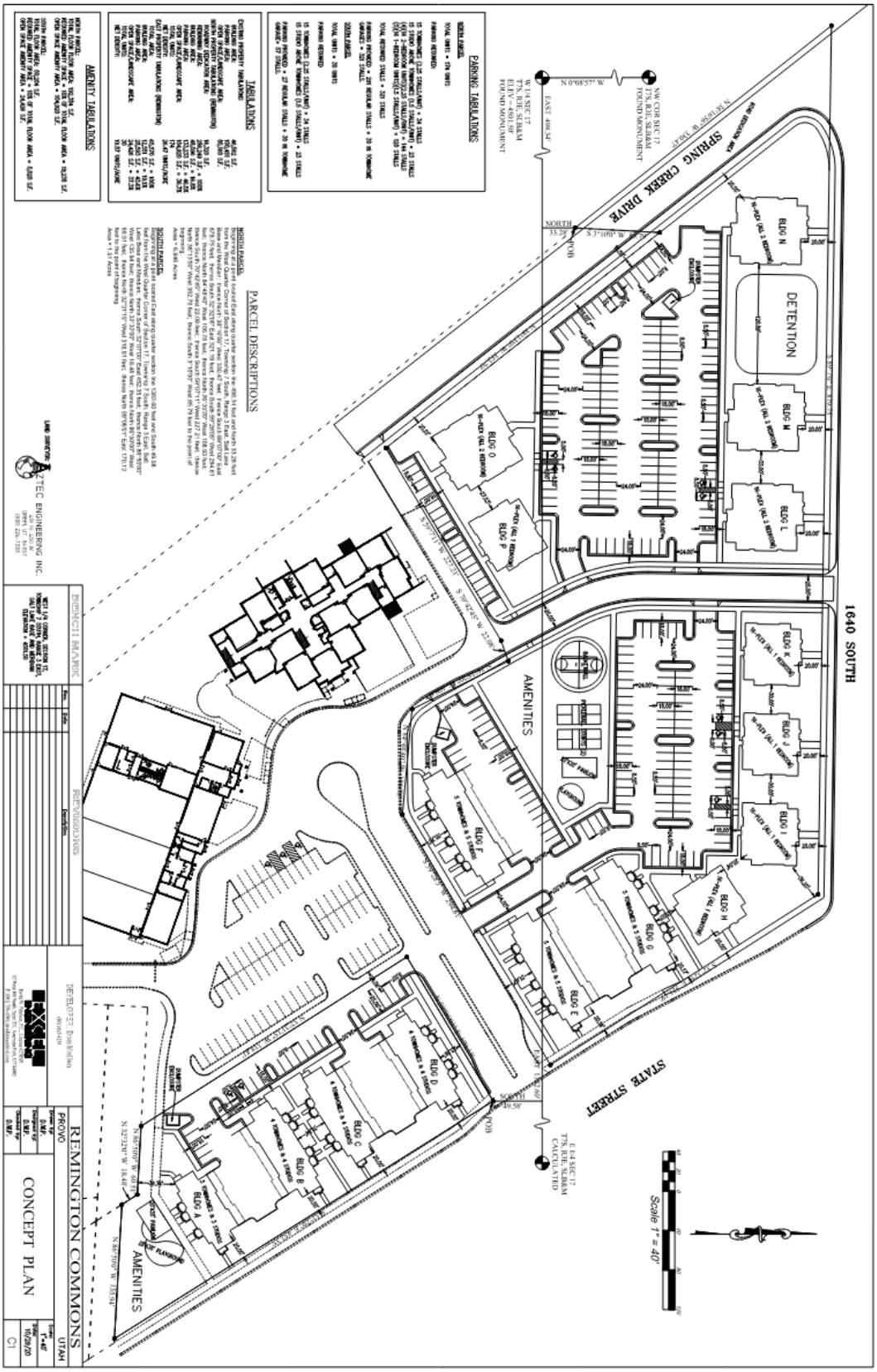
Sincerely,

David K. Gardner

(Amended)

724 NORTH 1890 WEST
PROVO, UTAH 84601
(801) 375-3476
FAX (801) 375-3449
www.gardnerassoc.net

ATTACHMENT 4 – Concept Plan



ORDINANCE 2020-.

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 8.5 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 1724 SOUTH STATE STREET, FROM HEAVY COMMERCIAL (CM), RESIDENTIAL AGRICULTURAL (RA), ONE-FAMILY RESIDENTIAL (R1.6), ONE-FAMILY RESIDENTIAL (R1.10), AND AGRICULTURAL (A1.5) TO MEDIUM DENSITY RESIDENTIAL (MDR). SPRING CREEK NEIGHBORHOOD. (PLRZ20190356)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 8.5 acres of real property, generally located at 1724 South State Street (an approximation of which is shown or described in Exhibit A and a more precise description of which will be attached hereto as Exhibit B after the Zone Map has been updated), be amended from Heavy Commercial (CM), Residential Agriculture (RA), One-Family Residential (R1.6), One-Family Residential (R1.10), and Agricultural (A1.5) to Medium Density Residential (MDR); and

WHEREAS, on December 9, 2020, the Planning Commission held a duly noticed public hearing to consider the proposed amendment, and at such meeting, the Planning Commission recommended approval to the Municipal Council by a vote of 8:1~~0~~; and

WHEREAS, the Planning Commission's recommendation was based on the project design presented to the Commission; and

WHEREAS, on December 15, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the Planning Commission's recommendation and facts and comments presented to the Municipal Council, the Council finds (i) the Zone Map of Provo, Utah should be amended as described herein; and (ii) the proposed zone map classification amendment for the real property described herein reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The classification on the Zone Map of Provo, Utah is hereby amended from the Heavy Commercial (CM), Residential Agriculture (RA), One-Family Residential (R1.6), One-Family Residential (R1.10), and Agricultural (A1.5) Zones to the Medium Density Residential (MDR) Zone for approximately 8.5 acres of real property generally located at 1724 South State Street, as described herein.

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

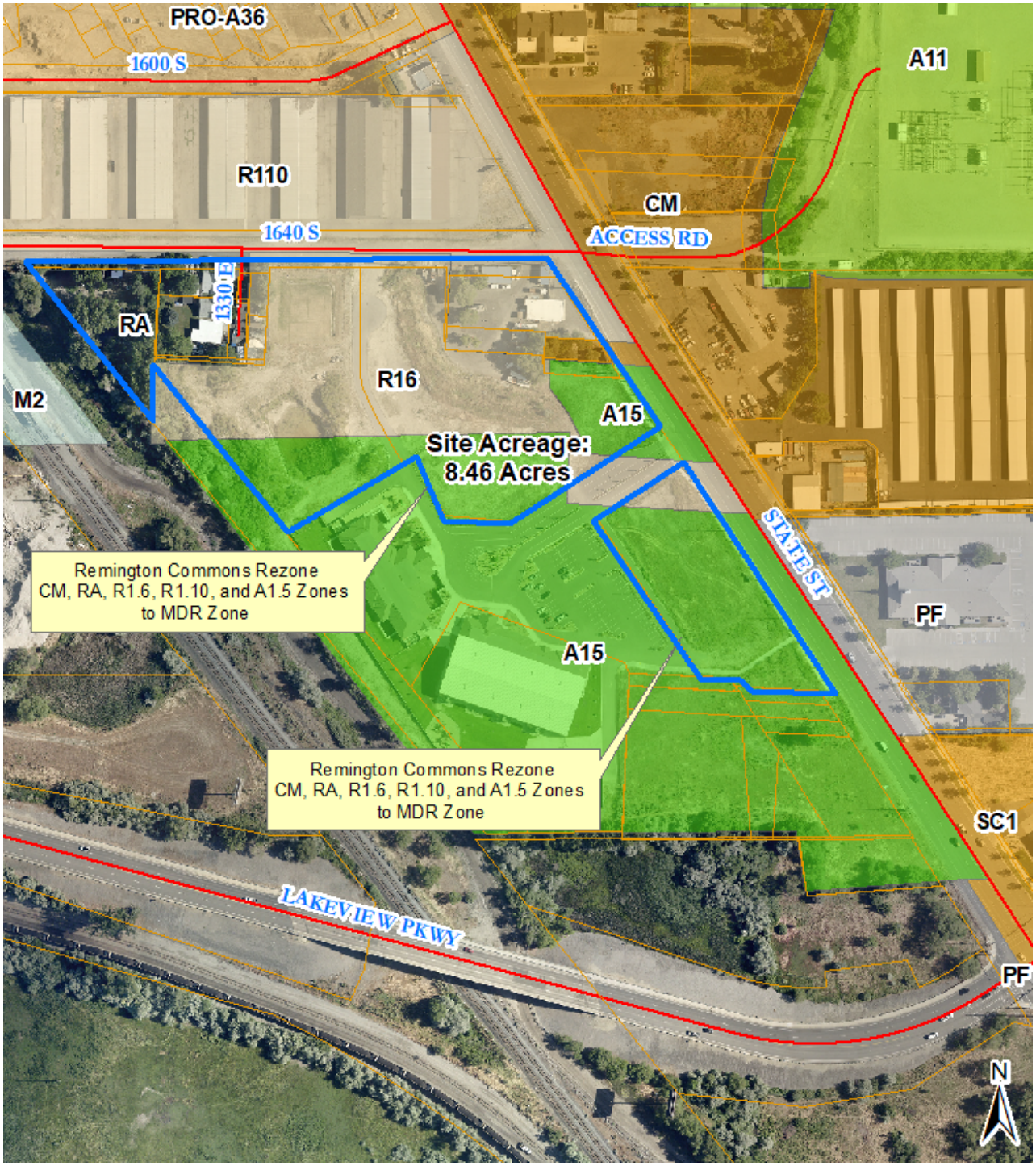
C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City, Utah be updated and codified to reflect the provisions enacted by this ordinance.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

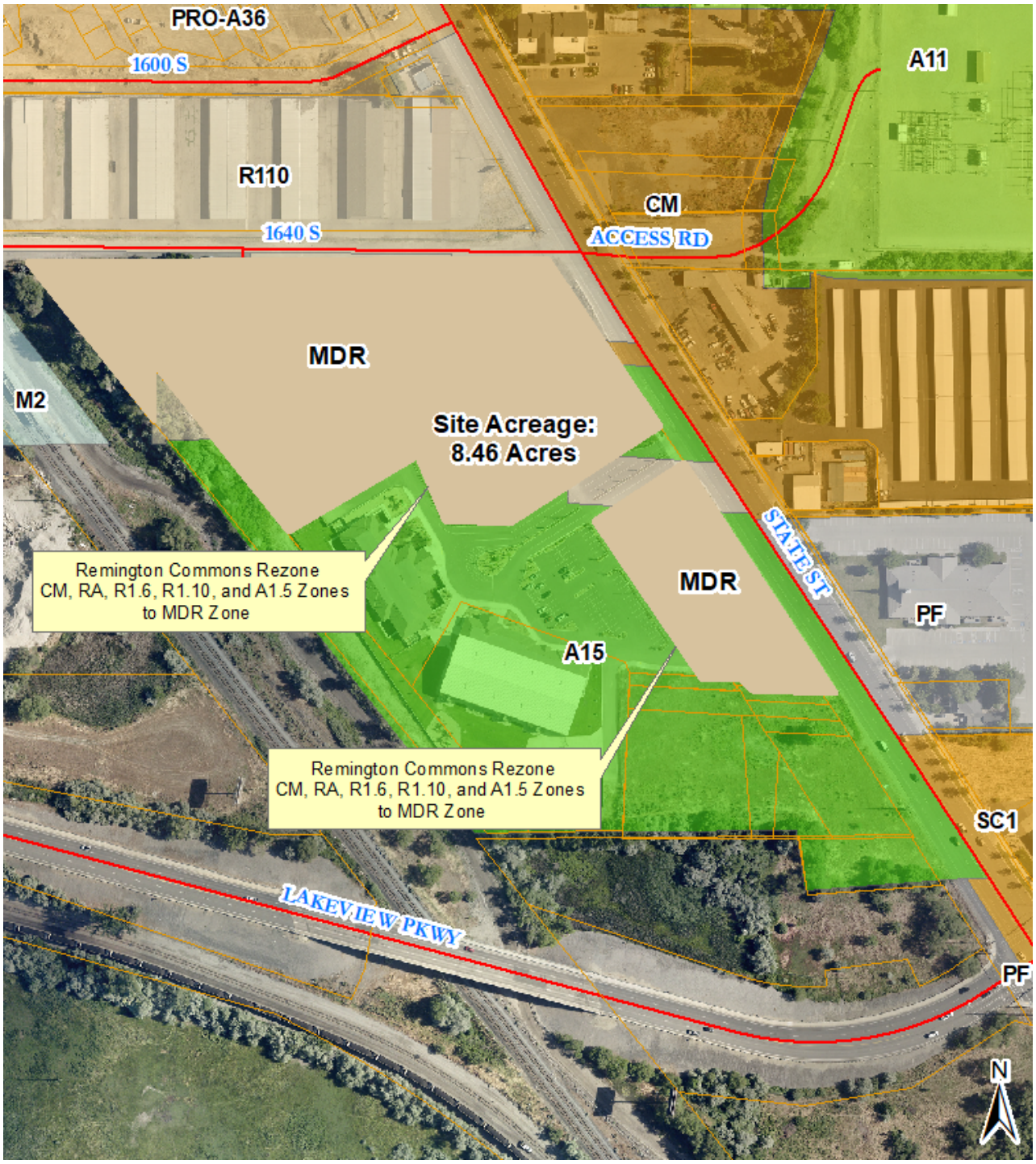
END OF ORDINANCE.

Exhibit A

Current Zoning: CM, RA, R1.6, R1.10, and A1.5



Proposed Zoning: MDR (Medium Density Residential)



Provo City Planning Commission

Report of Action

December 9, 2020

*Item 1 George Bills of Gardner and Associates, requests the rezoning of approximately 8.5 acres from CM (Heavy Commercial), RA (Residential Agricultural), R1.6 (One-Family Residential, 6000 SF), R1.10 (One-Family Residential, 10,000 SF), and A1.5 (Agricultural, 5 acre) to the MDR (Medium Density Residential) Zone, to facilitate the construction of a 204 dwelling units (30 townhomes, 30 studio apartments, 64 2-bedroom apts., 80 1-bedroom apts.), located at approximately 1724 S. State Street. Spring Creek Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLRZ20190356

The following action was taken by the Planning Commission on the above described item at its regular meeting of December 9, 2020:

RECOMMENDATION OF APPROVAL

On a vote of 8:1, the Planning Commission recommended approval of the above noted application.

Motion By: Laurie Urquiaga
Second By: Ally Jones

Votes in Favor of Motion: Laurie Urquiaga, Ally Jones, Deborah Jensen, Russell Phillips, Lisa Jensen, Daniel Gonzales, Brian Henrie, and Robert Knudsen

Votes Against Motion: Dave Anderson

Dave Anderson was present as Chair.

LEGAL DESCRIPTION OF PROPERTIES TO BE REZONED
The properties to be rezoned to the Medium Density Residential (MDR) Zone are described in the attached Exhibit "A."

RELATED ACTIONS
The associated concept plan for the subject property (Item 1, PLCP20190357).

STAFF PRESENTATION
The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in Staff's presentation to the Planning Commission included the following: Staff gave an overview of the proposal (Remington Commons); information on demographics, housing stock, and commercial development in the South State area of Provo; and staff recommendation, as set forth in the Staff Report.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on October 3, 2020. A question of drainage for the development was raised. The applicant stated that his drainage plan had been approved by the Public Works Department. Traffic was a topic of discussion for the proposed development, especially in relation to (1) the traffic produced by the school and (2) 1640 South Street. There were comments about using 1640 South Street for egress for the development. Improvements to 1640 South Street were also discussed. Treeside Charter School (TCS) parking was also discussed. The developer noted the proposed development has sufficient parking to meet applicable requirements.

NEIGHBORHOOD AND PUBLIC COMMENT

- Mary Millar, Spring Creek Neighborhood Chair, made the following comments:
  - The subject property has not changed in over 40 years.
  - The proposal is a positive thing. It is a very good development for this area.
  - This area is not necessarily a terrible, low-income area.
  - The developer has worked diligently with staff.
  - Ms. Millar trusts the staff's expertise and developer to produce a quality project.
  - The neighborhood is aware of the issues with the light (presumably referring to the discussion of a signal, or lack thereof, for 1640 South).
  - The neighborhood has seen a lot of development in the neighborhood and that it is exciting.
  - Ms. Millar indicated that it is ludicrous to expect that someone will bring you everything you need, and that it is close enough to services.
- Mrs. Townsend, representative of Treeside Charter School (TCS), stated the following:
  - The traffic study is inaccurate.
  - The cross-parking covenant clashes with their lease.
  - TCS has an exclusive lease for the access, parking, and ingress/egress to the school. They would have to permit or agree to allow another entity to use the access, parking, and ingress/egress to school.
  - Traffic accidents have occurred at, or near, the school.
- Erin Preston, representative for Treeside Charter School, asserted the following:
  - TCS is not opposed to Remington Commons or housing development going into this area; however, there are still some concerns:
    - The traffic study is inaccurate. It refers to businesses that are no longer on the property and an inaccurate and low number of students at the school. It does not account for what has gone on in the last year, such as accidents and congestion.
    - A neighborhood meeting has never been held where there was an accurate study to consider.
    - Ms. Preston said her concern for traffic is increased by the applicant's commercial concept plan (shown at the meeting).
    - A traffic study done with accurate information should be done and which considers the commercial concept plan.

APPLICANT RESPONSE

The following are key points the applicant made during the meeting:

- The applicant has been working on this project for over a year and has worked with Staff to address a number of issues.
- They have neighborhood support for their project, which is not a low-income project.
- Some of the units, including apartments, will be sold.
- Townhomes are designed to be owner-occupied.
- The project will have 140% amenity space.
- They have not asked for parking waivers.
- The townhomes would be fairly expensive.
- They believe they have a marketable mix of housing.
- If the General Plan needs to be updated to discourage more MDR housing in this area, do so after considering the developer's project. They believe it would be unfair to close the door on the developer when they have been working through the approval process.
- The road between the north and south portions of the proposed development is owned by Mr. Morley (Zions M-13 Development LLC). The applicant does not know what use restrictions are on the road.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Concerns about adding more medium density housing (MDR)—to an area that has seen many MDR units approved in the recent past—was expressed.
- Household median income level for the area was noted. A concern that the proposal would add residents of a similar income level and the potential negative impact this could have on commercial development in the area was expressed.
- The sentiment was expressed that the vicinity is not likely to attract detached, single-family dwellings.

- The subject area is adjacent to rail lines and struggles commercially.
- Concerns of creating an imbalance of housing types was expressed.
- Resident tenure may be a concern in this proposed development; this proposal will not help the composition of the Spring Creek Neighborhood.
- One commissioner expressed that the proposal meets the letter of the law but is not necessarily what the Neighborhood needs.
- How do we attract higher-quality MDR developments? We are saturated with low-income housing in this area.
- Concern about traffic, especially making left turns out of the driveway at 1724 South State, was expressed.
- A desire to see a traffic signal to benefit the subject property was implied, especially at 1640 South.
- The mix of housing is favorable, and this proposed development is only about 1.5 miles from the medical school and may attract married medical students.
- South State is getting over-built with two-bedroom units.
- Lack of amenities in this area is a concern.
- South State is redeveloping, and the subject property is blighted.
- The applicant knows his market.
- The application is appropriate for the area and is supported by the neighborhood chair.
- Design corridor standards will help ensure the quality of development is appropriate.
- The applicant has worked with staff to make this project as good as possible.
- The project is not perfect, but the Neighborhood is in favor and it meets the needs for the area. The development fulfills a need for housing for those who are not ready for detached, single-family residences.

Planning Commission Chair

Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Development Services Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT "A"

LEGAL DESCRIPTIONS OF PROPERTIES TO BE REZONED

PARCEL DESCRIPTIONS

NORTH PARCEL

Beginning at a point located East along quarter section line 498.34 feet and North 33.28 feet from the West Quarter Corner of Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 38°16'56" West 330.47 feet; thence South 89°07'00" East 879.75 feet; thence South 32°32'00" East 321.19 feet; thence South 59°28'05" West 294.61 feet; thence North 84°48'40" West 106.78 feet; thence North 26°35'20" West 108.93 feet; thence South 70°42'45" West 22.08 feet; thence South 59°07'11" West 227.21 feet; thence North 38°13'00" West 352.70 feet; thence South 3°10'00" West 85.79 feet to the point of beginning.
Area = 6.946 Acres

SOUTH PARCEL

Beginning at a point located East along quarter section line 1382.60 feet and South 49.58 feet from the West Quarter Corner of Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence South 32°07'00" East 452.35 feet; thence North 86°50'00" West 135.94 feet; thence North 32°32'00" West 18.48 feet; thence North 86°50'00" West 69.51 feet; thence North 32°31'15" West 318.81 feet; thence North 59°06'01" East 170.13 feet to the point of beginning.
Area = 1.51 Acres

ITEM 1*

George Bills of Gardner and Associates, requests the rezoning of approximately 8.5 acres from CM (Heavy Commercial), RA (Residential Agricultural), R1.6 (One-Family Residential, 6000 SF), R1.10 (One-Family Residential, 10,000 SF), and A1.5 (Agricultural, 5 acre) to the MDR (Medium Density Residential) Zone, to facilitate the construction of a 204 dwelling units (30 townhomes, 30 studio apartments, 64 2-bedroom apts., 80 1-bedroom apts.), located at approximately 1724 S. State Street.

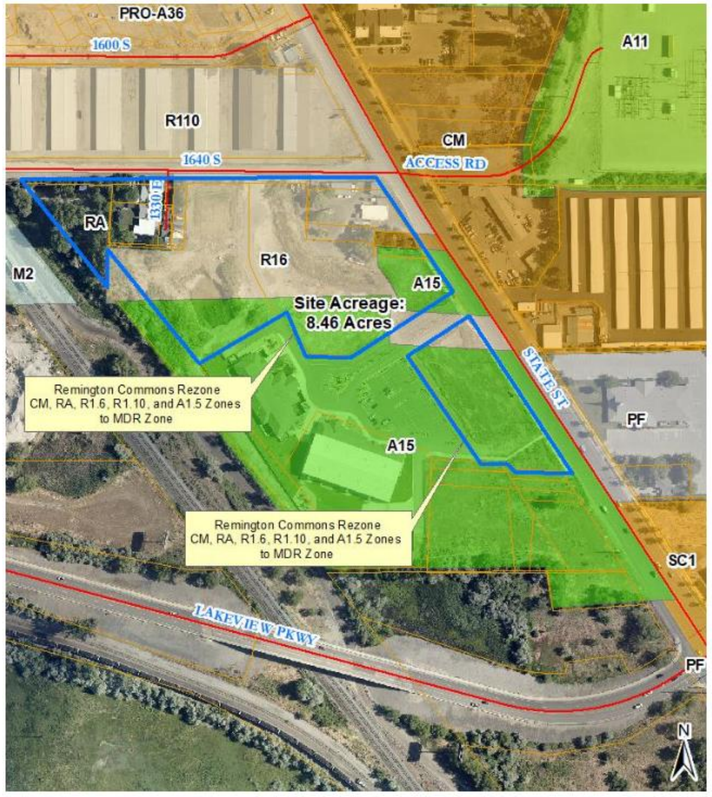
Spring Creek Neighborhood

PLRZ20190356

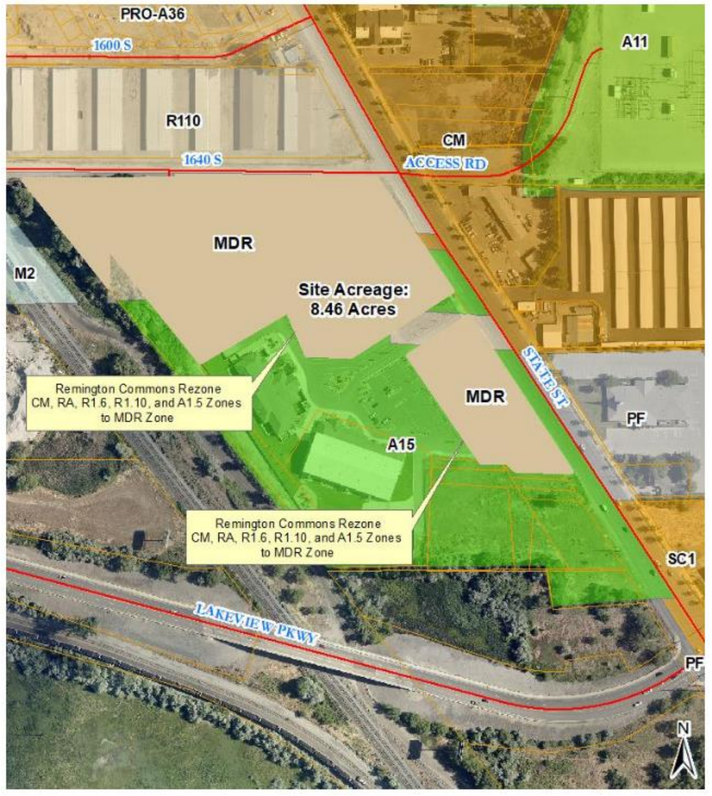
Remington Commons

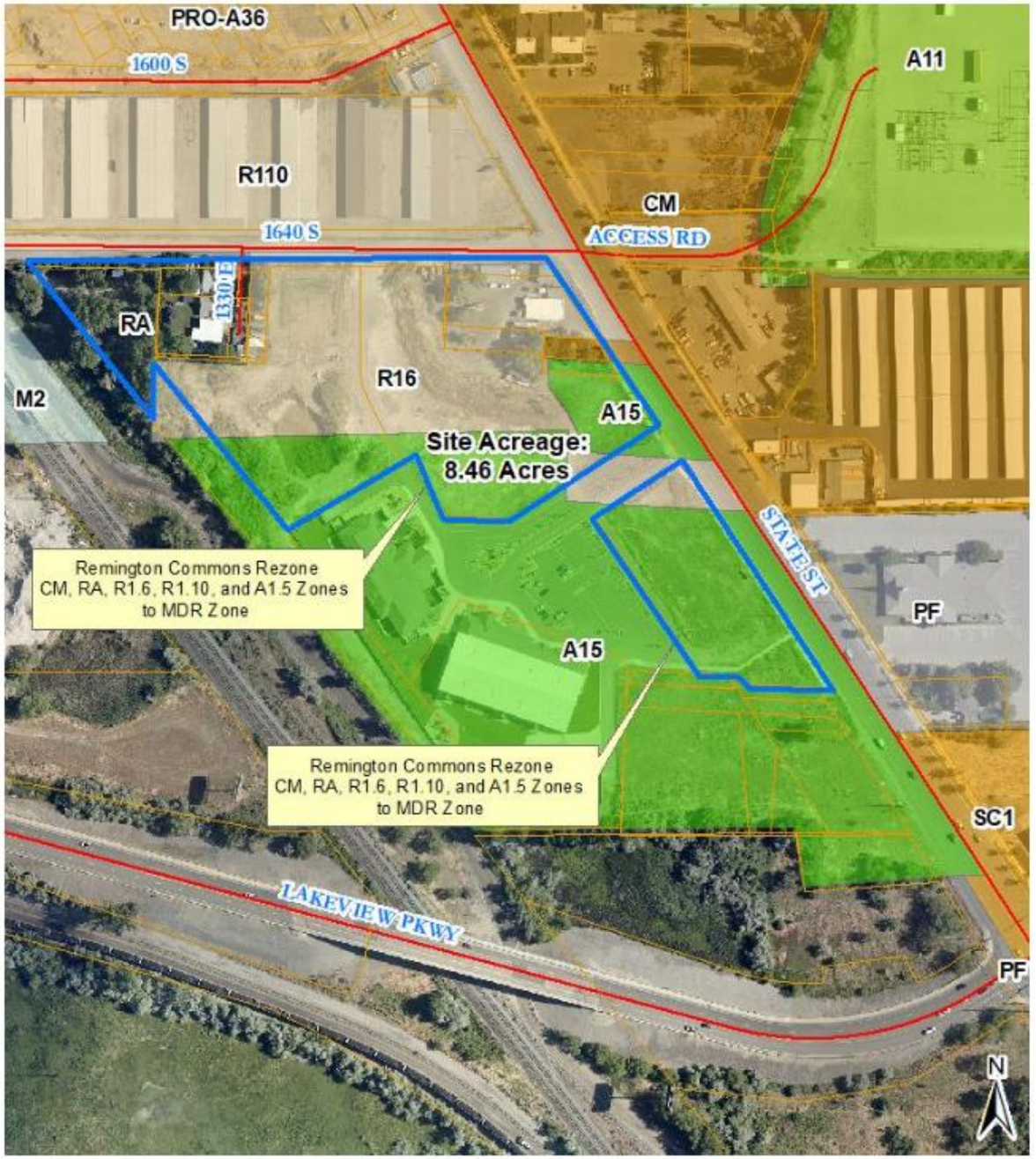
Rezone: CM, RA, R1.6, R1.10, and A1.5 to CG Zone

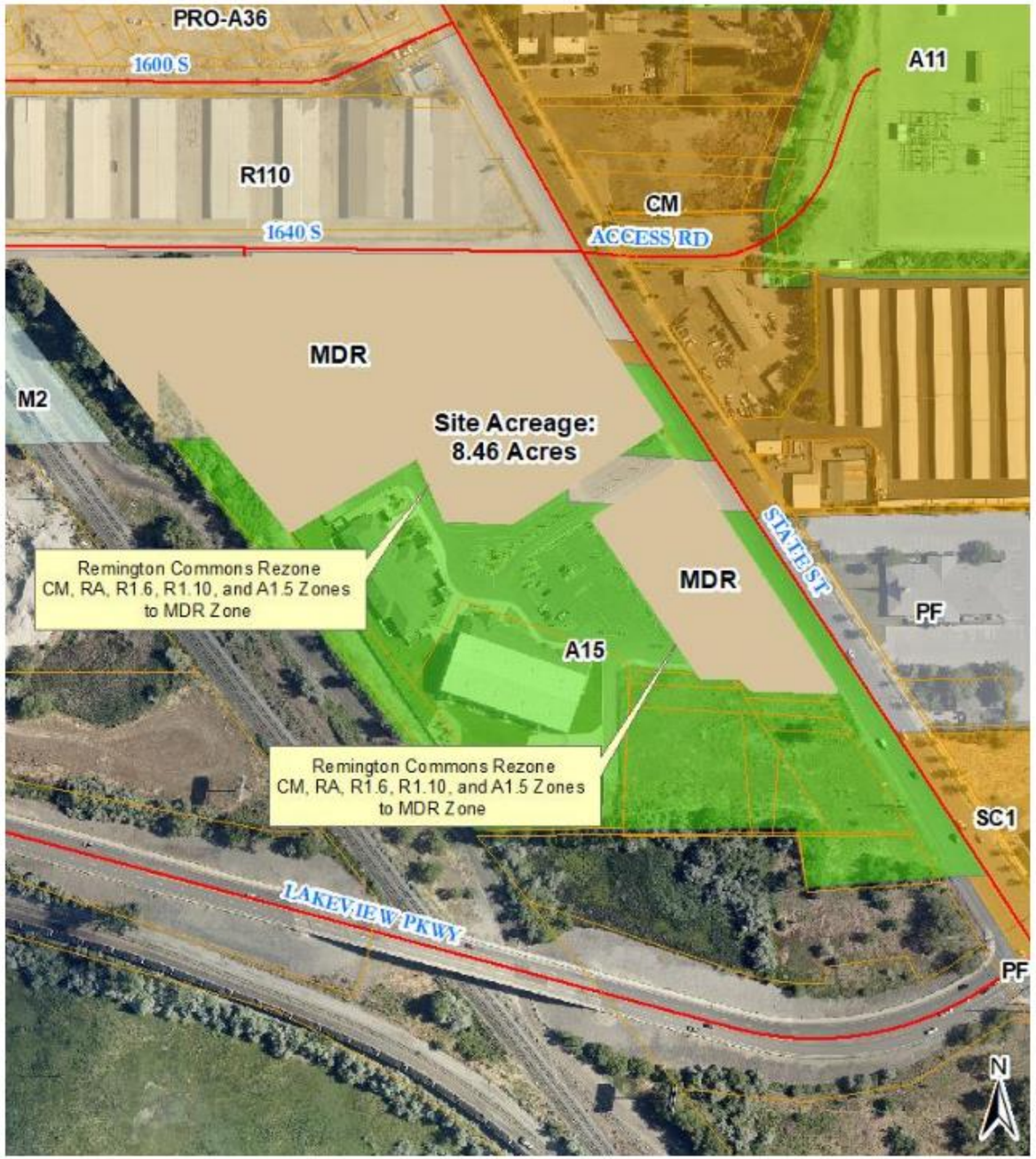
Current Zoning: CM, RA, R1.6, R1.10, and A1.5



Proposed Zoning: MDR (Medium Density Residential)




PRO-A36
1600 S
R110
1640 S
CM
ACCESS RD
A11
330' E
RA
R16
M2
A15
Site Acreage:
8.46 Acres
STATE ST
Remington Commons Rezone
CM, RA, R1.6, R1.10, and A1.5 Zones
to MDR Zone
PF
A15
Remington Commons Rezone
CM, RA, R1.6, R1.10, and A1.5 Zones
to MDR Zone
SC1
LAKEVIEW PKWY
PF
N


PRO-A36
1600 S
R110
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CM
ACCESS RD
MDR
M2
Site Acreage:
8.46 Acres
Remington Commons Rezone
CM, RA, R1.6, R1.10, and A1.5 Zones
to MDR Zone
MDR
STATE ST
PF
A15
Remington Commons Rezone
CM, RA, R1.6, R1.10, and A1.5 Zones
to MDR Zone
SC1
LAKEVIEW PKWY
PF
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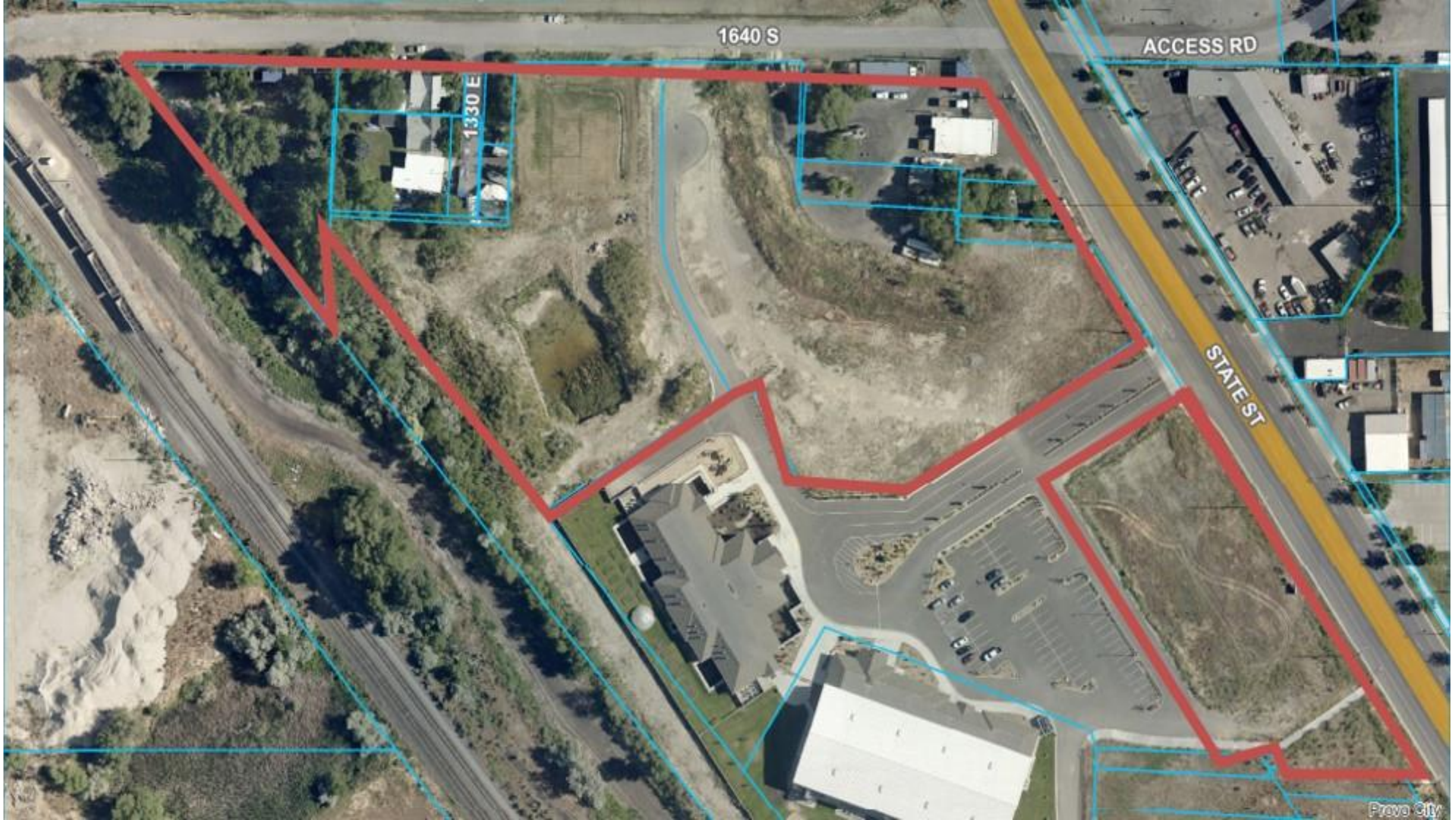

1640 S
ACCESS RD
1330 E
STATE ST
Provo City

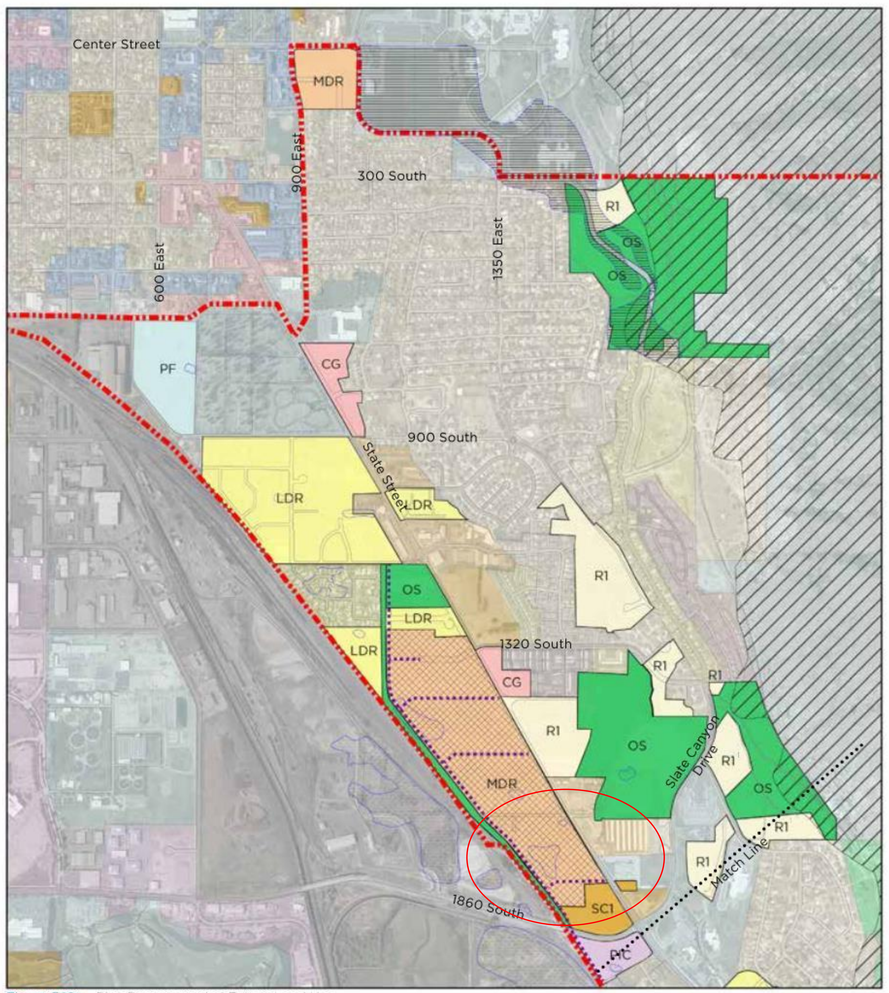


Figure 3.10a - Plan Recommended Future Land Use

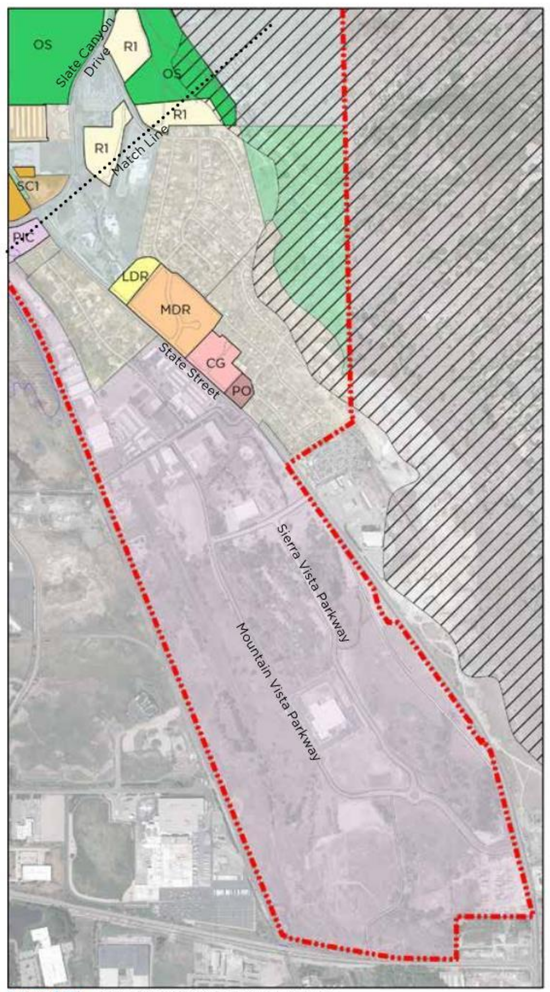


Figure 3.10b - Plan Recommended Future Land Use

Future Land Use Map

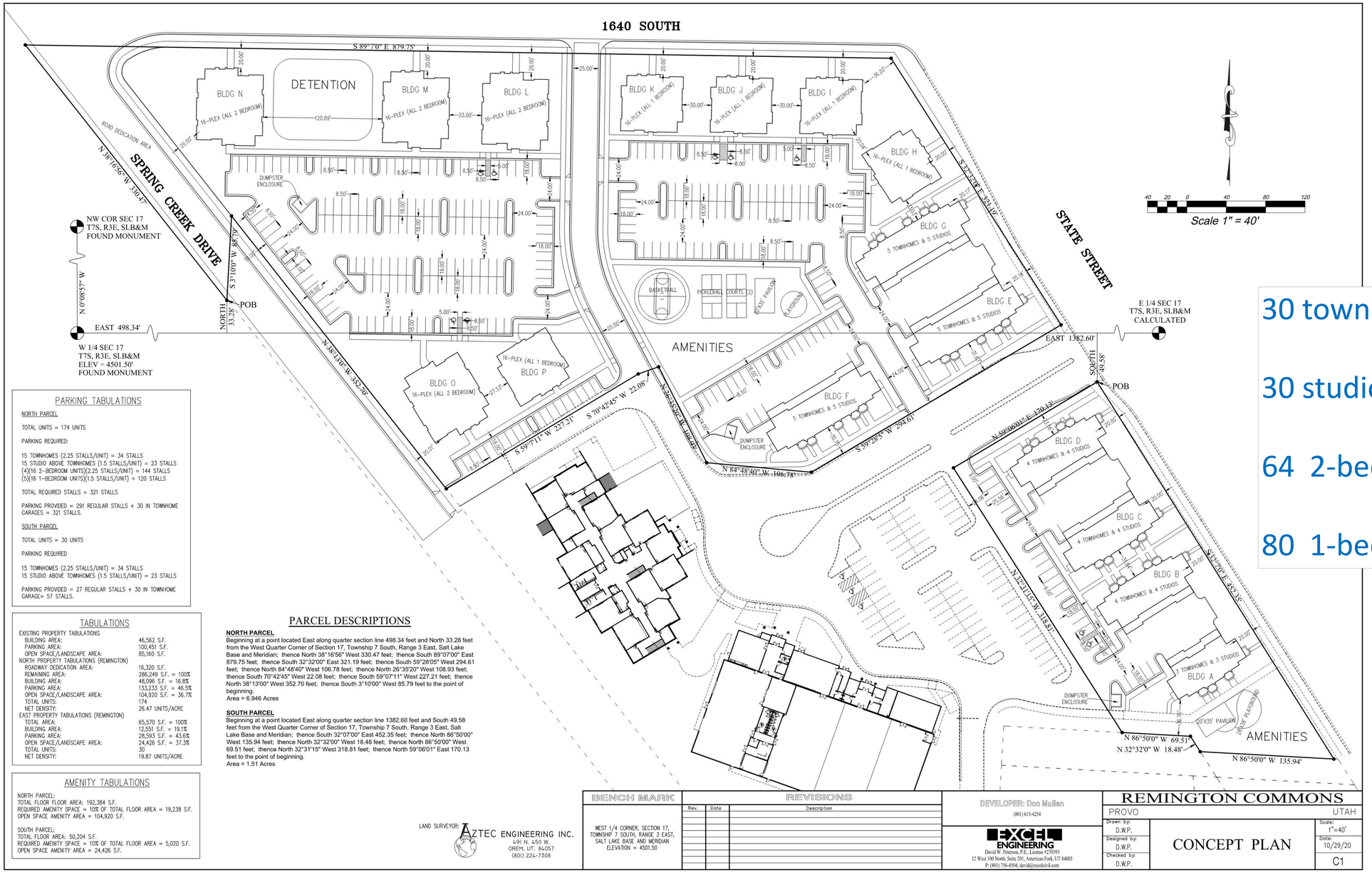
- R1 - Single Family Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- SC1 - Neighborhood Shopping Center
- PIC - Planned Industrial Commercial
- OS - Open Space / Parks
- CG - General Commercial
- PO - Professional Office
- Baching Overlay
- Proposed Street Connection
- Sensitive Lands - Steep Slopes/Slides
- Sensitive Lands - Wetlands
- Sensitive Lands - FEMA Flood Zone

Projections----------

**New R1 Area:*	*50 ac*
Potential R1 Units:	*162*
**New LDR Area:*	*25 ac*
Potential LDR Units:	*308*
**New MDR Area:*	*60 ac*
Potential MDR Units:	*1,350*
**New Commercial Area:*	*6 ac*

*Note: "New" refers to land that is either vacant or expected to redevelop. Areas where recommended zoning is reflective of existing conditions that are anticipated to remain indefinitely are not included in the provided projections.

'Areas shown for potential R1 development at the Buckley Draw site will require significant geological studies to determine actual feasibility of development in this area. Areas shown on this map are conceptual only and cannot be verified without additional study.



30 townhomes

30 studio apts

64 2-bedroom apts

80 1-bedroom apts

PARKING TABULATIONS

NORTH PARCEL

TOTAL UNITS = 174 UNITS

PARKING REQUIRED:

15 TOWNHOMES (2.25 STALLS/UNIT) = 34 STALLS
15 STUDIO ABOVE TOWNHOMES (1.5 STALLS/UNIT) = 23 STALLS
(4)(16 2-BEDROOM UNITS)(2.25 STALLS/UNIT) = 144 STALLS
(5)(16 1-BEDROOM UNITS)(1.5 STALLS/UNIT) = 120 STALLS

TOTAL REQUIRED STALLS = 321 STALLS

PARKING PROVIDED = 291 REGULAR STALLS + 30 IN TOWNHOME GARAGES = 321 STALLS.

SOUTH PARCEL

TOTAL UNITS = 30 UNITS

PARKING REQUIRED

15 TOWNHOMES (2.25 STALLS/UNIT) = 34 STALLS
15 STUDIO ABOVE TOWNHOMES (1.5 STALLS/UNIT) = 23 STALLS

PARKING PROVIDED = 27 REGULAR STALLS + 30 IN TOWNHOME GARAGE= 57 STALLS.

TABULATIONS

EXISTING PROPERTY TABULATIONS	
BUILDING AREA:	46,562 S.F.
PARKING AREA:	100,451 S.F.
OPEN SPACE/LANDSCAPE AREA:	85,160 S.F.
NORTH PROPERTY TABULATIONS (REMINGTON)	
ROADWAY DEDICATION AREA:	16,320 S.F.
REMAINING AREA:	286,249 S.F. = 100%
BUILDING AREA:	48,096 S.F. = 16.8%
PARKING AREA:	133,233 S.F. = 46.5%
OPEN SPACE/LANDSCAPE AREA:	104,920 S.F. = 36.7%
TOTAL UNITS:	174
NET DENSITY:	26.47 UNITS/ACRE
EAST PROPERTY TABULATIONS (REMINGTON)	
TOTAL AREA:	65,570 S.F. = 100%
BUILDING AREA:	12,551 S.F. = 19.1%
PARKING AREA:	28,593 S.F. = 43.6%
OPEN SPACE/LANDSCAPE AREA:	24,426 S.F. = 37.3%
TOTAL UNITS:	30
NET DENSITY:	19.87 UNITS/ACRE

AMENITY TABULATIONS

NORTH PARCEL:
TOTAL FLOOR FLOOR AREA: 192,384 S.F.
REQUIRED AMENITY SPACE = 10% OF TOTAL FLOOR AREA = 19,238 S.F.
OPEN SPACE AMENITY AREA = 104,920 S.F.

SOUTH PARCEL:
TOTAL FLOOR AREA: 50,204 S.F.
REQUIRED AMENITY SPACE = 10% OF TOTAL FLOOR AREA = 5,020 S.F.
OPEN SPACE AMENITY AREA = 24,426 S.F.

PARCEL DESCRIPTIONS

NORTH PARCEL
Beginning at a point located East along quarter section line 498.34 feet and North 33.28 feet from the West Quarter Corner of Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 38°16'56" West 330.47 feet; thence South 89°07'00" East 879.75 feet; thence South 32°32'00" East 321.19 feet; thence South 59°28'05" West 294.61 feet; thence North 84°48'40" West 106.78 feet; thence North 26°35'20" West 108.93 feet; thence South 70°42'45" West 22.08 feet; thence South 59°07'11" West 227.21 feet; thence North 38°13'00" West 352.70 feet; thence South 3°10'00" West 85.79 feet to the point of beginning.
Area = 6.946 Acres

SOUTH PARCEL
Beginning at a point located East along quarter section line 1382.60 feet and South 49.58 feet from the West Quarter Corner of Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence South 32°07'00" East 452.35 feet; thence North 86°50'00" West 135.94 feet; thence North 32°32'00" West 18.48 feet; thence North 86°50'00" West 69.51 feet; thence North 32°31'15" West 318.81 feet; thence North 59°06'01" East 170.13 feet to the point of beginning.
Area = 1.51 Acres

LAND SURVEYOR: AZTEC ENGINEERING INC.
491 N. 450 W.
OREM, UT. 84057
(801) 224-7508

BENCH MARK
WEST 1/4 CORNER, SECTION 17, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN
ELEVATION = 4501.50

REVISIONS

Rev.	Date	Description

DEVELOPER: Don Mullen
(801) 615-4254

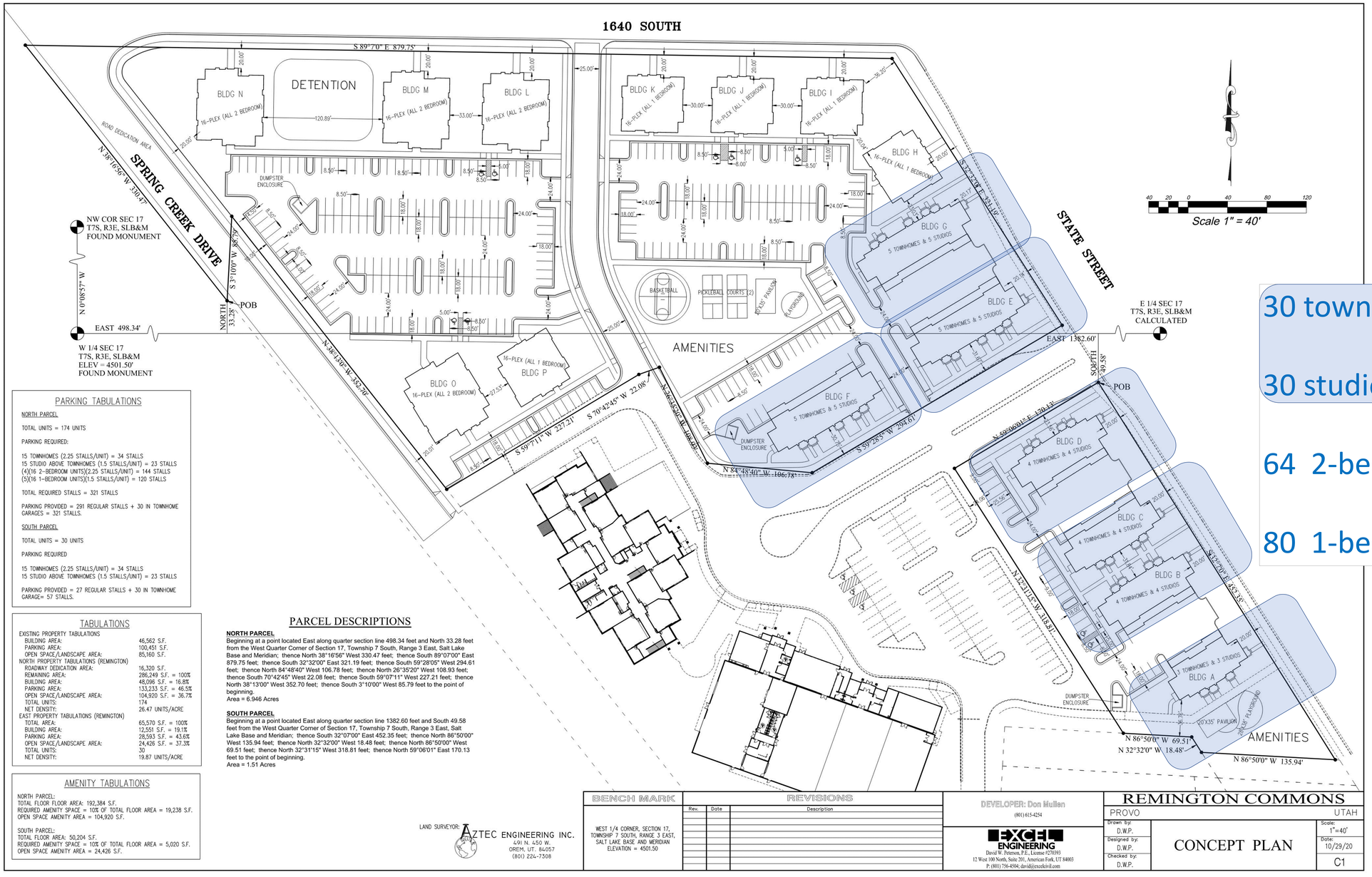
EXCEL ENGINEERING
David W. Peterson, P.E., License #270391
12 West 100 North, Suite 201, American Fork, UT 84003
P: (801) 756-4504; david@excelcivil.com

REMINGTON COMMONS
PROVO UTAH

Drawn by:	D.W.P.
Designed by:	D.W.P.
Checked by:	D.W.P.

CONCEPT PLAN

Scale:	1"=40'
Date:	10/29/20
	C1



30 townhomes

30 studio apts

64 2-bedroom apts

80 1-bedroom apts

PARKING TABULATIONS

NORTH PARCEL

TOTAL UNITS = 174 UNITS

PARKING REQUIRED:

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SOUTH PARCEL

TOTAL UNITS = 30 UNITS

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TOTAL UNITS:	30
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BENCH MARK
WEST 1/4 CORNER, SECTION 17, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN
ELEVATION = 4501.50

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Rev.	Date	Description

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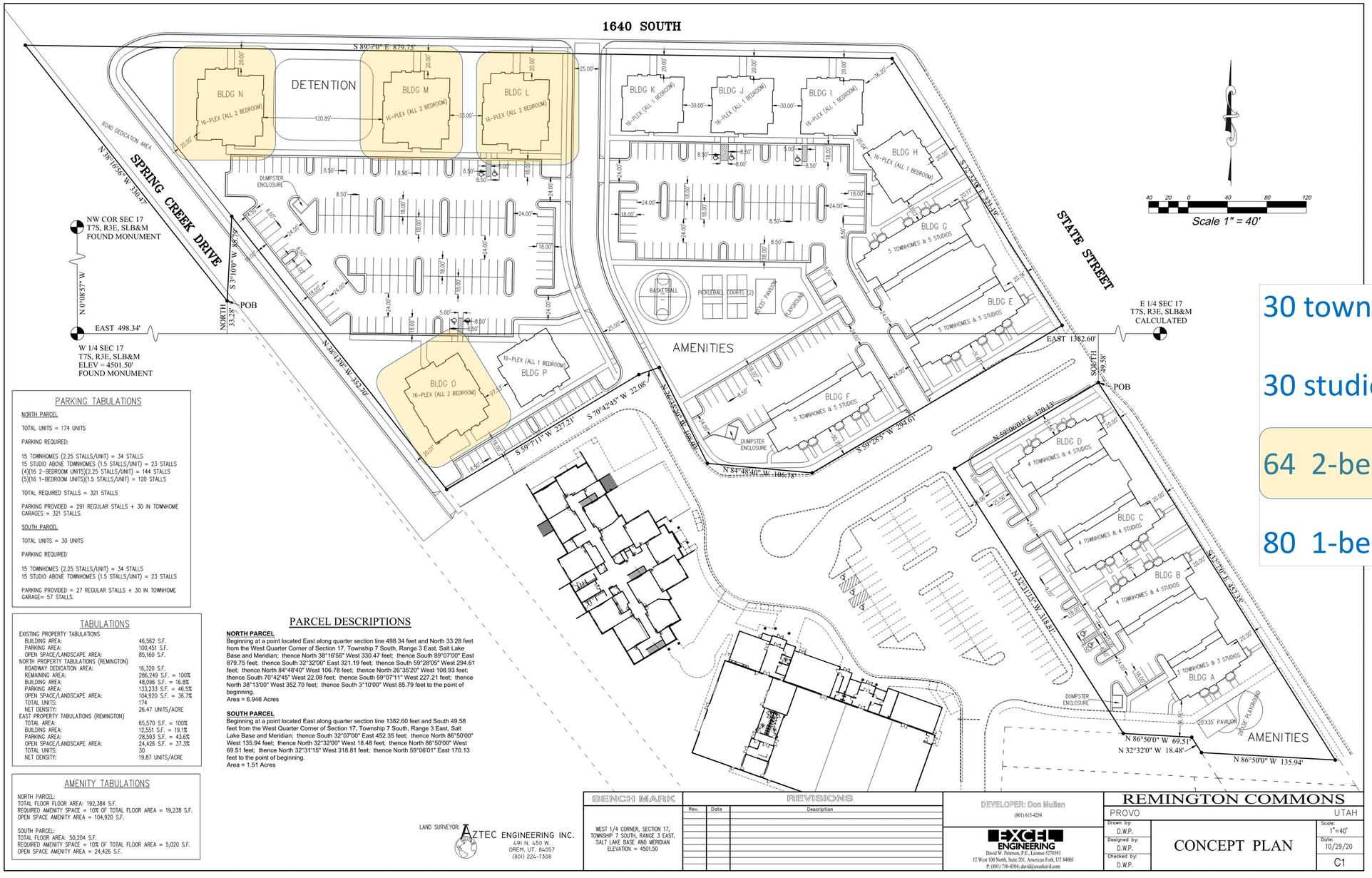

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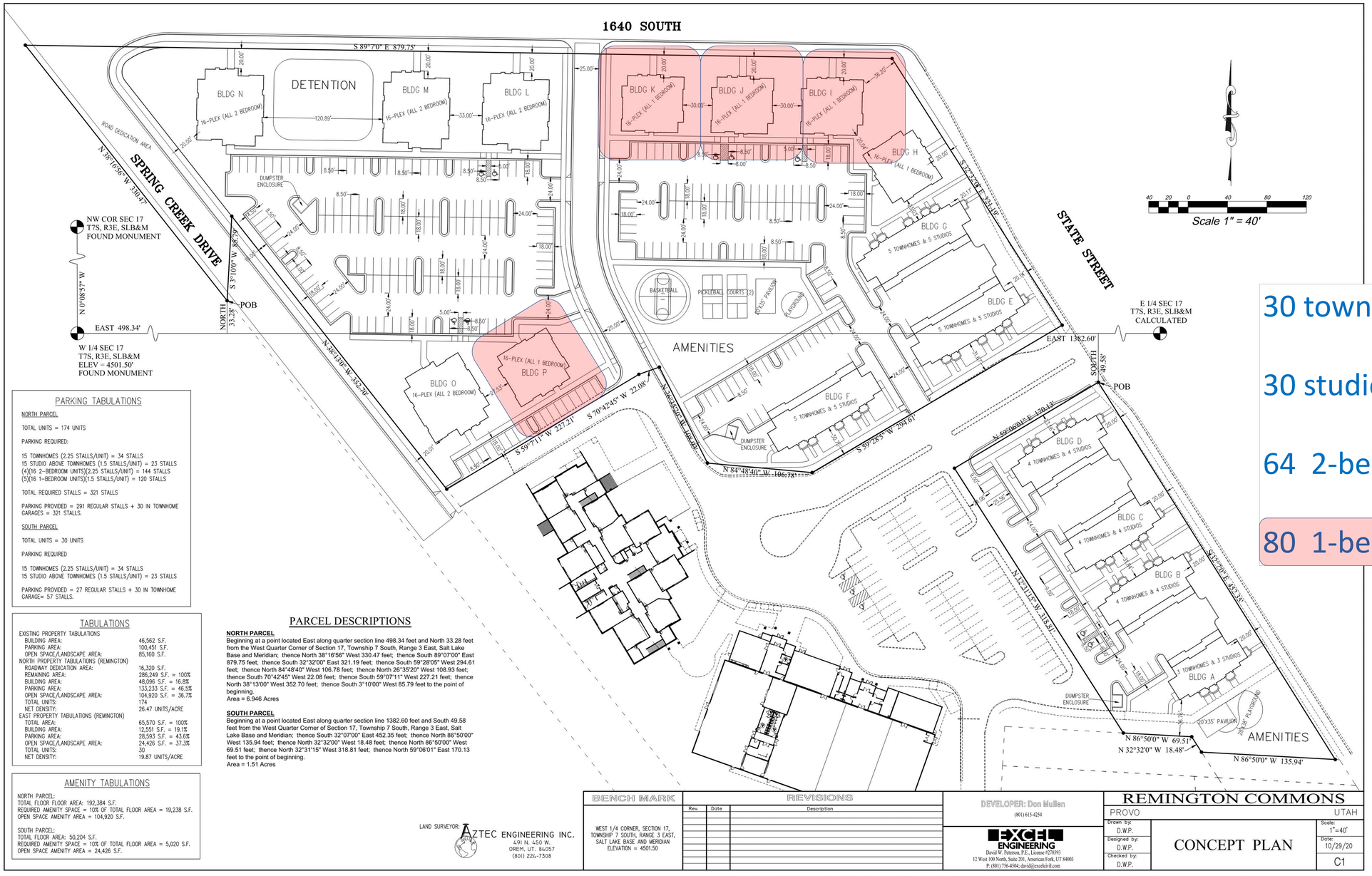

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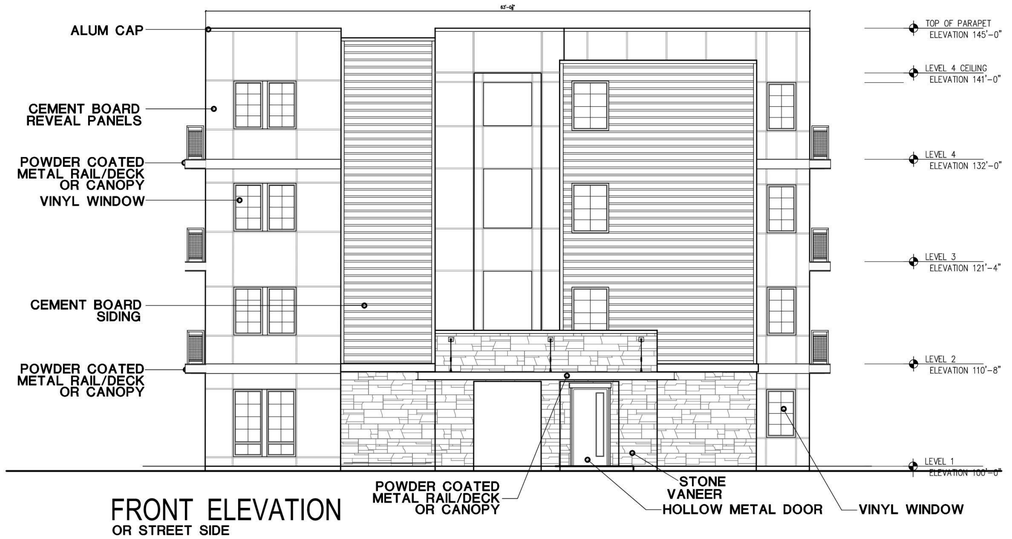
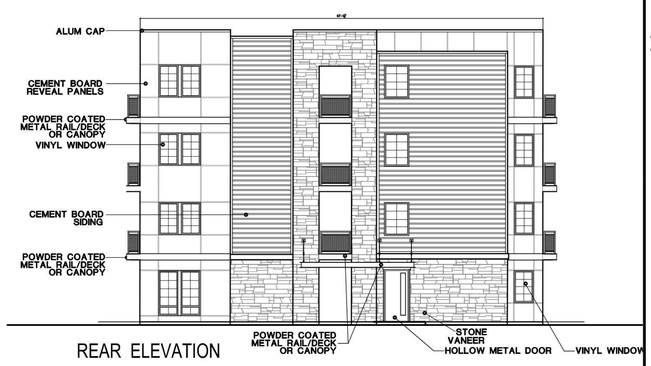


FRONT ELEVATION
OR STREET SIDE



REAR ELEVATION

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REVISIONS

DRAWN BY
BKH

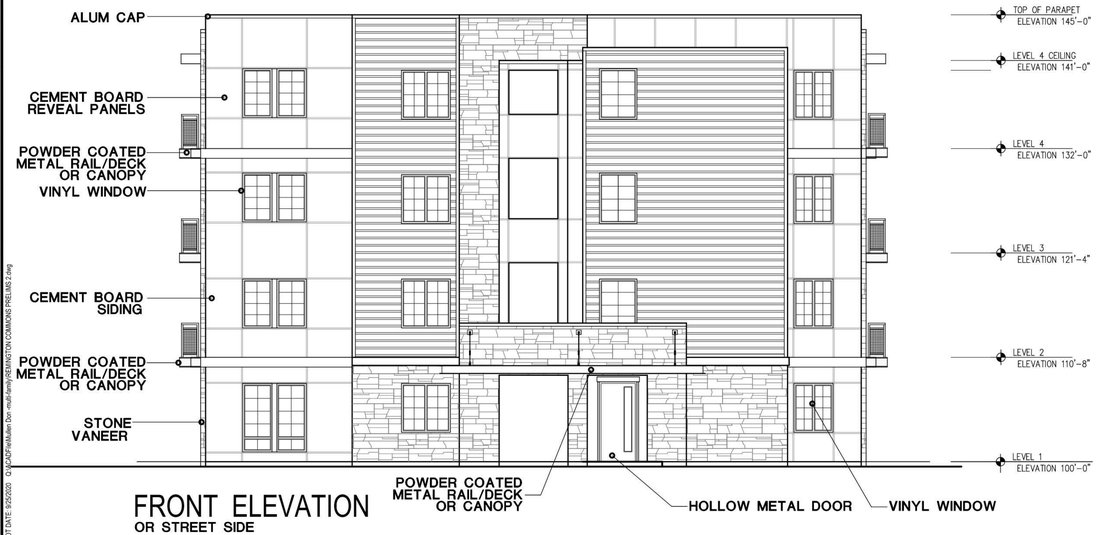
HARRIS ARCHITECTURE
3520 N UNIVERSITY AVENUE #200, PROVO UT 84604 | 801-377-6303 | WWW.HARRIS-ARCHITECTURE.COM

A NEW MULTI-FAMILY PROJECT FOR (1 BEDROOM)
REMINGTON COMMONS
(A) 1 BR STACKED FLAT ELEVATIONS

AUG. 2020
PROVO UTAH

A1.2

SIDE ELEVATION



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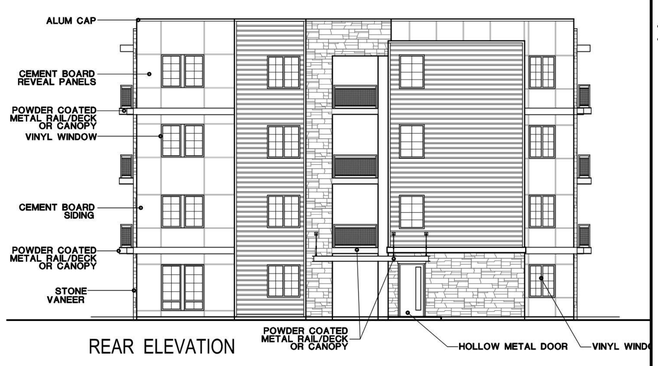

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(A) 2 BR STACKED FLAT ELEVATIONS

AUG. 2020
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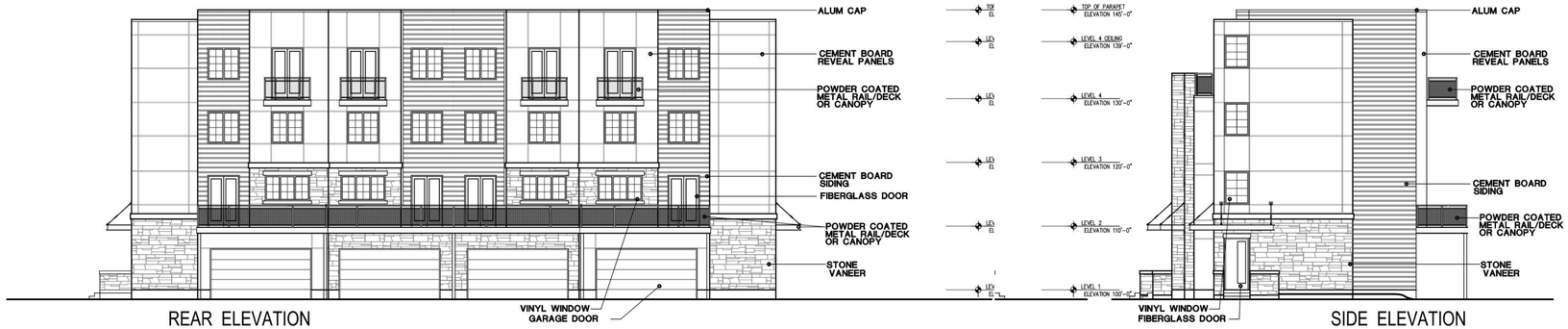
A1.2



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A NEW MULTI-FAMILY PROJECT FOR (TOWNHOMES)

REMINGTON COMMONS

TOWNHOME ELEVATIONS

AUG. 2020
PROVO UTAH

A1.2

HARRIS ARCHITECTURE

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Recently Approved South State Developments

- Tanaraq on 5th (Apts) – 64 Units
- Spring Creek Townhomes – 63 Units
- Rose Court Townhomes – 9 Units
- Autumn View Townhomes – 23 Units
- Spring Creek Condos – 64 Units
- Ironton Rail Townhomes – 44 Units
- Blackstone Farms PUD (Apts) – 208 Units
- Willow Creek Townhomes - 62 Units

Proposed Development

- Remington Commons – 204 Units

South State Developments Totals

- Total Approved Units = 537 Units
- Total Proposed Units = 204 Units
- Total Approved and Proposed Units = 741

Mix of Approved Units

- Apartments = 336 Units (63% of Units)
- Townhomes = 201 Units (37% of Units)

Mix of Proposed Units

- Apartments = 174 Units (68% of Units)
- Townhomes = 30 Units (32% of Units)

Existing Housing

*Spring Creek should have another housing type to account for approximately 90 manufactured homes. This category would account for 18% of dwellings in the Neighborhood (as of 2015).

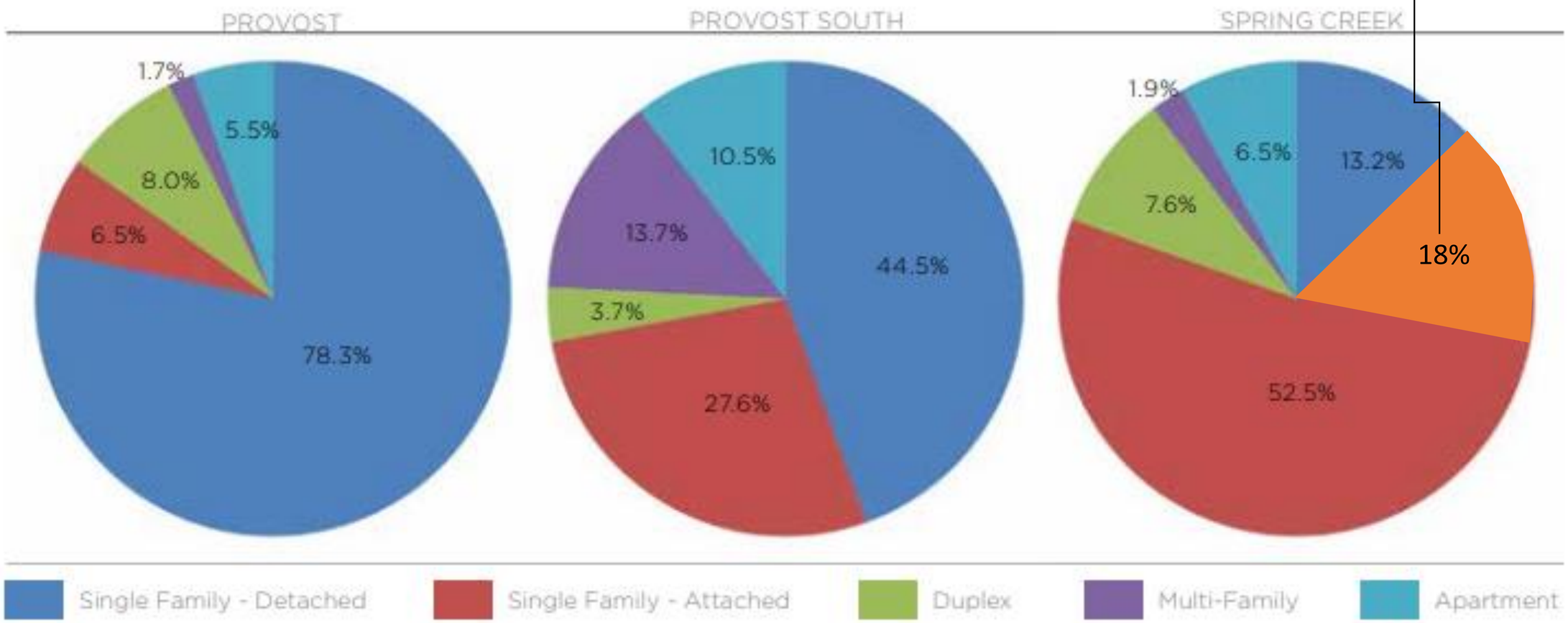
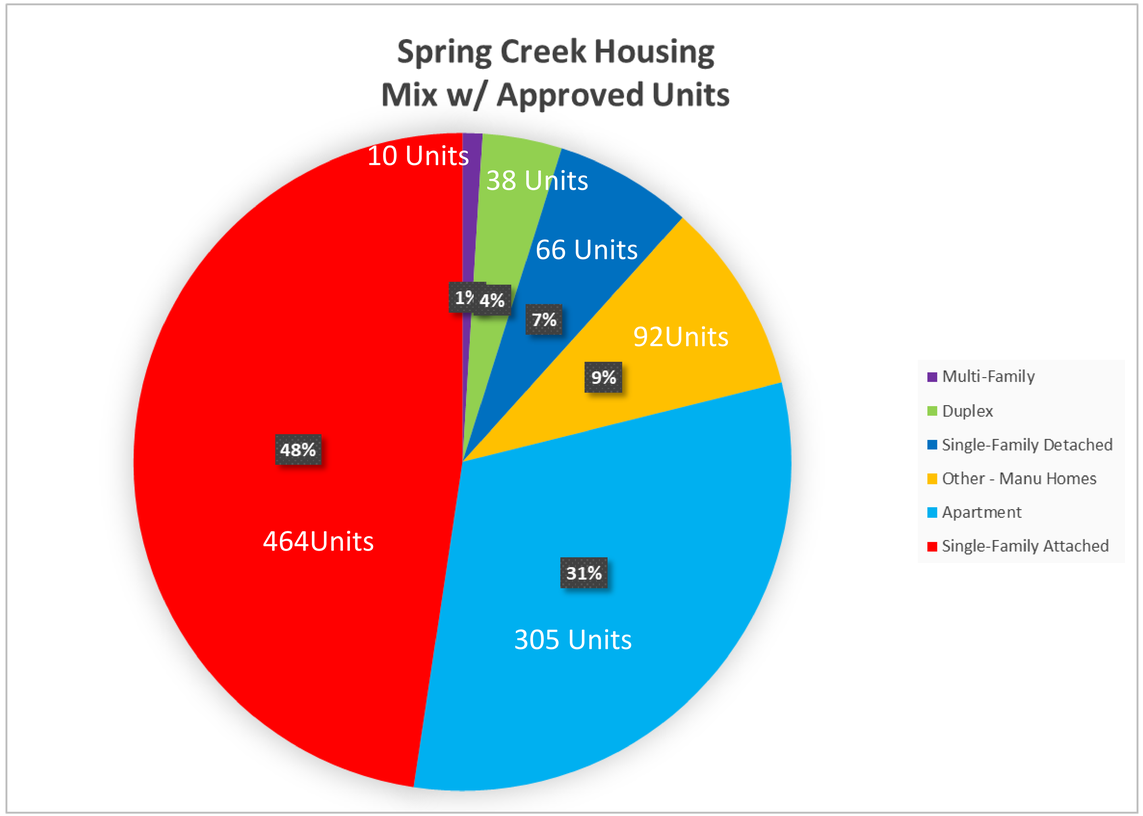
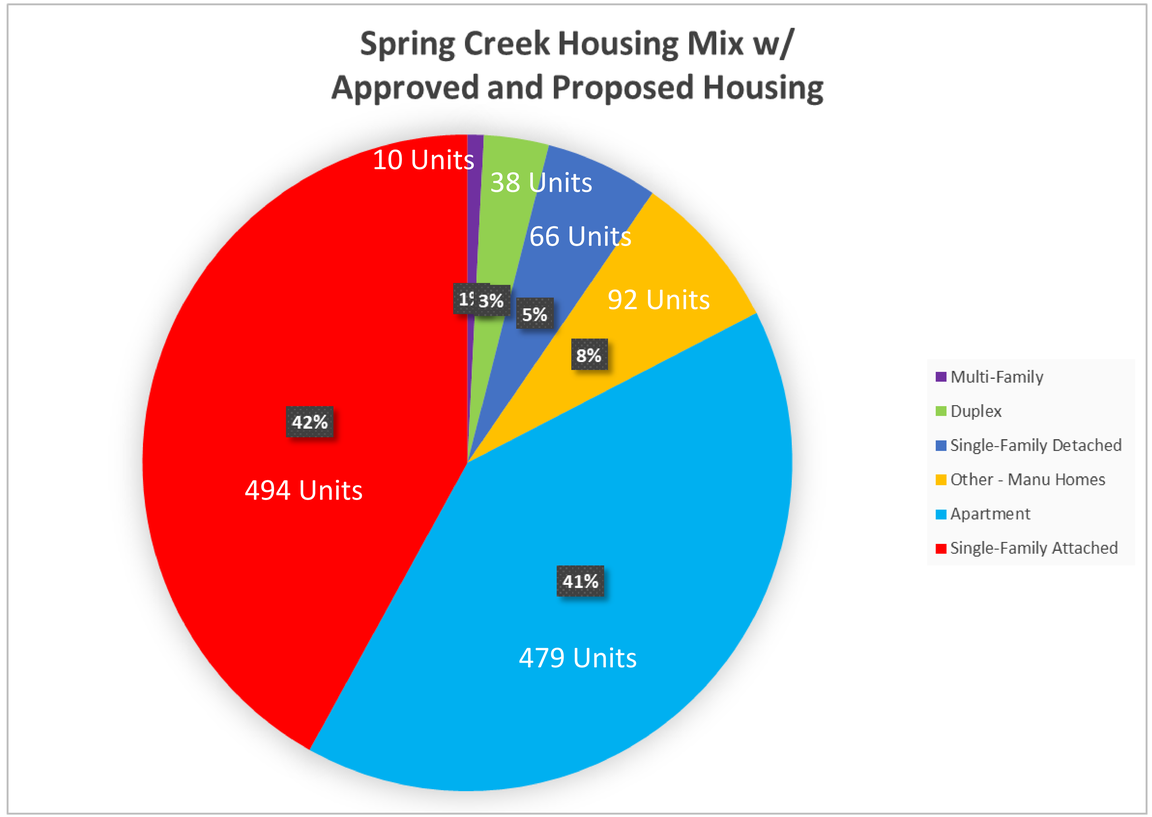


Figure 2.2 - Housing type distribution for the Southeast Neighborhoods

Single-family dwellings accounted for 66% of the dwellings in the Spring Creek Neighborhood when the SE Neighborhood Plan was prepared in 2015.

Spring Creek Housing Mix – Approved and Proposed Housing





*This data is based on the premise that the only housing units that have been constructed in the Spring Creek Neighborhood since 2010 are the recently approved units referenced in this presentation.

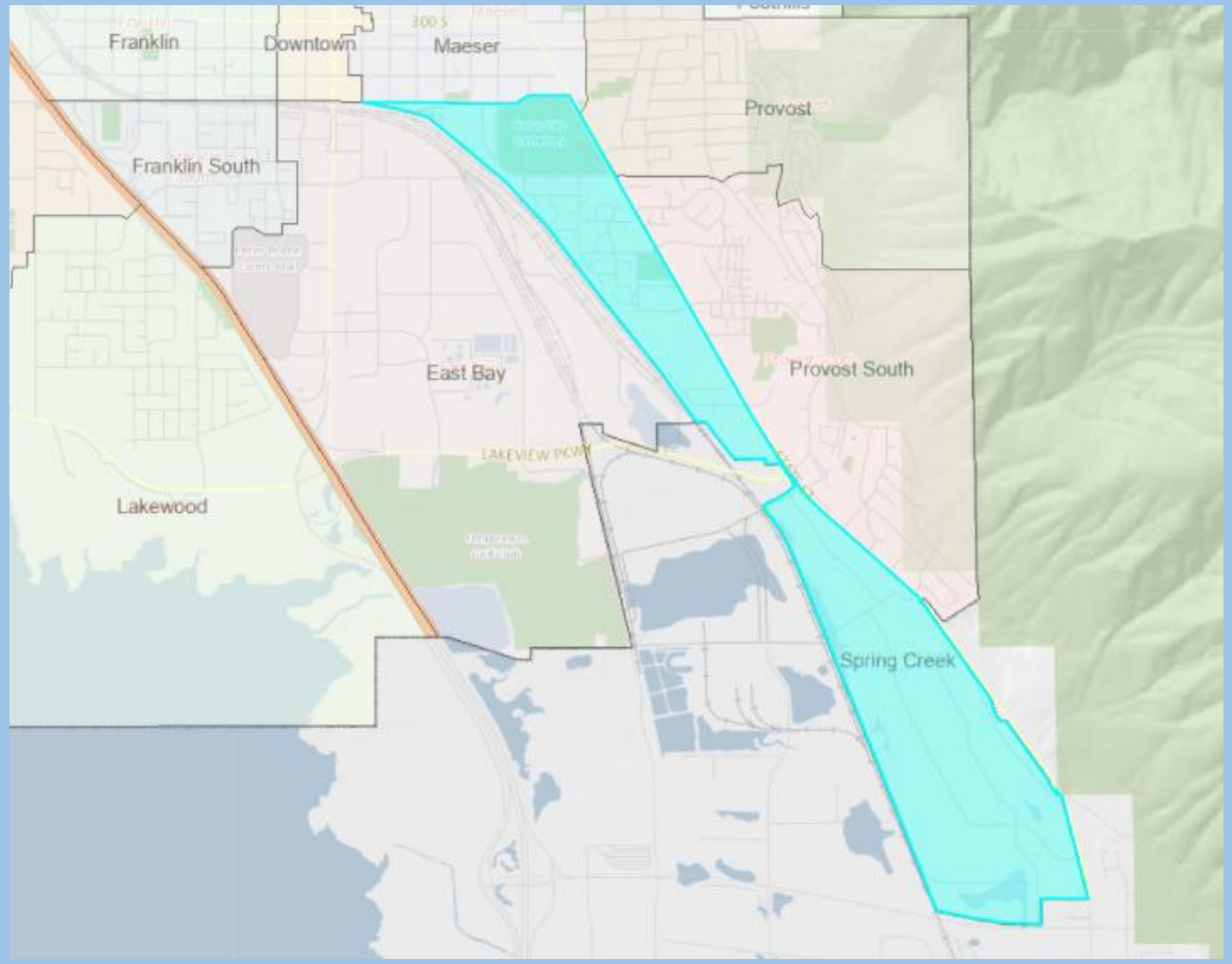
Spring Creek Neighborhood - Demographics

Population:

1446 (2010)

Housing Units:

501 (2010)
473 (Recently approved)



Median Income for Spring Creek Neighborhood:

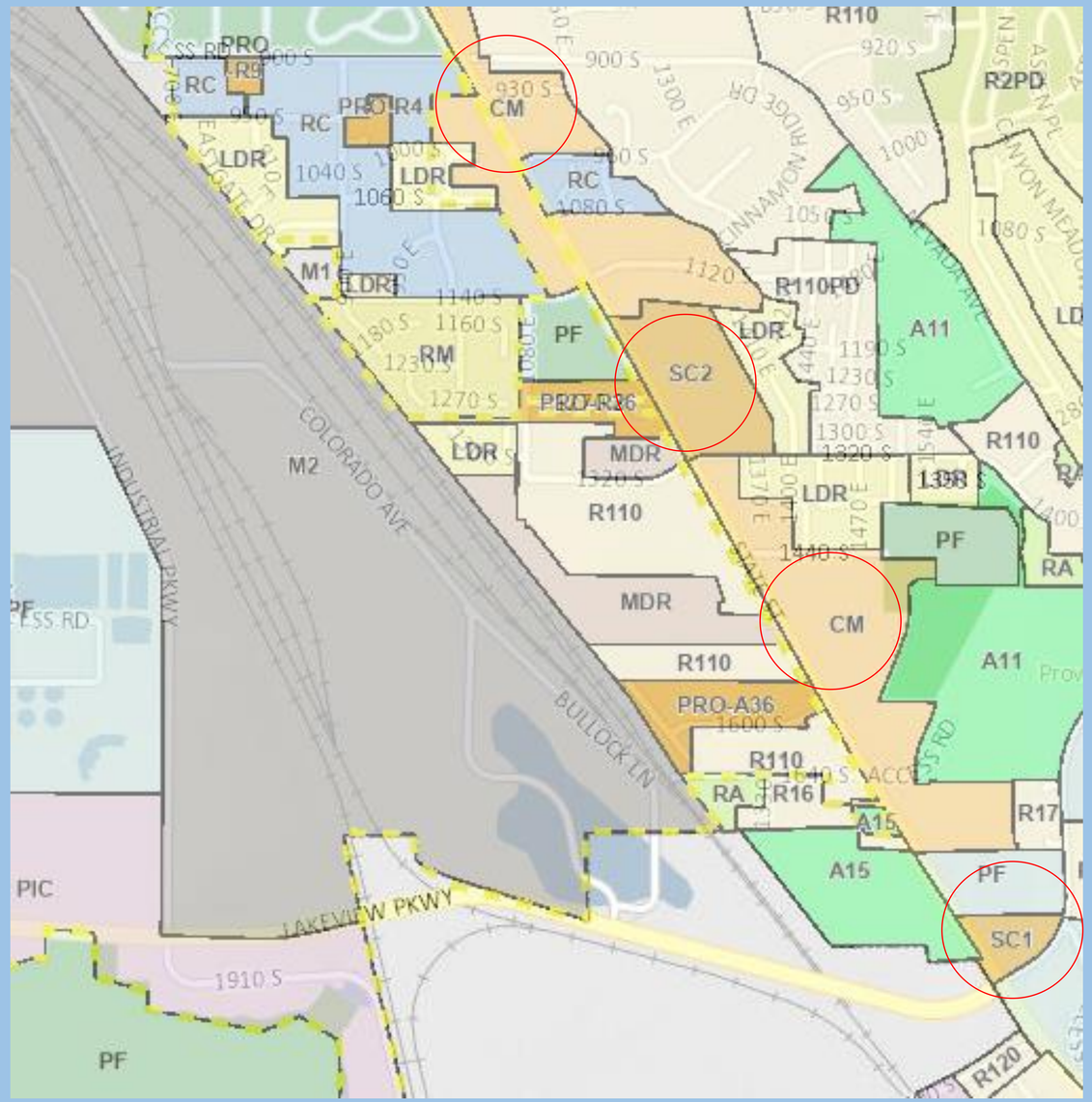
$32,455 (2018)

Persons Per Household in Provo:

3.2 (2014 - 2018)

Commercial Zones in South State Area

- SC1 – Neighborhood Shopping Center
- SC2 – Community Shopping Center
- CM – Heavy Commercial

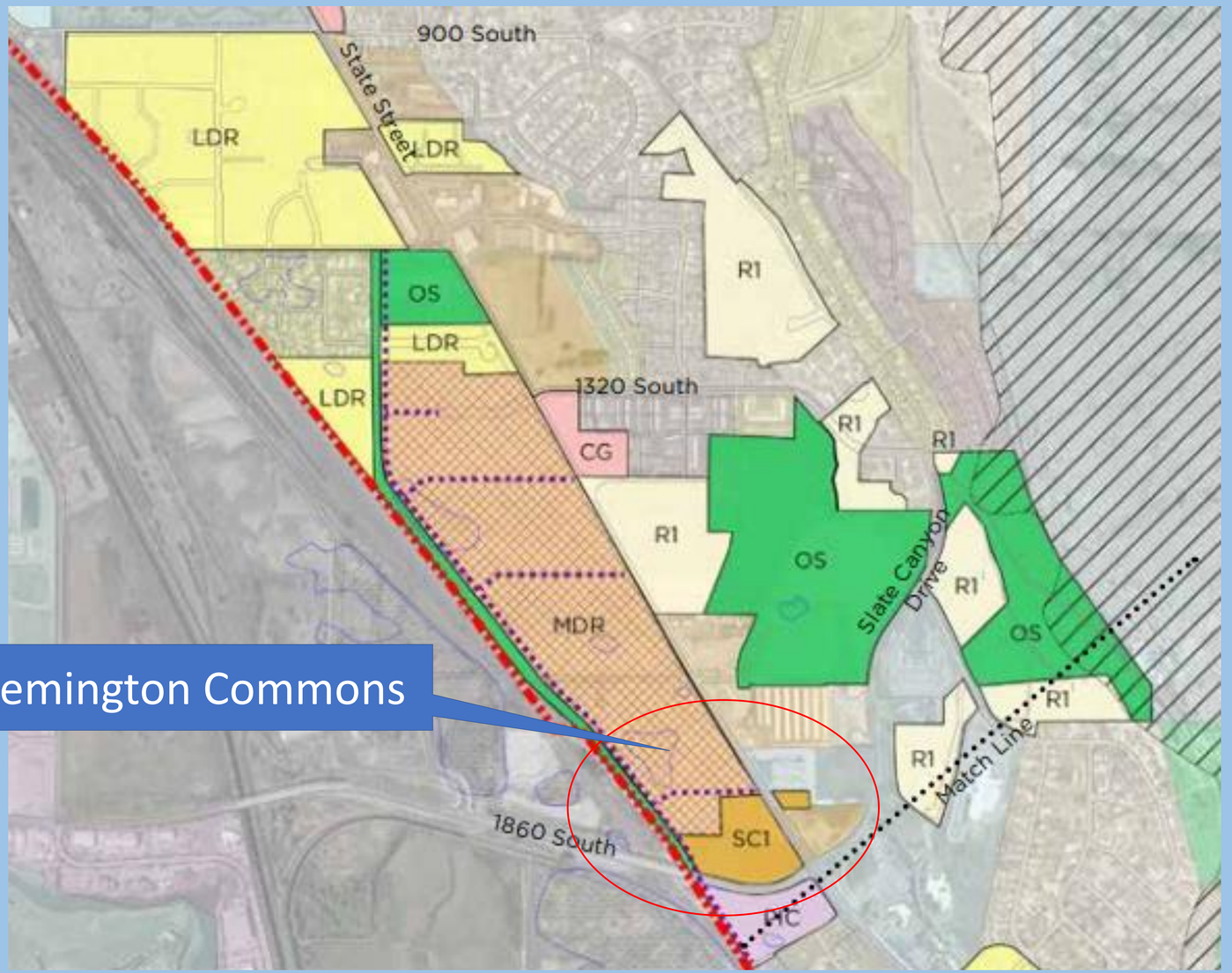


Future Land Use Map

Southeast Neighbors Plan

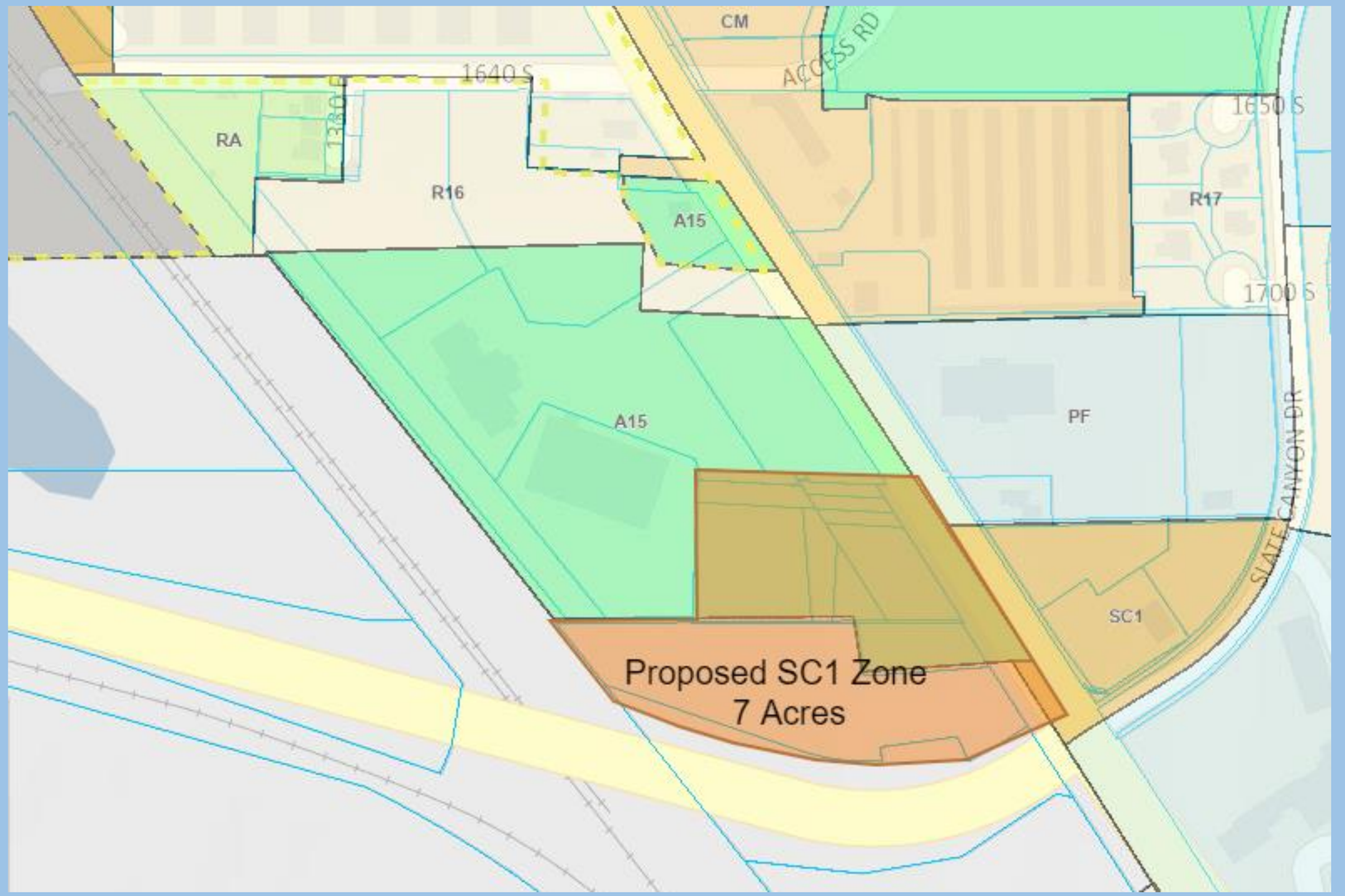
Future Land Use Map

- R1 - Single Family Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- SC1 - Neighborhood Shopping Center
- PIC - Planned Industrial Commercial
- OS - Open Space / Parks
- CG - General Commercial
- PO - Professional Office
- Baching Overlay
- Proposed Street Connection
- Sensitive Lands - Steep Slopes/Slides
- Sensitive Lands - Wetlands
- Sensitive Lands - FEMA Flood Zone



Remington Commons

Proposed SC1 Zone

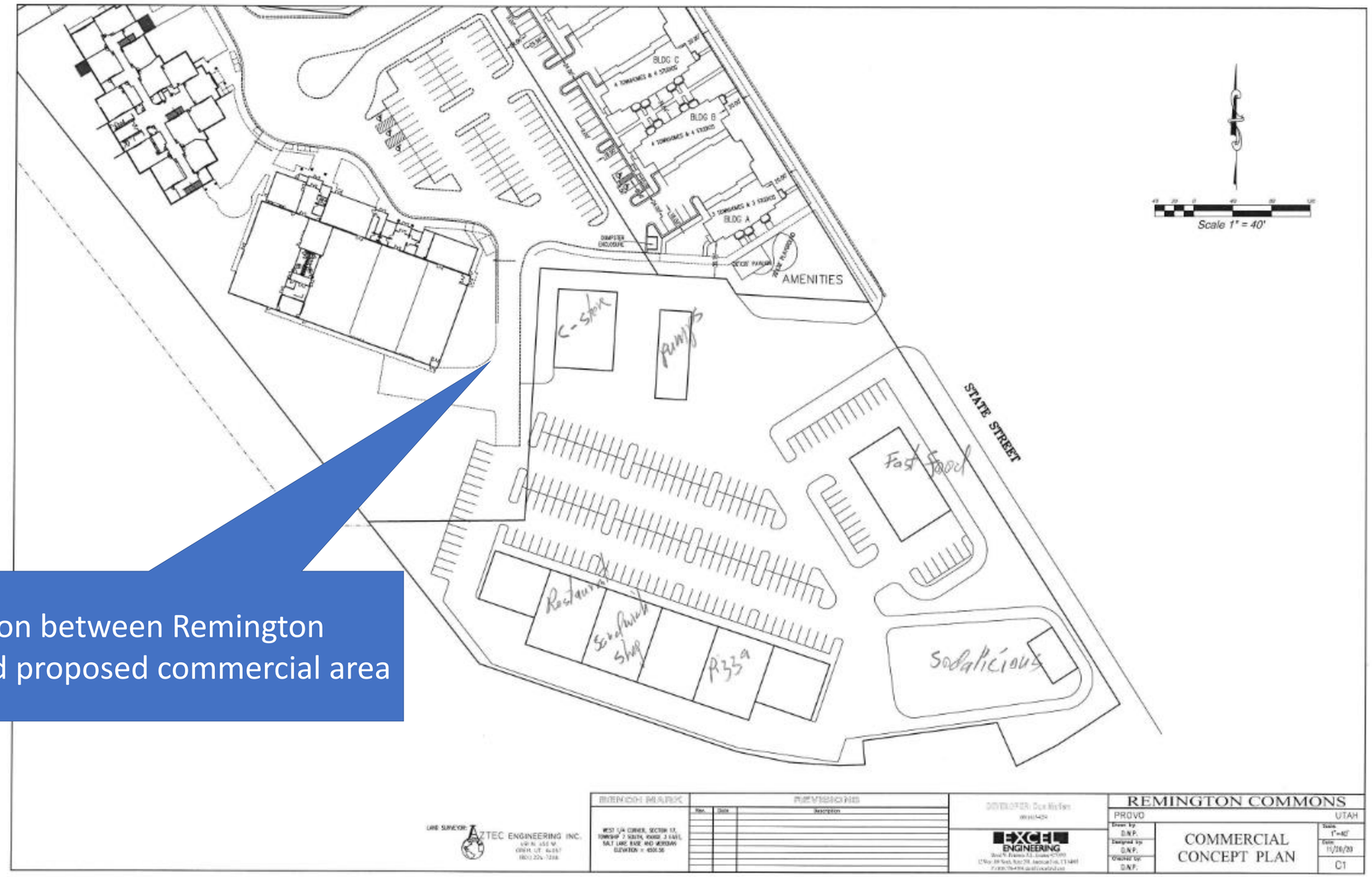


Applicant's Commercial Concept Plan

Conceptual Locations for the following:

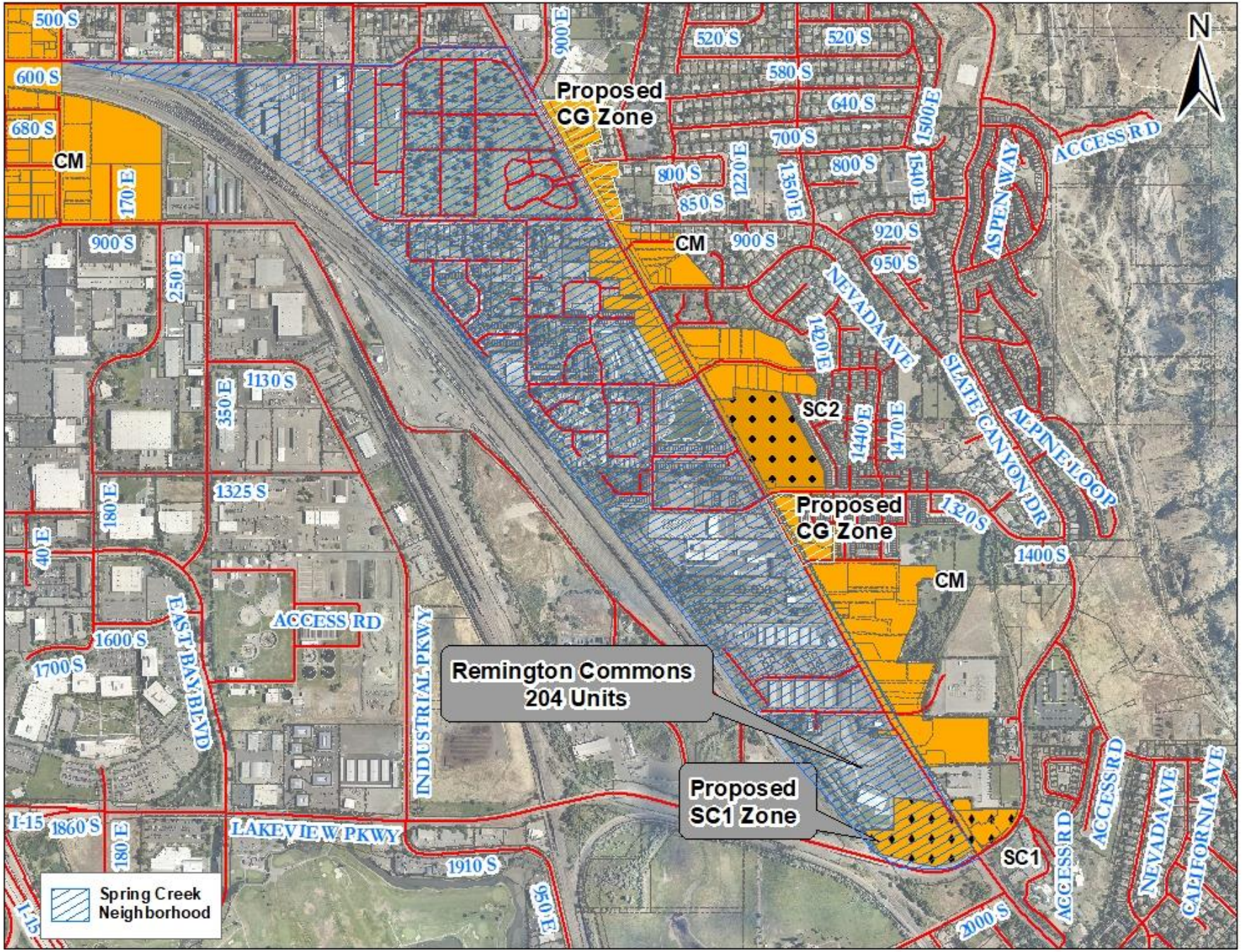
- C-store
- Two (2) fast-food pads
- Small strip of shops

Connection between Remington Commons and proposed commercial area



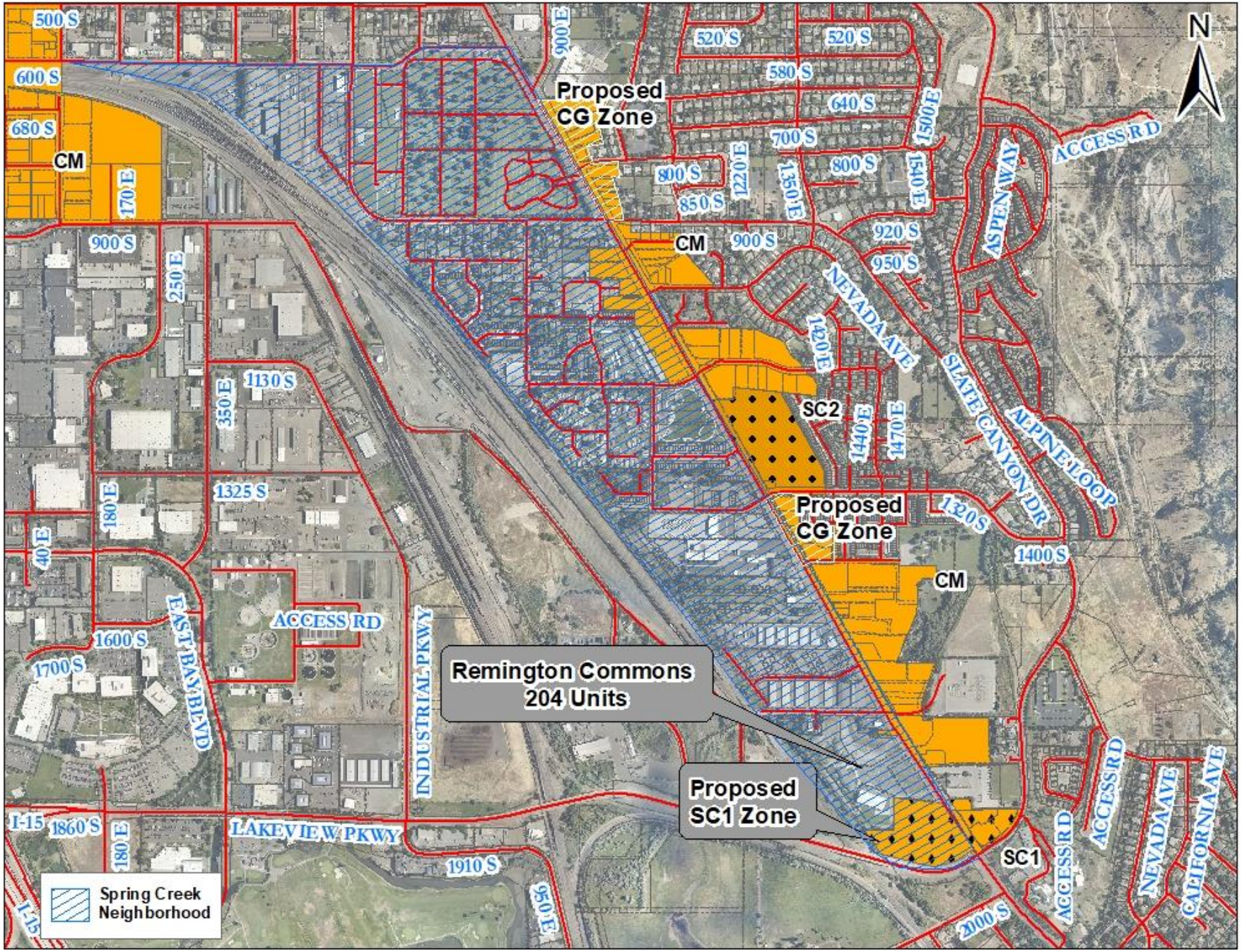
Commercial Zones North Spring Creek Neighborhood

- CM Zone – 60.27 Acres
- SC1 Zone – 3.29 Acres
- SC2 Zone – 11.51 Acres
  - Total – 75.07 Acres
- Proposed SC1 Zone – 7.33 Acres
- Proposed CG Zone – 11.00 Acres



Permitted Retail Uses – CM Zone

- Supermarkets
- Department Stores
- Bakeries and Doughnut Shops
- Delis
- Restaurants
- Boutiques
- Clothing Stores
- Banks
- Furniture Stores
- Drug Stores



State Street:

Because of the high speed, arterial nature of State Street, no stop control or signal is recommended on State Street. The increased traffic on State Street will have a very minor effect on traffic operations. No other constraints or improvements should be necessary as part of the construction of this project, because deceleration / right turn, that would otherwise be recommended, already exists.

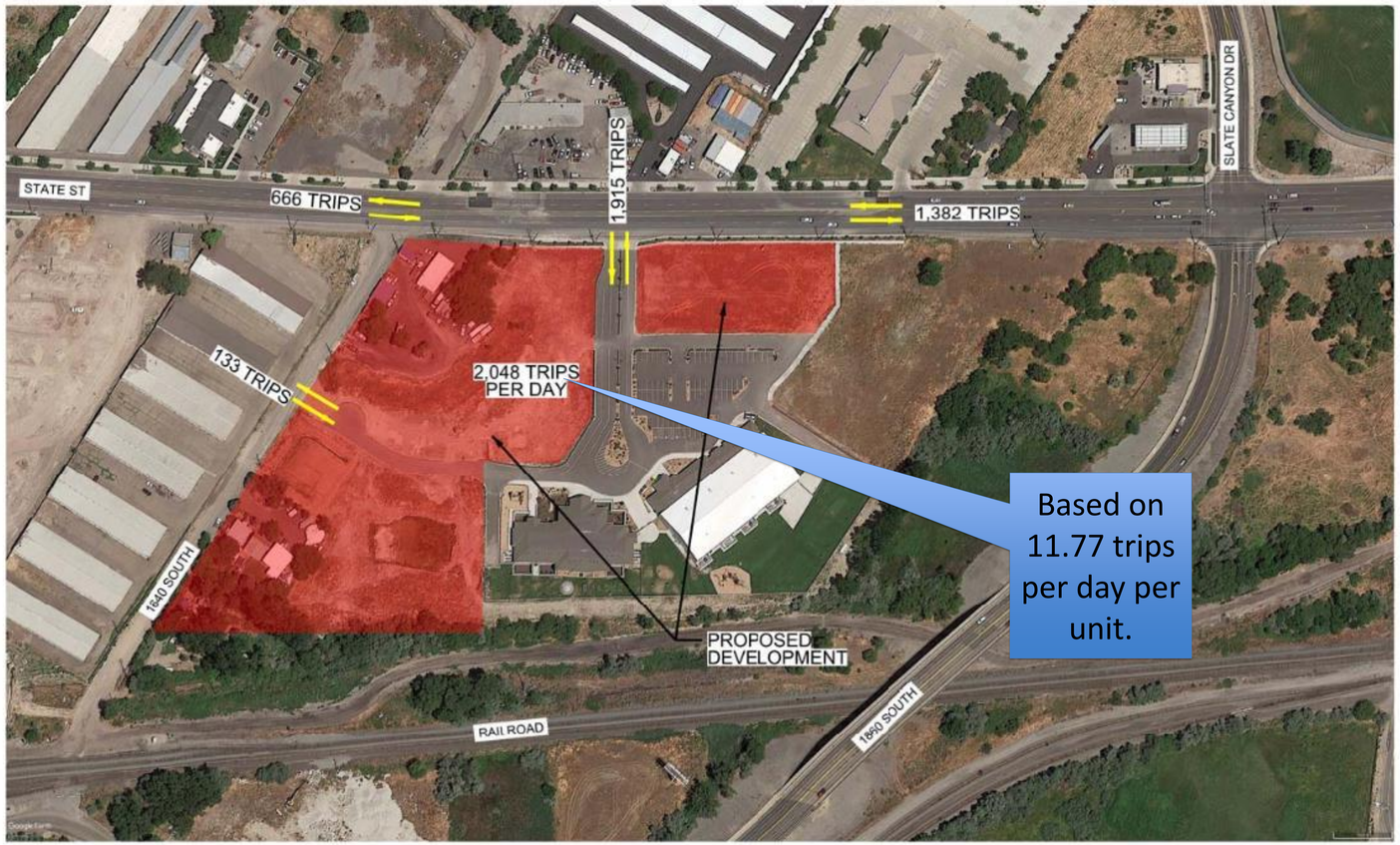
1640 South:

It is anticipated only a small number of vehicles will choose to access the proposed development from 1640 South as currently configured, so no changes to the existing intersection of 1640 South / State Street or the proposed interior street widths are recommended at this time. If future development or improvements to 1640 South and its intersection with State Street induce traffic volumes consistent with the assumptions of the warrant evaluation above, a signalized intersection would likely be warranted.

Traffic Assessment, Remington Commons Development [formerly Morley Site], 1700 South State Street, Provo; dated November 2, 2020; Prepared by Scott Hendricks, P.E., RB&G Engineering.

Recommendations

Based on our review of traffic volumes and other considerations, we recommend a Stop Sign be installed at the 1724 South driveway, and that the hours / durations left turns are signed prohibited out of the 1724 South driveway be extended to include 7:30 a.m. to 9:30 a.m., and 3:30 to 5:30 p.m. At this time, no other physical improvements or signing, such as median barriers, or signalization are recommended at or near the access points to the development.



RB&G ENGINEERING, INC.

Figure 2 - Average Added Daily Trips

Remington Commons Site Development Traffic Study

RB&G
ENGINEERING, INC.

Figure 3 - Added A.M. and P.M. Peak Hour Trips

Remington Commons Site Development Traffic Study

To: Provo City Planning Commission
Copied to: Provo City Ombudsman, Mayor Kaufusi
From: Robert and Heidi Lawrence
Re: South Provo Zoning Law Changes that Impact Treeside Charter School
Date: 11 Jan. 2020

Dear Provo City Planning Commission:

About a year ago, while driving south on State Street/Highway 89 in South Provo, I noticed a little yellow piece of paper stapled to a wooden pole. It was located at a point on State/89 where there is no sidewalk and no parking, and where the posted speed limit is 50 mph. This means people are driving anywhere from 50-70 mph: far too fast to be able to safely stop. The "public notice" (I put it in quotation marks because it seemed to not be intended for public consumption, given its location and size) was about some kind of planning for South Provo. There was a name attached to it, which raised my eyebrows, as I recognized it as a person who had been embroiled in a housing scandal in Provo for much of the previous decade, although eventually acquitted.

On the other side of State/89, there is a sidewalk. It is used frequently by walkers, bikers, and runners. It runs all the way down the road to 1860 South in Provo (alternatively Slate Canyon Dr./Lakeview Pkwy). Cars slow down and turn more often on that side of the road. In other words, a "public notice" would probably have been "noticed" by the "public" much more on the other side of the road than where it actually was. I do not recall seeing a second notice on that side of the road, however. And aside from us, I don't recall ever seeing another vehicle slow down and stop to read that "public notice." In order to read it, I had to exit the vehicle, pick my way through mud and snow, and stand on the unsafe side of State/89.

I am reminded of a scene from a novel called *The Hitchhiker's Guide to the Galaxy*. In it, Arthur Dent is informed that the plans for the highway bypass that require the demolishing of his home have been on file with the city. He goes to investigate and finds out that indeed they have been on file: "But Mr. Dent, the plans have been available in the local planning office for the last nine months." He replies, "Oh yes, well, as soon as I heard I went straight round to see them, yesterday afternoon. You hadn't exactly gone out of your way to call attention to them, had you? I mean, like actually telling anybody anything." We learn that after some searching, Dent found the notice about the plans "on display in the bottom of a locked filing cabinet stuck in a disused lavatory with a sign on the door saying 'Beware of the Leopard'" (Adams, pp. 9-10). Although the current situation was not as extreme as the parody, I'm sure you can see the parallels in a "public notice" posted where the "public" is highly unlikely to actually read it.

Fast forward to mid-November 2019. Parents of Treeside Charter School students were informed in an email, dated November 13, that "Treeside's Chapter 11 filing will allow us to address issues with creditors, including a recent property dispute with our landlord, in a central and organized venue for resolution. This is an act by Treeside to protect our school, our employees and state-funded assets from the actions of private entities." While I do not know who the landlord for the property is, my thoughts immediately went to the name that was on that "public notice" last year and I wondered whether that person was somehow involved.

Just this past week (8 January 2020), parents were informed by school officials that there would be a planning commission meeting that same night to talk about zoning changes to that area of Provo so that a developer (once again, my mind went straight to that name, wondering if there was a connection) could build a high-density housing development right in front of where the school is. We were later informed that this planning meeting would not address this issue after all, and the discussion would be rescheduled for some time in February (no date or time was given, in that email, for the reschedule). Given the importance of this issue to Treeside Charter School, it seems unlikely that the school official sending the messages delayed unreasonably after learning of the meeting himself. For busy parents, with work and childcare responsibilities making it difficult to fit in last-minute meetings, it feels like the timing of this information becoming available so shortly before the scheduled meeting time could have the effect of discouraging attendance of anyone with interest in the continued success of Treeside, whether or not that effect was intended.

Over the last 24 hours, I have thought very carefully about last year's "public notice," Treeside Charter School's landlord's recent behavior, and the notice yesterday about a planning meeting to change zoning laws to put housing where Treeside is, and I have come up with a very disturbing picture. Judging only from circumstances and observations from the perspective of parents and regular members of the community, it doesn't look very ethical. In fact, it looks very much like the landlord, the property developer, and the person whose name was on the "public notice" are all colluding in trying to push Treeside Charter School out of operation at its current location for their own financial gain (in short, it looks like greed overriding all other considerations). But why do we care? Why should you care?

We care because Treeside Charter School is a miracle in our lives. Just before our daughter entered first grade, we moved from Springville back into Provo, in the Provost area. We had been seriously looking in a different area of Provo, much closer to what was then our daughter's school. However, coming back to the Provost area ended up "feeling right," even though it wasn't as close to that school. Six months after the move, we realized it was inspiration. During the first half of first grade, our daughter faced an unfortunate situation in connection with another student in her class. Her behavior and performance naturally fell well below expected levels, given the severity of the issue. When I approached the teacher about some of the things our daughter had told me, the teacher's response was dismissive and it turned out later that nothing else was done at the time, despite the teacher's assurances that she would manage the situation. Our daughter's performance and behavior continued to deteriorate, but I was not informed at all about the performance problems she was having until long after they started. When I asked my daughter about school every day, she told me she was doing great now. When I finally emailed her teacher to gratefully acknowledge her (implied) better performance in the classroom, I was abruptly informed that she was not doing well at all, her academic performance was even worse, and we needed to work on getting her help. Her teacher continually told us things like "she just can't do it, we need to get her in with a therapist and develop an IEP," right in front of our daughter. We were understandably devastated, as was our daughter, and disappointed with the lack of communication and the discouraging, helpless attitude.

We began investigating other schools in the area, and did a lot of reading on Treeside Charter School and its methodology, which is a relatively rare combination (for the Provo area schools) of Waldorf and Montessori with a heavy focus on the arts. We were impressed. We emailed the

school and asked about vacancies in the first grade and were told there were none. We went ahead and put her on the waiting list anyway. Within three days of putting her on the waiting list, we received a phone call from Treeside saying that a space had opened up in a first grade classroom – would we like to come and tour the school and meet the teacher? Absolutely! Within two weeks, we had our daughter transferred into Treeside and her behavior and performance turned 180 degrees. She was no longer being told "she couldn't do any better." She was encouraged and taught in age-appropriate ways by a qualified, certified teacher. The skills she had struggled with in the other school were quickly developed over the rest of the year. There was no need at all for an IEP. It turned out she was a perfectly normal first grader. Now during second grade, she is in a classroom with another caring teacher who helps me know when I need to help my daughter at home. The school makes an effort to keep classmates together between grades, so she has friends and feels accepted and loved. Treeside Charter has literally been a miracle in our lives, as I mentioned earlier. Through following that nudge to relocate back to Southeast Provo, we ended up less than a 5-minute drive from Treeside. I'm sure we are not the only ones who have a similar story about the excellent experience Treeside offers.

In the past, Utah has not ranked particularly well in State education rankings for K-12 (according to US News and World Report, it ranked 22 for K-12 during 2019, though its ranking for higher education/post-secondary gave it an overall ranking in the top 10). It is beginning to improve, and that improvement is because of schools like Treeside. This school contributes positively to our community. It makes a real difference to its students. As it says in its mission, it does educate the whole child, and while the school is naturally required by the State to participate in standardized testing, teaching to the test is not the focus of the school. Education is the focus of the school. Please do not allow zoning law changes that would disturb the atmosphere of a good school like Treeside. Particularly, please consider whether the combination of circumstances and events under which these changes appear to have been proposed suggest that they have not been conducted ethically. (Just because something is "legal" doesn't make it "right!")

Thank you for your time and serious consideration of the lasting negative impact these changes could have on the Provo community and our children's education, and the positive effect Treeside Charter School has on our community every day.

Sincerely,

Robert J. Lawrence

Heidi A. Lawrence

PLRZ20190356 - Spring Creek Neighborhood

December 10, 2020, 12:19 PM

Contents

i.	Summary of registered statements	2
ii.	Individual registered statements	3

Topic Registration Type: Registration required

PLRZ20190356 - Spring Creek Neighborhood

Spring Creek Neighborhood - What do you think about the proposed zone change for the Remington Commons housing complex?

Summary Of Registered Statements

Topic Registration Type: Registration required

As of December 10, 2020, 12:19 PM, this forum had:		Topic Start	Topic End
Attendees:	35	October 1, 2020, 12:58 PM	December 10, 2020, 12:18 PM
Registered Statements:	3		
Minutes of Public Comment:	6		

PLRZ20190356 - Spring Creek Neighborhood

Spring Creek Neighborhood - What do you think about the proposed zone change for the Remington Commons housing complex?

Individual Registered Statements

Topic Registration Type: Registration required

All participants living inside Oak Hills

J D
inside Oak Hills
October 1, 2020, 9:11 PM

How will this large addition impact traffic? What landscaping requirements exist to prevent development up to the sidewalk? Not excited about this development.

2 Supporters

All participants living inside Provost South

Timothy Willis
inside Provost South
October 2, 2020, 4:55 AM

We have so many high density units in Provo now and so few affordable single family housing units (starter homes) does if make since to build more. Does Provo no longer want families. ??????

1 Supporter

Jennifer Partridge
inside Provost South
December 2, 2020, 7:17 PM

Many townhomes and apartments have been built in this area lately. I would like to see more options for families to stay in our area. Also, I remember several years ago that we created a Neighborhood Plan that was supposed to detail what the neighborhood would like to see in each area. What does the plan say? As a regular resident, it is hard to tell if the city is following any of the neighborhood plans. Instead, it seems like city planners went to a lot of work and instead of referring to the plans, the council/planning commission is reactive to the developers who step forward.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: NLA
Department: Development Services
Requested Meeting Date: 10-20-2020

SUBJECT: ***CONTINUED*** An ordinance amending the zone map classification of approximately 5.33 acres of property, generally located at 1724 S State St, from Agricultural (A1.5) and Residential (R1.6) to Community Shopping Center (SC2). Spring Creek Neighborhood. (PLRZ20190426)

RECOMMENDATION: ***CONTINUED*** The Planning Commission has recommended denial (7:1, Daniel Gonzales opposed).

BACKGROUND: ***CONTINUED*** The subject property lies on South State, just north of the intersection of State Street and Lakeview Parkway (1860 South). It is bordered on the north and east by vacant land that is the subject of a sizeable medium density residential project (204 units). A railway lies to the west of the property. The Provo City Transportation Master Plan 2020, Major and Local Street Plan calls for a future collector to run parallel with, and east of, the railway. The land west of the subject property lies in unincorporated Utah County and has an industrial zoning designation. Some of the land to the south also lies in unincorporated Utah County and has an agricultural/residential designation. A portion of the land to the south lies within the city boundaries and has an A1.5 zoning designation. The subject land is in a high-water table area and the National Wetlands Inventory Mapper shows potential wetlands on the property. Portions of the subject property (new construction, etc., which are located within one hundred [100] feet of South State Street) lies in the South State Street Design Corridor. This Design Corridor has a set of design standards to, among other things, “promote attractive development” and “attract customers to businesses.”

FISCAL IMPACT:

PRESENTER’S NAME: Brandon Larsen (801) 852-6408 jblarsen@provo.org

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: PLRZ20190426

DEVELOPMENT SERVICES

Planning Commission Hearing Staff Report
Hearing Date: October 14, 2020

ITEM # 5* Jodi Hoffman requests a zone change from the Agricultural (A1.5) and One-Family Residential (R1.6) Zones to Community Shopping Center (SC2) Zone, located at 1724 S State Street to allow the charter school to be used as a preschool and a recreational use. Spring Creek Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLRZ20190426

Applicant: Jodi Hoffman

Staff Coordinator: Brandon Larsen

Property Owner: Zions M-13 Development, LLC

Parcel ID#: 22:046:0170 & 22:046:0176

General Plan Designation: Mixed Use Development

***Southeast Neighborhoods Plan* – Recommended Future Land Use**: MDR (Medium Density Residential Zone)

Current Zoning: A1.5 (Agricultural Zone) & R1.6 (One-Family Zone)

Proposed Zoning: SC2 (Community Shopping Center Zone)

Acreage: 5.33 acres

Number of Properties: 2

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is October 28, 2020, 6:00 P.M.*

2. **Recommend Denial** of the proposed zone map amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Current Legal Use: A charter school lies on the subject property.

Relevant History:
The subject property has been used as a charter school since 2017.

Neighborhood Issues:
Staff has not received comments from the neighborhood on this item. The leasee expressed concerns about the proposal at a neighborhood meeting on October 3, 2020. These concerns appear to be civil matters between the leasee and the landlord.

Summary of Key Issues:

- The applicant is proposing to rezone 5.33 acres from the A1.5 and R1.6 zones to the SC2 Zone.
- The property owner desires the rezone to potentially establish a day care and/or recreational uses on the subject property
- There is no concept plan associated with this application
- No new development is proposed
- The property has a total of 70 parking spaces on the property.

Staff Recommendation:
Staff recommends that the Planning Commission forward a positive recommendation to the Municipal Council for a zone change from the A1.5 and the R1.6 to SC2 Zone.

BACKGROUND

The subject property lies on South State, just north of the intersection of State Street and Lakeview Parkway (1860 South). It is bordered on the north and east by vacant land that is the subject of a sizeable medium density residential project (204 units). A railway lies to the west of the property. The *Provo City Transportation Master Plan 2020, Major and Local Street Plan* calls for a future collector to run parallel with, and east of, the railway. The land west of the subject property lies in unincorporated Utah County and has an industrial zoning designation. Some of the land to the south also lies in unincorporated Utah County and has an agricultural/residential designation. A portion of the land to the south lies within the city boundaries and has an A1.5 zoning designation.

The subject land is in a high-water table area and the National Wetlands Inventory Mapper shows potential wetlands on the property.

Portions of the subject property (new construction, etc., which are located within one hundred [100] feet of South State Street) lies in the South State Street Design Corridor. This Design Corridor has a set of design standards to, among other things, "promote attractive development" and "attract customers to businesses."

The property is comprised of two (2) parcels (3.18 and 2.15 acres) that total 5.33 acres. The Treeside Charter School lies on both parcels. The school has two (2) buildings, including a large gymnasium on the smaller parcel. The school has 70 parking spaces lying on the larger parcel. This larger parcel fronts onto State Street (approximately 65 feet).

The applicant has submitted the following statement regarding the purpose for the proposal: *"The owner … is seeking a rezone [to the SC2 Zone] to allow preschool and recreational uses as permitted uses on the property.*

The SC2 does allow for day care centers, as well as a number of recreational/amusement type uses, including athletic clubs (excludes gymnasiums). There is no associated concept plan for this proposal.

STAFF ANALYSIS

General Plan Policies. The subject property has a Mixed-Use land use designation. The policies of the General Plan appear to value "reductions in parking and automobile facilities" for development on land with a Mixed-Use designation. The subject property is already developed and is home to a public school. However, if uses are to change, or the property is to redevelop in the future, "reductions in parking and automobile facilities," as well as the incorporation of alternative transit options, should be incorporated or provided for.

The "Increasing the Tax Base through Commercial Development" paragraph of Section 1.2.8 of the General Plan states the following: *"Provo City should be a 'full service' community, providing consumer choices and convenient shopping opportunities."* This area appears to be underserved by commercial uses.

A portion of the Spring Creek section of Section 1.2.9 of the General Plan states the following: *"Mixed-use development should be considered for the property along the west side of South State Street (US 89), between 900 South and 1860 South, after an area master plan has been completed. Multi-family housing may be developed within this area with or without the commercial elements…."*

The *Southeast Neighborhoods Plan* was prepared a few years ago and addresses the recommended future land use of the subject property. As noted earlier, the recommended future land uses for the subject land are those consistent with the Medium Density Residential Zone. A proposed Neighborhood Commercial (SC1) Zone lies very near and to the south of the subject property. The Southeast Neighborhood plan appears to consider the possibility of smaller-scale neighborhood shopping being increased to community-scale services—at 1860 South State—if densities are sufficient. A portion of the *Neighborhood Shopping Center* paragraph of the *Southeast Neighborhoods Plan* reads, as follows:

"Although zoning can reflect the desire for community scale conveniences at these locations, it is also important to understand that the viability of these nodes will rely heavily on sufficient housing densities to support these uses."

Again, staff notes the close proximity of the subject property to the proposed SC1 Zone. Taking into account both the General Plan land use designation and the recommended land use of this property, staff believes the proposed request is acceptable. A large multi-family housing development is proposed adjacent to this proposal. Having commercial zoned property proximate to this development, and near other recently approved residential developments, seems acceptable considering the Mixed-Use designation and the above-noted policies of the General Plan and the *Southeast Neighborhoods Plan*. There may be some synergistic opportunities related to having commercial and residential zones next to each other, including commercial opportunities for residents and clients/customers for businesses (i.e., preschool and multi-family development)

Findings of Fact. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of zoning map amendments:

Upon receipt of a petition by the Planning Commission, the Commission shall hold a public hearing in accordance with the provisions of Section 14.02.010 of this Title and may approve, conditionally approve, or deny the preliminary project plan. Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan: (responses in bold)

(a) Public purpose for the amendment in question.

The public purpose is to establish commercial opportunities (not heavy commercial) for the subject property. The applicant has specifically identified preschools and recreational uses (athletic clubs) as potentially desirable for this property.

(b) Confirmation that the public purpose is best served by the amendment in question.

It appears there is a lack of commercial (not heavy commercial) opportunities for southeast residents. The subject property currently has a lack of parking to facilitate some of the uses permitted or conditionally permitted in the proposed zone. This issue should be considered in evaluating the final decision for this request.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

This proposal appears to be acceptable considering the policies of the General Plan and the *Southeast Neighborhoods Plan*.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Staff is not aware of any timing or sequencing issues with this request.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

It does not appear that this proposal will hinder or obstruct attainment of the General Plan's articulated policies.

(f) Adverse impacts on adjacent landowners.

Staff is not aware of potential adverse impacts to adjacent landowners. This proposal has the potential to be a great benefit to adjacent landowners, namely providing commercial opportunities to residents.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

The General Plan and zoning have been verified for correctness.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

The General Plan Map and policies appear to support this proposal.

Conclusion. The proposed zone map amendment appears to be acceptable for the area and would help facilitate commercial opportunities for area residents. This area of Provo City appears to be under-served, as it relates to commercial development. The subject property currently has a lack of parking to facilitate some of the uses permitted or conditionally permitted in the proposed SC2 Zone. This issue should be considered in evaluating the final decision for this request.

ATTACHMENTS

1. Current Zoning

2. Proposed Zoning

3. Potential Use of Property Statement

4. Rezone Written Description

ATTACHMENT – Current Zoning

Current Zoning: A1.5 & R1.6 (Agricultural & One-Family Residential)

ATTACHMENT – Proposed Zoning

Proposed Zoning: SC2 (Community Shopping Center)

ATTACHMENT – Potential Use of Property Statement

HOFFMAN LAW

Provo Planning Department
Attn: Brandon Larsen
jblarsen@provo.org

August 19, 2020
Via Online Portal

RE: Re-zone request for 1724 S. State Street Provo, Utah

Dear Mr. Larsen:

The owner and developer of 1724 S. State Street is seeking a rezone of the subject property from A15 to SC-2, in order to allow preschool and athletic club uses as permitted uses on the property. Currently, the property is being used by a charter school for elementary education and childhood physical development. If the existing charter school tenant departs, the owner foresees the immediate need for additional permitted uses to efficiently use the built environment. The owner anticipates that following the departure of the current tenant, the larger building would most effectively be used as an indoor athletic club, with perhaps supporting and related wellness uses, and the smaller school building would most effectively be used as a preschool. The SC-2 zone allows preschool and athletic club uses as permitted principal uses.

Sincerely,

Hoffman Law
Jodi S. Hoffman

P.O. Box 4421, Park City, UT 84060 • 435.901.0805 • jodi@parkcitylegal.com

ATTACHMENT – Rezone Written Description

HOFFMAN LAW

Provo Planning Department
Attn: Brandon Larsen
jblarsen@provo.org

August 19, 2020
Via Online Portal

RE: Re-zone request for 1724 S. State Street Provo, Utah

Dear Mr. Larsen:

Zions M-13 Development, LLC, the owner of two parcels located at 1724 S. State Street, requests a zone change from the A15 zone to the SC-2 zone. The property is currently home to a charter school that occupies two newly constructed (2017) buildings. A rezone is required to continue beneficial use of the property should the existing charter school tenant cease operations. We have received notice that the charter school will cease operations in the near future and there are no new charter school tenants on the horizon.

The current A15 zoning designation does not align with Provo City's General Plan, SE Neighborhood Plan, the desired future use of the property, nor the proposed use of the adjacent property currently pending a rezone request for MDR zoning. A rezone of the property from A15 to SC-2 would align with the City's vision for mixed-use development for this area and would also fit well with the SE Neighborhood Plan by tying into SC-1 zoning that is immediately south of the property.

Both the General Plan and the SE Neighborhood Plan Future designate this property for mixed-use development. *See* Provo General Plan Map; *see also* Provo SE Neighborhood Plan at 23. The General Plan seeks to encourage neighborhood inter-connectivity (Goal 1.4.1) and neighborhood amenities, such as neighborhood commercial uses (Goal 1.4.12). The SE Neighborhood Plan specifically notes the City's desire to incentivize neighborhood commercial uses in the area and reduce car reliance and congestion on South State Street.

This zone change envisions repurposing two existing charter school structures into similar office or neighborhood commercial uses—whether they be another school use, pre-school, athletic club, or other uses that support the surrounding residential community.

By providing local conveniences within walking distance of residential neighborhoods, the requested zone change would facilitate at least two of the City's stated goals from the SE Neighborhood Plan and is in line with the General Plan Map. A preschool and an indoor athletic club are commercial uses that are central to the everyday life of many families and are magnetic amenities for any community. The property owner's desired uses and proposed rezone fit well into the City's land use vision for this area.

P.O. Box 4421, Park City, UT 84060 • 435.901.0805 • jodi@parkcitylegal.com

ATTACHMENT – Rezone Written Description, cont.

Thank you for the time and guidance you have provided our firm in preparing this request. Please let us know how we can help facilitate this application.

Sincerely,

Hoffman Law
Jodi S. Hoffman

ORDINANCE 2020-.

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 5.33 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 1724 SOUTH STATE STREET, FROM AGRICULTURAL (A1.5) AND RESIDENTIAL (R1.6) TO COMMUNITY SHOPPING CENTER (SC2). SPRING CREEK NEIGHBORHOOD. (PLRZ20200426)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 5.33 acres of real property, generally located at 1724 South State Street (an approximation of which is shown or described in Exhibit A and a more precise description of which will be attached hereto as Exhibit B after the Zone Map has been updated), be amended from Agricultural (A1.5) and Residential (R1.6) to Community Shopping Center (SC2); and

WHEREAS, on October 14, 2020, the Planning Commission held a duly noticed public hearing to consider the proposed amendment, and at such meeting, the Planning Commission recommended denial to the Municipal Council by a vote of 7:1; and

WHEREAS, the Planning Commission's recommendation was based on the project design presented to the Commission; and

WHEREAS, on December 15, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the Planning Commission's recommendation and facts and comments presented to the Municipal Council, the Council finds (i) the Zone Map of Provo, Utah should be amended as described herein; and (ii) the proposed zone map classification amendment for the real property described herein reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The classification on the Zone Map of Provo, Utah is hereby amended from the Agricultural (A1.5) and Residential (R1.6) Zones to the Community Shopping Center (SC2) Zone for approximately 5.33 acres of real property generally located at 1724 South State Street, as described herein.

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City, Utah be updated and codified to reflect the provisions enacted by this ordinance.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

Exhibit A

1600 S
PRO-A36
R110
1640 S
ACCESS RD
A11
CM
RA
1330 E
R16
A15
R16
STATE ST
PF
A15
SC1
LAKEVIEW PKWY

Provo City Planning Commission

Report of Action

October 14, 2020

Item 5* Jodi Hoffman requests a zone change from the Agricultural (A1.5) and One-Family Residential (R1.6) Zones to Community Shopping Center (SC2) Zone, located at 1724 S State Street to allow the charter school to be used as a preschool and a recreational use. Spring Creek Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLRZ20190426

The following action was taken by the Planning Commission on the above described item at its regular meeting of October 14, 2020:

RECOMMENDATION OF DENIAL

On a vote of 7:1, the Planning Commission recommended denial of the above noted application.

Motion By: Deborah Jensen
Second By: Laurie Urquiaga

Votes in Favor of Motion: Deborah Jensen, Ally Jones, Laurie Urquiaga, Lisa Jensen, Brian Henrie, Dave Anderson, and Robert Knudsen

Votes against Motion: Daniel Gonzales

Dave Anderson was present as Chair.

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED

The property proposed to be rezoned to the Community Shopping Center (SC2) Zone is described in the attached Exhibit "A."

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in Staff's presentation to the Planning Commission included the following: Staff gave an overview of the proposal and staff recommendation as read in the Staff Report.

NEIGHBORHOOD MEETING

- The Spring Creek Neighborhood meet on Saturday, October 3, 2020. Much of the conversation at the meeting about this item appeared to be regarding civil issues between by the property owner (landlord) and lessee (Treeside Charter School or TCS). TCS is concerned about student safety and believes a rezone of the property to allow additional uses may jeopardize student safety. They also question if this request is premature; they assert the school is in good position to continue operations into the future. Again, these issues appear to be civil matters between the property owner and lessee.

NEIGHBORHOOD AND PUBLIC COMMENT

- An attorney and an employee of TCS expressed concerns at the meeting, which were similar in nature to those referenced in the previous section.

APPLICANT RESPONSE

The following are key points the applicant made during the meeting:

- The property owner is looking for land uses he can switch into if the current tenant leaves.
- Considering the existing facilities on the property, preschools and athletic clubs are the two (2) uses the property owner is most interested in.
- The SC2 Zone is requested because both preschools and athletic clubs are permitted uses in this zone.
- The proposal is in-line with the general plan and the neighborhood plan.
- The proposed zone would be a good change for the neighborhood and community.
- Available parking spaces will limit the uses on the property.
- The proposal—with its potential for community shopping center (SC2 Zone) uses--could offer a broader public benefit to the community than the school is currently providing.
- The civil issues addressed in the *Neighborhood Meeting* section of this report were addressed.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Dave Anderson believes the request is premature. He would not feel comfortable moving forward on this request without knowing more about the development proposals for adjacent properties. There is no urgent need to act on the proposal.
- Laurie Urquiaga also stated there is no urgency to move on this application.
- Lisa Jensen expressed concern with the proposal because there is no concept plan or imminent land use change.
- Deborah Jensen acknowledged the existence of a development proposal for land adjacent to the subject property. The Planning Commission has not had the opportunity to review this proposal. She noted that it appears the Planning Commission is not on-board with the subject proposal.
- Brian Henrie believes the rezone request is premature. There is not enough information to act on this request.

Planning Commission Chair

Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Development Services Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED

A Parcel of land being located in the Southwest Quarter of Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian, being further described as follows:
Beginning at a point being North 89º09'59" East 723.57 feet along the Section Line and South 158.19 feet from the West Quarter Corner of said Section 17;
Thence North 58º17'11" East 227.21 feet;
Thence North 69º52'45" East 22.08 feet;
Thence South 27º25'20" East 108.93 feet;
Thence South 85º38'40" East 106.78 feet;
Thence North 58º38'05" East 296.21 feet to the Westerly Right-of-Way line of State Street;
Thence South 33º06'00" East 68.52 feet along the said Right-of-Way line;
Thence South 58º16'01" West 171.68 feet;
Thence South 33º21'15" East 318.81 feet;
Thence North 87º40'00" West 120.63 feet;
Thence South 2º20'00" West 262.49 feet;
Thence South 89º02'00" West 155.43 feet;
Thence North 39º03'00" West 640.71 feet to the Point of Beginning.

Contains 5.33 Acres or 232,173 square feet, more or less

ITEM 5*

Jodi Hoffman requests a zone change from the Agricultural (A1.5) and One-Family Residential (R1.6) Zones to Community Shopping Center (SC2) Zone, located at 1724 S State Street to allow the charter school to be used as a preschool and a recreational use.

Spring Creek Neighborhood

PLRZ20190426

1724 South State Street – Treeside Charter School Property

Rezone: A1.5 & R1.6 Zones to SC2 Zone

Current Zoning: A1.5 Zone (Agricultural) & R1.6 Zone (One-Family Residential)

Proposed Zoning: SC2 Zone (Community Shopping Center)

1640 S
ACCESS RD
1330 E
1650 S
SLATE CANYON DR
BAY VIEW LOOP
1724 South State Street
(Treeside Charter School Property)
A1.5 & R1.6 Zones to SC2 Zone
STATE ST
DAKOTA LN
LAKEVIEW PKWY
2000 S
ACCESS RD

1724 South State Street
(Treeside Charter School Property)
A1.5 & R1.6 Zones to SC2 Zone
70
Parking Spaces
Site Acreage:
5.33 Acres
STATE ST
LAKEVIEW PKWY

From the Southeast Neighborhoods Plan:

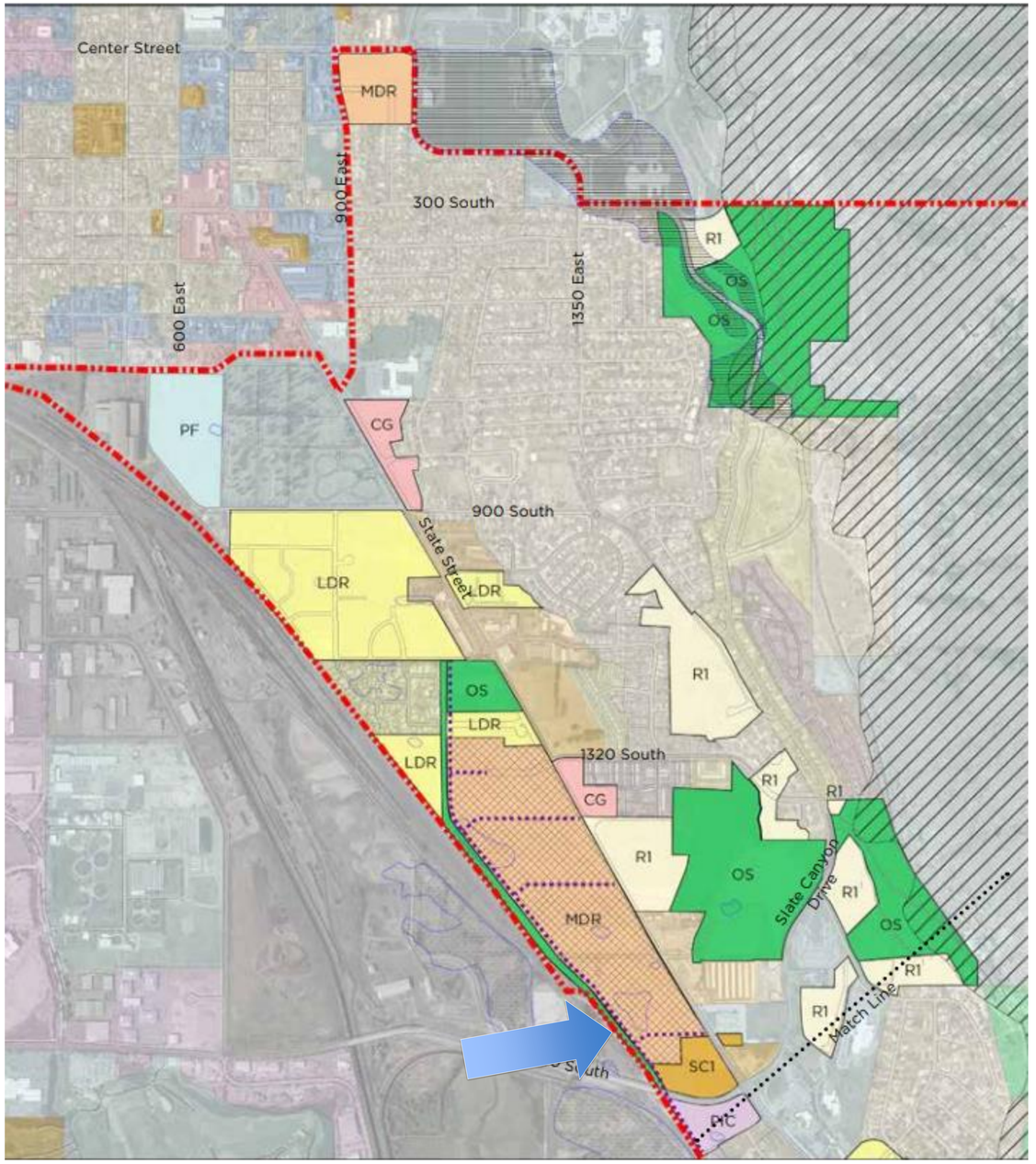
MEDIUM DENSITY RESIDENTIAL (MDR)

The MDR zone permits multi-family dwellings as dense as 30 units per acre. Allowing these higher densities west of State Street could encourage appropriate development to accommodate the population needs in the area necessary to incentivize the desired neighborhood shopping center. It is recommended that commercial uses also be permitted in this area.

NEIGHBORHOOD SHOPPING CENTER

During discussions with area residents, a primary concern expressed was the desire to reduce automobile reliance and congestion on State Street. One key to reducing automobile reliance is to provide local conveniences within walking or biking distance so that automobile trips become unnecessary for daily tasks.

Two commercial nodes are identified as key locations where neighborhood-scale shopping centers could be a valuable enhancement to the quality of life for this neighborhood. These nodes occur at the intersections of 1320 South State Street and 1860 South State Street. Although zoning can reflect the desire for community scale conveniences at these locations, it is also important to understand that the viability of these nodes will rely heavily on sufficient housing densities to support these uses. Balancing the need for sufficient residential rooftops to encourage commercial development with the desire for low-density, detached housing will be an ongoing challenge for this area.



Desired uses (athletic clubs and preschools) are permitted in the SC2 Zone and are conditionally permitted in the SC1 Zone.

Karen Tapahe

From: Ken Millar <kgmillar@gmail.com>
Sent: Monday, October 5, 2020 10:13 AM
To: Karen Tapahe
Subject: Spring Creek Meeting

CAUTION: This email originated from outside of Provo's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Spring Creek Neighborhood Meeting
October 3, 2020
Zoom Format

The meeting began at 9am conducted by Mary Millar Spring Creek Chair and facilitated by Karen Tapahe Provo City Neighborhood Coordinator. Approximately 15 attended.

Item 1

George Bills of Gardner and Associates requests the rezoning of approximately 8.5 acres from Heavy Commercial (CM), Residential Agricultural (RA), One-Family Residential (R1.6 and R1.10), and Agricultural (A1.5) to the Medium Density Residential (MDR) zone, as well as concept plan approval, to facilitate the construction of 204 dwelling units (30 townhomes, 30 studio apartments, 64 2-bedroom apartments, and 80 1-bedroom apartments), located at approximately 1724 S State Street.

Developer Don Mullen presented his plat plans and elevations for the above proposed housing project

Concerns discussed included:

Is the drainage including the catch basin in the north west corner sufficient for the development.? Mr Mullen stated that the drainage plan had been approved by the city engineering department

What are the new traffic considerations given the twice daily traffic influx at the adjacent school? It is recommended that the exiting traffic use 1640 South to access State Street. The developer will be required to improve the south side of 1640 South along their property. A new traffic study has been conducted and indicated everything was good to go.

The number of living units is stated as 204

Mr Mullen stated that parking for the development has been approved as sufficient. The developer will provide signs indicating the school property is not to be used for parking at any time. A representative for the school stated that there are mandates for the number of parking spaces the school is required to have and currently they are short. Mr Mullen stated that the current property owner has a parking easement on some area of his property but it is unclear where that is.

The final use of the project as apartments or condominiums has not been definitively decided, --likely will be after final plat approval.

Item 2

Jodi Hoffman requests a zone change from A1.5 (agricultural) to SC2 (community shopping center) zone, located at 1724 S State Street in the Spring Creek Neighborhood to allow the charter school to be used as a preschool and for recreational use. The property currently houses Treeside Charter School within two buildings. The owner and developer of the property is seeking a rezone to facilitate the continued use of the property should the charter school cease its lease of the two buildings. The property owner foresees an easy use transition for the property if, at a minimum, preschool and recreational uses are permitted in the zone. Applicant states that the larger building would most effectively be used as an indoor athletic club, with perhaps supporting and related wellness uses, and the smaller school building would most effectively be used as a preschool, uses included in the SC2 zone. This is located at 1724 S State.

A representative for Jodi Hoffman presented the request for the above rezone and stated that it is not related to Item 1 for housing development. There are now two buildings used for Treeside Charter School. The land owners are postering for the time when the school no longer occupies the buildings and commercial use can be facilitated by the new zone. Possibilities are a preschool in the north building and a commercial gym in the south building.

Concerns discussed included:

The traffic patterns will not change with this rezone procedure.

The owner feels like the school may be leaving in the near future but stated that the land owner's relation to Treeside's position as a lessee is a private matter

The city master plan indicates this area is expected to be mixed use in the future.

The land owner signed a 25 year lease with Treeside November 2016 and the construction was completed as a school installation. It was at that time zoned under the most restricted permitted use of the land and now it is requested that it be open for any commercial use.

Erin Preston, Attorney for Treeside Charter, presented the schools position:

She stated that the owner signed with another party for use of the gym near the same time Treeside signed. This resulted in Treeside receiving a citation from the office of education. Treeside changed the locks on the gym area and Provo City later evicted those tenants for zone violations. The effect of this zone change would now allow third parties to occupy the building.
The owner has been restrained form further leasing pending current litigation in state court. Treeside stated that there were misrepresentations made in their rezone application which included that the school is leaving. She stated that the school is fully staffed and intends to remain,
Treeside's court filings state that the school will continue to occupy both buildings while school is in session and asks that this matter be deferred until the court case is settled.

The applicant representative responded to the above that they are willing to enter into a development agreement with the city for school and athletic use only. She stated that the owner and the school have a pending settlement agreement and that they are not paying their financial obligations. She stated that the school will not be staying for the duration of their lease.

Attorney Preston stated that there are two different attorneys representing the owner and that the owner's representative today may not be aware of other litigation or misrepresentations. Attorney Preston stated that there is no settlement agreement and that their non payment is inaccurate. This would open the door to anything despite the owner's stated intentions and would create a tool for the owner to use against the school.

Bill Farley who is an adjacent land owner stated that in 40 years of dealing with the owner/applicant he has had considerable issues and said, the zoning for the land the school should not change.

A Mrs Townsend (did not catch her first name)reports to be an employee of the school stated that the applicants presentation consisted of many half truths and did not represent the employee's experiences with the school. She stated that the school never agreed to leave and in the future it cannot be operated safely with other building occupants. She stated that the school uses the gym and that random strangers have been found wandering through both buildings. She alluded to the taxpayers ultimately having paid for the building and that there are still leftover problems from previous tenants and the building itself.

Karen Tapahee encouraged all to go to the opentownhall.com web site and to review the above three items and that comments can be left there.

Item 3

Ryan Livingston is proposing a zone change from the One-Family Residential (R1.10) zone to the Low Density Residential (LDR) zone in order to accommodate single-family and twin homes for a property in the Spring Creek Neighborhood. This is located at approximately 1107 E 1320 South.

Brandon Larsen, city planner, from the city introduced that the developer requests a zone change to allow for single family and twin homes on a property adjacent to his current development. The applicant was not in attendance.

There were no significant comments on this item, however, residents of Spring Creek Neighborhood have long requested (at several neighborhood meetings over the past five years) some single family homes be built.

PLRZ20190426 - Spring Creek Neighborhood

October 15, 2020, 12:57 PM

Contents

i.	Summary of registered statements	2
ii.	Individual registered statements	3

Topic Registration Type: Registration required

PLRZ20190426 - Spring Creek Neighborhood

Spring Creek Neighborhood - What do you think about the proposed zone change for the charter school property?

Summary Of Registered Statements

Topic Registration Type: Registration required

As of October 15, 2020, 12:57 PM, this forum had:		Topic Start	Topic End
Attendees:	29	September 14, 2020, 12:01 PM	October 15, 2020, 12:57 PM
Registered Statements:	1		
Minutes of Public Comment:	2		

PLRZ20190426 - Spring Creek Neighborhood

Spring Creek Neighborhood - What do you think about the proposed zone change for the charter school property?

Individual Registered Statements

Topic Registration Type: Registration required

Aaron Burgemeister
½ to 1 mile
September 19, 2020, 8:30 PM

It seems like the new zone would better reflect what is there currently; the area currently doesn't fit any description f what I would consider "agricultural" anyway (I was raised on a farm, and haven't read the definitions of the zones in Provo), but I presume schools can be housed in that zone. The buildings look very nice, and have been used for what I would consider commercial purposes before (a dance studio for kids) which was very convenient for people living nearby like myself.

From: Robert J Lawrence
Sent: Tuesday, October 13, 2020 2:54 PM
To: DS Public Hearings
Subject: Planning Commission meeting regarding South State Street Zoning

Please find attached a memo drafted by my wife and me together, expressing our concerns about a proposed zoning change that would affect the area around Treeside Charter School. Please consider our concerns in deciding on this matter.

Sincerely,

Robert & Heidi Lawrence

Provo UT 84606

To: Provo City Planning Commission
From: Robert and Heidi Lawrence
Re: Treeside Charter School and Zoning Law changes
Date: 12 October 2020

It has come to our attention, as Provo residents and parents of a Treeside Charter School student, that another attempt is being made by the owner of the land on which Treeside Charter School is located to push Treeside Charter School out, this time through the landowner's representative Jodi Hoffman. This appears to be the third time in as many years that actions have been taken, which on the surface appear innocent, but which seem calculated to push Treeside out of Provo.

We strongly object to the zoning law changes which are proposed by Jodi Hoffman for the area surrounding Treeside Charter School. We have found Treeside to be a wonderful learning and growing atmosphere for our child, and feel that it is very important to keep the environment around the school intact as a rural/residential area with permission for a school to be on it. No other elementary school in Provo is forced to exist in an industrialized, strip-mall atmosphere. No other elementary school is forced or required to allow other businesses to operate out of their school buildings, putting the children at risk physically and emotionally. Other Provo elementary schools are located in specifically residential areas that are allowed to have schools.

At a time when Utah as a whole is viewed negatively by the rest of the United States for not taking better care of its educators and students, a zoning change such as that suggested by Ms. Hoffman would only serve to reinforce that negative image. For two examples of negative coverage raising concerns about conditions of the Utah school system, see the following links: https://www.sltrib.com/news/education/2020/09/03/study-finds-utah-teachers/ and https://www.deseret.com/opinion/2020/9/19/21445900/covid-19-pandemic-masks-utah-inside-the-newsroom-media-test-utah.

Please consider the safety and education of the children who attend Treeside Charter School. Although it's obvious that unrestricted commercial development could be more lucrative for the property owner than leasing the property for use in community education apparently is, having entered into a multi-year lease with Treeside Charter School, it is unethical for the landowner to attempt to drive out the school by changing the zoning. This change would create a hostile environment that would be detrimental to the safety, security, and learning of the students, and would interrupt and impair their use and enjoyment of the school buildings and surrounding grounds. Furthermore, such actions act against the mutual interest

of the Provo community in providing safe spaces for the education and development of young citizens, according to the expectations set by the current zoning applicable to the area in which Treeside Charter School was established.

Please honor the strong educational values of Treeside Charter School by respecting the importance of keeping a safe, non-commercialized environment around the school, just as other elementary schools in Provo are located in safe, residential zones. Do not allow the zoning changes suggested by Ms. Hoffman on behalf of the landowner to take place.

From: Erin G. Preston
Sent: Tuesday, October 13, 2020 3:59 PM
To: DS Public Hearings
Cc: 'board@treesidecharter.org'; Brandon Larsen; Bill Peperone; Marcus Draper
Subject: Letter of Opposition to Zoning Request: PLRZ20190426, Rezone, 1724 S. State Street Rezone

Dear Planning Commission,

On behalf of Treeside Charter School, I am writing to request the Commission deny the rezoning request of Jodi Hoffman and Zion's M-13 Development. This request is being primarily on the basis that granting the rezoning request could jeopardize the safety of the elementary students attending Treeside Charter School.

Thank you for your consideration.

Erin Preston, Esq.
Of Counsel, Lear & Lear
Education Law Section
808 E. South Temple, Salt Lake City, Utah 84114

www.learlaw.com

LEAR & LEAR LLP
LAW OFFICES

The Downey Mansion
808 East South Temple Street
Salt Lake City, Utah 84102
801-538-5000
Fax: 801-538-5001
www.learlaw.com com

Erin G. Preston 801-883-8002
erin.preston@learlaw.com
Licensed in Utah

October 13, 2020

Provo Planning Commission
Sent via e-mail: dspublichearigs@provo.org

Re: Planning Commission Meeting Item 5 – Jodi Hoffman/Zion's M-13 Development rezoning request.

Dear Provo Planning Commission,

Provo Planning initially approved the zoning of the property in question for construction and use as a public charter school under Permitted Use Zoning on July 12, 2017. Permitted Use Zoning is one of the most restrictive zoning categories in the State Code and only allows for the construction and operation of a Utah Public Charter school. Per the rezoning application at issue now, Jodi Hoffman, counsel for Zion's M-13 Development, an entity owned by Mike Morley, is attempting to use that prior limited zoning approval to now obtain SC2 zoning, one of the most restrictive zoning categories in State or Municipal Code. There is no legitimate basis or need for this property to be rezoned at this time. Additionally, the claims asserted in the application for re-zoning are inaccurate, inconsistent with current litigation, and we believe, made in bad faith. Perhaps more importantly, a change in zoning as is requested could further jeopardize the safety of elementary students, and the taxpayer financed school facility.

On behalf of TCS Charter School ("Treeside" or "TCS") I am writing to request you decline this rezoning request on the following grounds:

1. **<u>Student Safety</u>**

Treeside Charter School was approved by the Utah State Charter School Board and Utah State Board of Education to operate as a Utah Public Kindergarten – 6th grade school in 2016. Consistent with that purpose, TCS representatives signed a lease/development agreement with Ivy Charter Holdings, a subsidiary of Zion's M-13 Development, on Nov 17, 2016. This agreement was to engage the Landlord in construction of a school facility for the exclusive purpose operation as a public school.

Unbeknownst to Treeside, beginning September 2017, Zion's M-13 Development also signed additional 3rd party lease agreements with multiple vendors, that also gave these vendors exclusive access to the same facility. There is some evidence to suggest that the 3rd party renters

were also unaware of the conflict between their use of the facility and that of TCS. TCS's administration became concerned about the 3rd party tenant's access to the school facilities, and the unfettered access to the students themselves. TCS Administration took multiple steps to ensure protection of the students and control of the facility, including changing the facility locks to prevent the 3rd party tenants from accessing the school facility. In April 2019 Zion's M-13 Development filed a lawsuit against TCS. The actions included in this suit included seeking a Temporary Restraining Order against the school to prevent the school from prohibiting unrestricted access to the facility by Zion's M-13 Development representatives and tenants.

2. Utah State Charter Board Notice of Concern issued to Treeside Charter School

Upon notice of the Zion's M-13 Development v. Treeside Charter School and the issues involved, the State Charter School Board Staff and Assistant Attorney General David Jones sought information from TCS and independently reviewed the filings made in the case. On September 17, 2019 the Utah State Charter Board issued a Notice of Concern to TCS requiring the school take action to "ensure the safety of Utah students". (See attached). In addition to the duty Treeside already had to ensure the safety of students and the facility, this explicitly outlined TCS's duty to act under this direction from their chartering entity. Failure to do so would risk additional penalty, up to or including closure of their school. The Notice focused primarily on safety concerns related to students and the school facility.[1]

The State Charter Board further directs TCS Charter School to:

[1] *TCS Charter School's facilities, and therefore TCS students, are not in the school's exclusive control and supervision during the regular school day and during school-sponsored activities outside of the regular school day… These documents [contracts included in litigation record] appear to show that the Developer has rental agreements for the school facility with third party tenants who are unrelated to school purposes and are outside of the control of TCS Charter School's board and staff. These agreements are contrary to the Lease Agreement that TCS initially submitted to the SCSB in 2016 that confirmed that the school property would be used only for the operation of the Charter School and public education-related uses. Instead, the referenced third-party rental agreements appear to provide multiple commercial tenants unrestricted use and occupancy of the TCS school facility without limitations as to times or dates. As such, TCS Charter School's Landlord and the Landlord's tenants may enter the school premises and building(s) through unmonitored access points at any time, including during the school day and at other hours when TCS students are in the building or on the premises participating in school activities. The SCSB is particularly concerned about the assertion that the Landlord and the Landlord's tenants may have keys to the school building, allowing unlimited, unsupervised access to the school facility. As you are aware, TCS Charter School is bound by Utah State Law and State Board of Education Rules designed to ensure the safety of Utah students. TCS Charter School is required to ensure the safety of students.*

> ***"…provide immediate assurance (and supporting documentation) to the SCSB that TCS Charter School has exclusive control of its facilities during the regular school day and during school-sponsored activities and a feasible plan for continued financial and operational viability given the terms in the proposed lease modifications, the SCSB will consider action to protect students and students' interests. Such action may include options outlined in U.C.A. §53G-5-501[2] and 503[3]."***

Although Zion's M-13 Development has been provided this notification by the State Charter Board, their latest Second Amended Complaint filed with the District Court on October 5, 2020 Zion's M-13's attorneys continues to press the court to allow the Developer to rent the school facility to 3rd party renters outside the control and supervision of Treeside Charter School.

3. **Request made in bad faith**

Ms. Hoffman, on behalf of Zion's M-13 Development LLC first applied for a rezoning of the property on December 19, 2019. This application was denied for completeness on multiple grounds, one of which being "potential use of property statement". Ms. Hoffman re-submitted her application on August 19, 2020 supplementing the original application by stating the need for rezoning as: ***"We have received notice that the charter school will cease operations in the near future and there are no new charter school tenants on the horizon."*** This statement is patently false and made without justification. The statement also creates a false reason for rezoning action, and an urgency for such action, that also does not exist. Zion's M-13 Development sued TCS Charter School in April 2019, a suit that continues now. At no time in this litigation, or any other forum, has Treeside expressed intent or need to "cease operations". As of this date, TCS Charter School has a full staff and 440 K-6th grade students enrolled and attending the school for the 2020-21 school year. TCS Charter School has recently successfully emerged from a Chapter 11 Bankruptcy and is financially stable for this school year and anticipated years to come.

During the Neighborhood Meeting, Lauren Bolger, an Associate of Ms. Hoffman's firm, presented on behalf of Zion's M-13 Development. When questioned on her firm's assertions that the school "will cease operations" she demurred, stating that she was not involved in the litigation (assumedly between Zion's M-13 Development v. TCS). From there, she provided no substantiation of their claim Treeside would cease operations, but she did go on to argue the change was justified based on claims made by Zion's M-13 in their claims made in the litigation. Ms. Hoffman and Ms. Bolger, in their application statement and in Neighborhood meeting, made comments that had no basis in fact. Whether their inaccurate claims were made in reliance on

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[2] **53G-5-501. Noncompliance – Rulemaking**
https://le.utah.gov/xcode/Title53G/Chapter5/53G-5-S501.html?v=C53G-5-S501_2020051220200512

[3] **53G-5-503. Termination of a charter agreement**
https://le.utah.gov/xcode/Title53G/Chapter5/53G-5-S503.html?v=C53G-5-S503_2020051220200512

the assertions of their client, they had a duty to verify the accuracy of that information and provide accurate information to Provo Planning and to the Neighborhood Committee.

4. **Zoning change could be used as a means of bypassing the current litigation.**

In their latest Complaint filed with the District Court in, Zion's M-13 Development lists multiple times their intent to continue providing the facility to 3rd party renters. As previously the case, these 3rd party renters would be outside of TCS's authority, knowledge or control. In short, TCS would have no way to ensure the safety of their students as these 3rd party renters would be enabled by the Landlord to have independent access to the facility and the renters and their clients would have no separation from the school students. TCS has gone to great lengths to act to protect their students from such action on the part of the Landlord. As Zion's M-13 Development has not been successful in court, it appears Zion's M-13 Development is now seeking to bypass the legal process to gain this access using the Provo Planning process to do so instead.

Treeside Charter School requests that the Provo Planning Commission deny this re-zoning request. In the alternative, TCS Charter School requests that this request be delayed to allow TCS, and related entities such as the State Charter Board and Attorney General's Office, the ability to provide independent comment. Thank you for your consideration.

Sincerely,
/s/ Erin Preston
Erin Preston, Esq.

CC: Bill Peperone, Provo Development Director
Brandon Larsen, Provo Planner III
Marcus Draper, Provo City Attorney

UTAH STATE CHARTER SCHOOL BOARD

250 East 500 South P.O. Box 144200 Salt Lake City, UT 84114-4200 Phone: 801.538.7720
http://www.utahscsb.org

September 17, 2019

Treeside Charter School
c/o April Clawson, Board Chair
aclawson@treesidecharter.org
1724 S. State Street
Provo, UT 846060

Re: Notice of Concern for student security issues at Treeside Charter School facilities

Dear Treeside Charter School:

Part of the State Charter School Board's responsibility is to hold the charter schools we authorize accountable for their performance and monitor them for compliance. As part of this charge, information has come to our attention that causes the SCSB concern. Specifically, we have three concerns, related to Treeside Charter School's facilities and lease.

1. Treeside Charter School's facilities, and therefore Treeside students, are not in the school's exclusive control and supervision during the regular school day and during school-sponsored activities outside of the regular school day. The SCSB staff has reviewed public legal filings in the matter of *Zion's M-13 Development LLC v. Treeside Charter School* related to a lease and property dispute between Treeside and its Landlord. These documents appear to show that the Developer has rental agreements for the school facility with third party tenants who are unrelated to school purposes and are outside of the control of Treeside Charter School's board and staff. These agreements are contrary to the Lease Agreement that Treeside initially submitted to the SCSB in 2016 that confirmed that the school property would be used only for the operation of the Charter School and public education-related uses. Instead, the referenced third-party rental agreements appear to provide multiple commercial tenants unrestricted use and occupancy of the Treeside school facility without limitations as to times or dates. As such, Treeside Charter School's Landlord and the Landlord's tenants may enter the school premises and building(s) through unmonitored access points at any time, including during the school day and at other hours when Treeside students are in the building or on the premises participating in school activities. The SCSB is particularly concerned about the assertion that the Landlord and the Landlord's tenants may have keys to the school building, allowing unlimited, unsupervised access to the school facility. As you are aware, Treeside Charter School is bound by Utah State Law and State Board of Education Rules designed to ensure the safety of Utah students. Treeside Charter School is required to ensure the safety of students.
2. The proposed lease modification raises Treeside Charter School's lease payments, so that Treeside Charter School will be paying an abnormally large percentage of revenue to lease payments. It is unclear if a charter school could be financially viable under such terms. Further,

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Vice Chair DeLaina Tonks | Cynthia Phillips | Jim Moss | Krystle Bassett

paying such a high rate on a lease may not be good use of taxpayer funds and take away what should be going to students in the classroom.

3. The proposed lease modification terminates the lease on May 31, 2021 with no extension, requiring Treeside Charter School to find a new location in a short timeframe.

While this letter serves as written notification consistent with U.C.A. §53G-5-501, it also provides an opportunity for Treeside Charter School to respond to the concerns outside of an open and public board meeting. However, if Treeside Charter School cannot provide immediate assurance (and supporting documentation) to the SCSB that Treeside Charter School has exclusive control of its facilities during the regular school day and during school-sponsored activities and a feasible plan for continued financial and operational viability given the terms in the proposed lease modifications, the SCSB will consider action to protect students and students' interests. Such action may include options outlined in U.C.A. §53G-5-501 and 503.

The SCSB recognizes that Treeside Charter School is doing many good things for students. Identifying these deficiencies is not meant to detract from those good things. However, these deficiencies must be addressed. It is our hope that you and your staff will be able to resolve these deficiencies. The SCSB also offers technical assistance and mentoring via mentoring funds provided in U.C.A. §53F-2-705. Contact Authorizing and School Support Coordinator Marie Steffensen if you would like this support.

Sincerely,

Executive Director Jennifer Lambert
State Charter School Board

cc: Dr. Benjamin Johnson, Treeside Charter School Director

Chair Kristin Elinkowski
Vice Chair DeLaina Tonks
Director Jennifer Lambert
Cynthia Phillips
Michelle Smith
Jim Moss
Bryan Bowles
Krystle Bassett

HOFFMAN LAW

Provo City Planning Commission
351 W Center St
Provo, UT 84601

October 7, 2020
Via Email

RE: Additional information for 1724 S. State Street rezone request.

Dear Provo City Planning Commission Members,

Zions M-13 Development is the owner of two parcels located at 1724 S. State Street and has requested a rezone for this property from A15 to SC2. The rezone will allow for the continued beneficial use of its significant investment in two existing buildings, in largely the same manner in which they are currently used. As counsel for the property owner, I would like to address a somewhat unusual issue that you may encounter during the Planning Commission meeting.

By way of background, Zions M-13 originally constructed a building on the site in 2017 that would accommodate a school use as well as a separate athletic facility and offices next to the school in 2018. Zions M-13's original tenant for the school building, and a small portion of the athletic facility, was Treeside Charter School. Under state law, a charter school use does not require local zoning approval. As such, the Zions M-13 property was not rezoned to accommodate this tenant.

Unfortunately, shortly after Treeside Charter School took possession of the school building, it breached its lease. Compounding the dilemma, last year, Treeside Charter School filed for bankruptcy. Zions M-13 will be without any charter school tenant in June of 2021. Consequently, Zions M-13 has requested this rezone to ensure the continued beneficial use of the existing buildings once the charter school tenant leaves the site. The requested rezone will allow the two existing buildings to be used as a preschool and an athletic facility.

The Provo City General Plan and SE Neighborhood Plan both designate this area as mixed-use—featuring commercial uses that will serve the surrounding community. This rezone request is consistent with the General Plan and the SE Neighborhood Plan. It will also complement new residential development that is planned to surround the site.

While it is highly unusual for a tenant to object to a landlord's rezone request, we do expect that someone from the Charter School may testify in opposition next week. As such, for clarity, we have attached a letter from Morgan Fife, Zions M-13's litigation counsel, to better explain the status of the Charter School's lease obligations to Zions M-13 and the current litigation.

Finally, it is important to underline the fact that Treeside Charter School's rights under the lease agreement are not impacted by the rezone. Under state law, a charter school is allowed in every zone.

Moving forward, this rezone is consistent with the City's vision for the neighborhood and is essential for the owner's continued beneficial use of his significant investment in the property. We look forward to answering any questions you may have about the property and the requested rezone on October 14th.

Sincerely,

Hoffman Law
Jodi S. Hoffman

Cc: Brandon Larsen

SEILER, ANDERSON, FIFE & MARSHALL, LC

Attorneys and Counselors at Law

Thomas W. Seiler
Jared L. Anderson
Morgan Fife
Derek T. Marshall
Lacee M. Whimpey
Perris E. Nelson
Scott B. Mosley
Mark F. Robinson
Norman H. Jackson
Jeri L. Allphin

October 7, 2020

Provo City Planning Commission
330 West 100 South
Provo, UT 84601

RE: Application by Zions M-13 Development, LLC

Dear Provo City Planning Commissioners,

I represent Zions M-13's in its ongoing contract dispute with Treeside Charter School ("Treeside"). Zion's M-13 is the owner of property located at 1724 S. State Street (the "Property Owner") that was leased to Treeside in 2017. Through this letter I hope to provide you additional information on the state of litigation between my client and the charter school.

My client entered into a 20-year lease with the tenant, Treeside Charter, for the main school building in 2017. In 2018, my client and Treeside amended the 20-year lease and also entered into a 5-year agreement to nonexclusively lease a new athletic facility built by Zions M-13 at great expense. Both in their negotiations and in the lease for the new athletic facility's lease, it was the parties' express intention to permit Zions M-13 to lease the property to third parties. Unfortunately, almost immediately, Treeside failed to live up to its obligations in the lease, and Zions M-13 was forced to sue Treeside to enforce the lease.

After the court issued a temporary restraining order in favor of Zions M-13, the parties agreed to try and resolve their dispute through mediation. During mediation, my client and Treeside reached a comprehensive settlement agreement, which included an addendum to their leases. Treeside's board then approved the settlement agreement (see attached board minutes) and Treeside's counsel, Ginger Utley from the office of Lear & Lear, confirmed to me by email that the settlement had been approved (see attached email). Treeside now denies that the settlement is in effect. In the settlement agreement, Treeside agreed to pay additional money to lease both the school building and the entire athletic facility (and even made the first payment required by the amended lease). Treeside also agreed that the lease would terminate on May 31, 2021.

Shortly after the settlement was reached, Treeside filed for bankruptcy protection largely to invalidate its obligations under the settlement agreement and amended lease. The bankruptcy court recently set aside the automatic stay and is allowing Zions M-13's lawsuit to move forward in State Court to address the issues related to the lease. It is our position that Treeside has breached both the original lease and the settlement agreement.

Based on reports we received about representations made by Treeside at a meeting last week, we expect Treeside to testify in opposition to the proposed rezone before you. One thing is

certain: no matter how the current litigation is resolved, a rezone of this property as requested will not in any way diminish Treeside's rights under its original lease or the settlement agreement.

Sincerely,

SEILER, ANDERSON, FIFE & MARSHALL, LC

Morgan Fife
Attorney for Zions M-13 Development, LLC

2500 N. University Ave., Ste. 100, Provo, UT 84604, Telephone (801) 375-1920, Fax (801) 377-9405
Email: mfife@safmlaw.com; www.safmlaw.com

BOARD OF TRUSTEES

Regular Meeting

6:00 PM, Monday, September 30, 2019
Music Room, Treeside Charter School
1724 S State Street, Provo, UT 84606

Minutes

Welcome & Call to Order

1. Opening Remarks at 6:09 PM. Emergency meeting will move directly into closed session

Public Comment

None

Closed Meeting (0:00:12)

Roll Call vote for moving to closed session: April Clawson, BJ Taylor, Robert Leckie, Randall Robertson

Robert Leckie moved that we close the meeting for discussion as allowed by state code.

Return from Closed Session & Action Agenda (0:01:12)

Randall Robertson moved to ratify the settlement terms reached by party's counsel to resolve litigation in the case of Zion's M-13 Development LLC & American Charter Development v. Treeside Charter School. Robert Leckie second. Roll Call vote, all in favor: April Clawson, BJ Taylor, Robert Leckie, Randall Robertson, Jennifer Ammott.

Adjourn

Jennifer Ammott moved to adjourn. Board agreed. Adjourned.

Public Comment

Public Comment is time for the public to give input directly to the TCS Board of Trustees. The Board may engage in discussion to clarify any points raised but in general, this is not a forum for extended discussion. Individual (or group, represented by a single individual) comments are limited to 2 minutes. Individuals wishing to make a longer presentation to the board may request placement on a future agenda by contacting the board Secretary or Chair. Administrative or operational items, those regarding the day-to-day operation of the school, may be referred to the school director. Individuals who have previously met with the school director and still have concerns should feel free to participate in the public comment portion of the meeting.

Notice of Compliance with the Americans with Disabilities Act (ADA)

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Treeside Charter School Board of trustees at 1724 S State Street, Provo, 84601, or email rrobertson@treesidecharter.org at least three working days prior to the meeting. The meeting

room at the School is fully accessible via the parking lot.

Notice of Telephonic Communications
One or more Council members may participate by telephone or Internet communication in this meeting. Telephone or Internet communications will be amplified as needed so all Council members and others attending the meeting will be able to hear the person(s) participating electronically as well as those participating in person. The meeting will be conducted using the same procedures applicable to regular Municipal Council meetings.

Notice of Compliance with Public Noticing Regulations
This meeting was noticed in compliance with Utah Code 52-4-202. Agendas and minutes are accessible through the Utah Public Meeting Notice website at utah.gov/pmn, which also offers email subscriptions to notices.

Network for public internet access is via SSID:TREE-Open with no password.

Morgan Fife

From: Ginger L. Utley <ginger.utley@learlaw.com>
Sent: Wednesday, October 2, 2019 9:33 AM
To: Morgan Fife; Mitch S. Maio
Cc: Tom Seiler
Subject: RE: Confidential Settlement Communication

That sounds great. Thanks, Morgan. Let us know if you have any questions as you prepare the draft.

Best,
Ginger

From: Morgan Fife [mailto:mfife@safmlaw.com]
Sent: Tuesday, October 1, 2019 4:04 PM
To: Mitch S. Maio
Cc: Ginger L. Utley; Tom Seiler
Subject: RE: Confidential Settlement Communication

Mitch & Ginger:

Thank you for your phone call confirming that the TCS Board has approved the settlement agreement and lease addendum subject to the revisions we proposed below. I think that this is a good outcome. I will get moving forward with the addendum and the dismissal docs.

Best regards,

Morgan

MORGAN FIFE | ATTORNEY
Seiler, Anderson, Fife & Marshall, LC
2500 N. University Ave., Provo, UT 84604
T: 801.375.1920 F: 801.377.9405
mfife@safmlaw.com | www.safmlaw.com

*****Please note that I have a new email address: mfife@safmlaw.com. Emails sent to my old "rsalawyers.com" email address will still reach me.*****

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From: Morgan Fife
Sent: Thursday, September 26, 2019 5:18 PM
To: Mitch S. Maio
Cc: 'Ginger L. Utley' Tom Seiler
Subject: RE: Confidential Settlement Communication

Mitch:

Thank you for taking a moment to speak with me. Based on the concerns that your client expressed, here is what the landlord proposes.

The balloon payment would be split evenly in two. The first half would be paid by April 15, 2021. The second half would be paid by May 31, 2021.

In the interim, the school would agree that it will not pledge the items we proposed as security (all property, both tangible and intangible) and that it will not sell any of the property outside the normal course of business.

Kind regards,

MORGAN FIFE | ATTORNEY
Seiler, Anderson, Fife & Marshall, LC
2500 N. University Ave., Provo, UT 84604
T: 801.375.1920 F: 801.377.9405
mfife@safmlaw.com | www.safmlaw.com

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From: Morgan Fife
Sent: Wednesday, September 25, 2019 3:50 PM
To: Mitch S. Maio
Cc: Ginger L. Utley Tom Seiler
Subject: Confidential Settlement Communication

Mitch:

Thank you for speaking with me. As discussed, after addressing the concerns you raised on behalf of the school, Tom and I spoke with our client. They proposed the following.

The Monthly Fixed Rent would continue to be $68,000 per month. From now until July 31, 2020, the landlord would permit the school to defer $4,000 monthly from the Monthly Fixed Rent. As a result, during that time period, the school would only pay $64,000 per month in Monthly Fixed Rent. The total of all deferred amounts would be paid in a balloon payment on or before May 31, 2021.

Starting on August 1, 2020, the school would pay $68,000 per month in Monthly Fixed Rent.

The deferral period would permit the school time to work towards increased enrollment in the upcoming year as well as find and secure tenants for the gym building.

The landlord would require the school to pledge a security interest to secure its performance of the lease in all of the school's tangible and intangible property in the form of a security agreement with normal and customary terms. This would include all of the normal items, including equipment, business fixtures, accounts, cash, personal property, etc.

Kind regards,

MORGAN FIFE | ATTORNEY
Seiler, Anderson, Fife & Marshall, LC
2500 N. University Ave., Provo, UT 84604
T: 801.375.1920 F: 801.377.9405
mfife@safmlaw.com | www.safmlaw.com

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To: Provo City Planning Commission
Copied to: Provo City Ombudsman, Mayor Kaufusi
From: Robert and Heidi Lawrence
Re: South Provo Zoning Law Changes that Impact Treeside Charter School
Date: 11 Jan. 2020

Dear Provo City Planning Commission:

About a year ago, while driving south on State Street/Highway 89 in South Provo, I noticed a little yellow piece of paper stapled to a wooden pole. It was located at a point on State/89 where there is no sidewalk and no parking, and where the posted speed limit is 50 mph. This means people are driving anywhere from 50-70 mph: far too fast to be able to safely stop. The "public notice" (I put it in quotation marks because it seemed to not be intended for public consumption, given its location and size) was about some kind of planning for South Provo. There was a name attached to it, which raised my eyebrows, as I recognized it as a person who had been embroiled in a housing scandal in Provo for much of the previous decade, although eventually acquitted.

On the other side of State/89, there is a sidewalk. It is used frequently by walkers, bikers, and runners. It runs all the way down the road to 1860 South in Provo (alternatively Slate Canyon Dr./Lakeview Pkwy). Cars slow down and turn more often on that side of the road. In other words, a "public notice" would probably have been "noticed" by the "public" much more on the other side of the road than where it actually was. I do not recall seeing a second notice on that side of the road, however. And aside from us, I don't recall ever seeing another vehicle slow down and stop to read that "public notice." In order to read it, I had to exit the vehicle, pick my way through mud and snow, and stand on the unsafe side of State/89.

I am reminded of a scene from a novel called *The Hitchhiker's Guide to the Galaxy*. In it, Arthur Dent is informed that the plans for the highway bypass that require the demolishing of his home have been on file with the city. He goes to investigate and finds out that indeed they have been on file: "But Mr. Dent, the plans have been available in the local planning office for the last nine months." He replies, "Oh yes, well, as soon as I heard I went straight round to see them, yesterday afternoon. You hadn't exactly gone out of your way to call attention to them, had you? I mean, like actually telling anybody anything." We learn that after some searching, Dent found the notice about the plans "on display in the bottom of a locked filing cabinet stuck in a disused lavatory with a sign on the door saying 'Beware of the Leopard'" (Adams, pp. 9-10). Although the current situation was not as extreme as the parody, I'm sure you can see the parallels in a "public notice" posted where the "public" is highly unlikely to actually read it.

Fast forward to mid-November 2019. Parents of Treeside Charter School students were informed in an email, dated November 13, that "Treeside's Chapter 11 filing will allow us to address issues with creditors, including a recent property dispute with our landlord, in a central and organized venue for resolution. This is an act by Treeside to protect our school, our employees and state-funded assets from the actions of private entities." While I do not know who the landlord for the property is, my thoughts immediately went to the name that was on that "public notice" last year and I wondered whether that person was somehow involved.

Just this past week (8 January 2020), parents were informed by school officials that there would be a planning commission meeting that same night to talk about zoning changes to that area of Provo so that a developer (once again, my mind went straight to that name, wondering if there was a connection) could build a high-density housing development right in front of where the school is. We were later informed that this planning meeting would not address this issue after all, and the discussion would be rescheduled for some time in February (no date or time was given, in that email, for the reschedule). Given the importance of this issue to Treeside Charter School, it seems unlikely that the school official sending the messages delayed unreasonably after learning of the meeting himself. For busy parents, with work and childcare responsibilities making it difficult to fit in last-minute meetings, it feels like the timing of this information becoming available so shortly before the scheduled meeting time could have the effect of discouraging attendance of anyone with interest in the continued success of Treeside, whether or not that effect was intended.

Over the last 24 hours, I have thought very carefully about last year's "public notice," Treeside Charter School's landlord's recent behavior, and the notice yesterday about a planning meeting to change zoning laws to put housing where Treeside is, and I have come up with a very disturbing picture. Judging only from circumstances and observations from the perspective of parents and regular members of the community, it doesn't look very ethical. In fact, it looks very much like the landlord, the property developer, and the person whose name was on the "public notice" are all colluding in trying to push Treeside Charter School out of operation at its current location for their own financial gain (in short, it looks like greed overriding all other considerations). But why do we care? Why should you care?

We care because Treeside Charter School is a miracle in our lives. Just before our daughter entered first grade, we moved from Springville back into Provo, in the Provost area. We had been seriously looking in a different area of Provo, much closer to what was then our daughter's school. However, coming back to the Provost area ended up "feeling right," even though it wasn't as close to that school. Six months after the move, we realized it was inspiration. During the first half of first grade, our daughter faced an unfortunate situation in connection with another student in her class. Her behavior and performance naturally fell well below expected levels, given the severity of the issue. When I approached the teacher about some of the things our daughter had told me, the teacher's response was dismissive and it turned out later that nothing else was done at the time, despite the teacher's assurances that she would manage the situation. Our daughter's performance and behavior continued to deteriorate, but I was not informed at all about the performance problems she was having until long after they started. When I asked my daughter about school every day, she told me she was doing great now. When I finally emailed her teacher to gratefully acknowledge her (implied) better performance in the classroom, I was abruptly informed that she was not doing well at all, her academic performance was even worse, and we needed to work on getting her help. Her teacher continually told us things like "she just can't do it, we need to get her in with a therapist and develop an IEP," right in front of our daughter. We were understandably devastated, as was our daughter, and disappointed with the lack of communication and the discouraging, helpless attitude.

We began investigating other schools in the area, and did a lot of reading on Treeside Charter School and its methodology, which is a relatively rare combination (for the Provo area schools) of Waldorf and Montessori with a heavy focus on the arts. We were impressed. We emailed the

school and asked about vacancies in the first grade and were told there were none. We went ahead and put her on the waiting list anyway. Within three days of putting her on the waiting list, we received a phone call from Treeside saying that a space had opened up in a first grade classroom – would we like to come and tour the school and meet the teacher? Absolutely! Within two weeks, we had our daughter transferred into Treeside and her behavior and performance turned 180 degrees. She was no longer being told "she couldn't do any better." She was encouraged and taught in age-appropriate ways by a qualified, certified teacher. The skills she had struggled with in the other school were quickly developed over the rest of the year. There was no need at all for an IEP. It turned out she was a perfectly normal first grader. Now during second grade, she is in a classroom with another caring teacher who helps me know when I need to help my daughter at home. The school makes an effort to keep classmates together between grades, so she has friends and feels accepted and loved. Treeside Charter has literally been a miracle in our lives, as I mentioned earlier. Through following that nudge to relocate back to Southeast Provo, we ended up less than a 5-minute drive from Treeside. I'm sure we are not the only ones who have a similar story about the excellent experience Treeside offers.

In the past, Utah has not ranked particularly well in State education rankings for K-12 (according to US News and World Report, it ranked 22 for K-12 during 2019, though its ranking for higher education/post-secondary gave it an overall ranking in the top 10). It is beginning to improve, and that improvement is because of schools like Treeside. This school contributes positively to our community. It makes a real difference to its students. As it says in its mission, it does educate the whole child, and while the school is naturally required by the State to participate in standardized testing, teaching to the test is not the focus of the school. Education is the focus of the school. Please do not allow zoning law changes that would disturb the atmosphere of a good school like Treeside. Particularly, please consider whether the combination of circumstances and events under which these changes appear to have been proposed suggest that they have not been conducted ethically. (Just because something is "legal" doesn't make it "right!")

Thank you for your time and serious consideration of the lasting negative impact these changes could have on the Provo community and our children's education, and the positive effect Treeside Charter School has on our community every day.

Sincerely,

Robert J. Lawrence

Heidi A. Lawrence

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: DWALTER
Department: Development Services
Requested Meeting Date: 12-15-2020

SUBJECT: A resolution authorizing the Chief Executive Officer to sign a lease agreement with PEG Development for office space in Downtown Provo. (20-248)

RECOMMENDATION: Approve the resolution authorizing the Chief Executive Officer of the Redevelopment Agency to sign a Lease Agreement with PEG Development.

BACKGROUND: The Redevelopment Agency has been working to develop additional office space and parking in the downtown area. PEG has been the through the development approval process and has had the development approved. Their construction financier requires that at least 60% of the proposed office space be committed by leases prior to releasing the funds for construction. PEG has asked the Agency lease the space with the understanding they will continue to look for alternative office users prior to the Redevelopment Agency taking possession of the premises.

FISCAL IMPACT: The terms of the lease will let the Agency use the tax increment generated by the development for the lease payments as long as the Agency is leasing the premises

PRESENTER'S NAME: David Walter

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Pursue economic development initiatives
Job Creation and Diversification
Increase Parking

CITYVIEW OR ISSUE FILE NUMBER: 20-248

Provo City *(Redevelopment)*

Staff Memorandum

Downtown Development

December 1, 2020

Department Head Bill Peperone 852-6402 **Presenter** David Walter 852-6167 **Required Time for Presentation** 15 Minutes **Is This Time Sensitive** No **Case File # (if applicable)** Not applicable	**Purpose of Proposal** • Approval of Lease for Office Space with PEG Development **Action Requested** • Staff recommends that the Redevelopment Agency Board approve the attached resolutions approving the proposed Lease Agreement between the Redevelopment Agency of Provo City and PEG Development and authorizing the Chief Executive Officer to sign the proposed Lease Agreement **Relevant City Policies** • Pursue economic development initiatives • Job Creation and Diversification • Increase Parking **Budget Impact** • Lease payments for the proposed office space are to be made from the tax increment generated by the project **Description of this item** • In 2018 the Provo Redevelopment Agency (Agency) signed a Settlement Agreement with Utah County to work to provide parking for the Utah County Convention Center. The Agency worked to make property it owned in the downtown into an office building with an associated parking structure that would serve the needs of the Convention Center, the proposed office complex and the general public when they come to downtown for business or pleasure.

	• The Agency has worked with PEG Development to develop the property and will transfer the property for development under the terms of a Joint Development Agreement. PEG has obtained approvals for the office building and associated parking structure • However, PEG's construction financier requires sixty percent (60%) of the proposed office space to be under lease prior to the release of construction and PEG has only been able to obtain less than 60% of the total floor space to be committed. Previously the Agency approved signing a Letter of Intent to lease space. Tonight's item is asking for the Agency to consider signing the actual lease document itself. PEG has committed to working with the Agency to find alternative users to the Agency before taking possession of the office space. Staff believes once the project in sunder construction it will be easier for potential office users to visualize themselves in the building as opposed to looking at the plans • Staff recommends that the Redevelopment Agency Board approve the attached resolution authorizing the Chief Executive Officer of the Agency to sign the attached lease with PEG Development.
Attachments	**Resolution approving the Lease Agreement with PEG Development and authorizing the Chief Executive Officer to sign said Lease**

RESOLUTION 2020-RDA.

A RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO SIGN A LEASE AGREEMENT WITH PEG DEVELOPMENT FOR OFFICE SPACE IN DOWNTOWN PROVO. (20-248)

WHEREAS, Provo City (the "City"), created the Redevelopment Agency of Provo City (the "Agency") pursuant to the provisions of, and the Agency continues to operate under, Title 17C of the Utah Code, the Limited Purpose Local Government Entities-Community Reinvestment Agency Act and its predecessor statutes (the "Act"); and

WHEREAS, the success of local businesses is integral to the economic vitality of Provo City; and

WHEREAS, new local businesses and entrepreneurial ventures have contributed and continue to contribute significantly to both the economy and resident quality of life in Provo City; and

WHEREAS, the addition of new office space will add to the vibrancy of downtown Provo City; and

WHEREAS, the Agency has an obligation to provide three hundred and fifty (350) parking spaces for the Utah County Convention Center; and

WHEREAS, PEG Development (PEG) will build a new office building and associated parking structure which will take the obligation of the 350 parking spaces and fulfill the Agency's obligation under that certain Settlement Agreement by and between Utah County and the Agency, dated August 14, 2018; and

WHEREAS, PEG has obtained approvals for the office building and associated parking structure; and

WHEREAS, PEG's construction financier requires sixty percent (60%) of the proposed office space to be under lease prior to the release of construction funds; and

WHEREAS, less than 60% of the total floor space is currently under lease; and

WHEREAS, it is proposed that the Agency enter into a lease agreement, attached hereto as Exhibit 1, with PEG to utilize portion of the office space; and

WHEREAS, on December 15, 2020, the Governing Board of the Agency held a duly noticed public meeting to ascertain the facts regarding this matter, which facts and comments are found in the public record of the Board's consideration; and

WHEREAS, all persons for and against the proposed agreement were given an opportunity to be heard; and

WHEREAS, after considering the facts presented, the Governing Board of the Redevelopment Agency of Provo finds (i) the Lease attached hereto as Exhibit 1 should be approved; (ii) the Chief Executive Officer, or her designee, should be authorized to execute the Lease; and (iii) said Lease reasonably furthers the health, safety and general welfare of the citizens of Provo.

NOW, THEREFORE, be it resolved by the Governing Board of the Provo City Redevelopment Agency as follows:

PART I:

The Chief Executive Officer, or her designee, is authorized to sign the Lease with PEG Development (attached hereto as Exhibit 1) for the proposed office development. The Chief Executive Officer is also authorized to make minor changes and sign any additional paperwork as may be necessary for this action.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

EXHIBIT 1

OFFICE LEASE AGREEMENT

between

PEG PRV 200 Freedom Office, LLC,
as "Landlord"

and

Provo City Redevelopment Agency
as "Tenant"

Freedom Commons (Phase 1) Office Building
125 West 200 North
Provo, Utah 84601

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EXHIBITS:

Exhibit A: Defined Terms
Exhibit B: Floor Plan of Premises
Exhibit C: Building Rules
Exhibit D: Lease Commencement Agreement

OFFICE LEASE AGREEMENT

This Office Space Lease Agreement ("Lease") is made and entered into as of December 7, 2020 (the "Effective Date"), by and between PEG PRV 200 Freedom Office, LLC, a Delaware limited liability company, as Landlord, and Provo City Redevelopment Agency, a Utah Community Reinvestment Agency, as Tenant (jointly herein with Landlord, the "Parties" or individually a "Party").

1. DEFINITIONS. Capitalized terms used in this Lease have the meanings ascribed to them on the attached Exhibit A.

2. BASIC LEASE TERMS. The following Basic Lease Terms are hereby incorporated into the Lease:

2.1 Building: The building commonly known as Freedom Commons (Phase I) Office Building, with an address of 125 West 200 North, Provo, Utah 84601. In addition to the Building, the parking structure ("*Parking Structure A*") to the West of the Building and such other structures which may be developed by the Landlord or its affiates from time to time comprise Freedom Commons (the "*Project*")

2.2 Premises: Suite 500, comprising a portion of the fifth floor of the Building and consisting of 13,350 rentable square feet ("RSF") and 11,704 usable square footage ("USF"). The Premises is depicted on the floor plan(s) attached hereto as Exhibit B.

2.3 Permitted Use: Tenant shall have the right to use the Premises for General Office purposes.

2.4 Parking: Approximately Forty-One (41) Non-Exclusive Parking Access Rights in Parking Structure A, to be based on the total square footage of the Premises.

The parking garage is shared with the adjacent Utah Valley Convention Center, Hyatt Place Hotel, Mountainland Technical College, and Freedom Commons Office and parking stalls are allocated on a first come first served basis.

All parking is open common area parking. Landlord's installation and maintenance of a parking management system, at its sole discretion, shall not be deemed an impediment of the Parking Access Rights so long as Tenant is provided with (i) access cards, vouchers, or other means with which Tenant may provide its invitees with parking within Parking Structure A for no additional cost, though not in a quantity to exceed the quantity of Parking Access Rights granted under this Section 2.4; and (ii) not less than fifteen (15) days notice prior to any change in the parking management system to be used within Parking Structure A. Additional Parking Access Rights may be obtained by Tenant, if available, for Eighty-Six and 00/100 Dollars ($86.00) per stall per month during the first twelve (12) months of the Lease and as adjusted, not more than once in any six month period, based on the then-current market rate thereafter.

2.5 Commencement Date of Term: This Commencement Date shall occur upon delivery of the Grey-Shell Premises to Tenant, but not sooner than April 1, 2022, being on or before the date Tenant, or its contracted contractor, begins the Tenant Improvements. The Commencement date shall be memorialized in the Lease Commencement Agreement, attached hereto as Exhibit D. Landlord shall not be deemed to have delivered possession until it has completed all its work.

2.6 Term: A ten (10) year lease, which, unless terminated earlier pursuant to this Lease, shall end on the last day of the 120th full calendar month following the Commencement Date.

2.7 Base Rent: This is a "Full Service Lease" with Base Rent of $25.50 per RSF, or Three Hundred Forty-Four Thousand Two Hundred Fifty and 00/100 ($344,250.00), payable annually

in arrears on the last day of the applicable period, being the day before the anniversary of the Commencement Date and due annually that date thereafter during the Term. Base Rent shall not increase during the Term.

Payment Period	Amount Due
First Day of Month 1	$ 0.00
First Day of Month 2	$ 0.00
First Day of Month 3	$ 0.00
Months 4 through 12	$ 258,187.50
Month 13 through 24	$ 344,250.00
Month 25 through 36	$ 344,250.00
Month 37 through 48	$ 344,250.00
Month 49 thorugh 60	$ 344,250.00
Month 61 through 72	$ 344,250.00
Month 73 through 84	$ 344,250.00
Month 85 through Month 96	$ 344,250.00
Month 97 through 108	$ 344,250.00
Month 109 through 120	$ 344,250.00

The Base Rent shall be paid solely from the Tax Increment, as defined in the Redevelopment Plan attached hereto as Exhibit E, and Landlord shall have no recourse to any other funds available to Tenant, up to and including funds that may be available to the Tenant from the Provo City Corporation. However, in the event the Tax Increment does not cover the total amount of Base Rent during any period, Guarantor, as identified below, shall pay the difference between the Tax Increment and the Base Rent pursuant to the terms of the Guaranty, attached hereto as Exhibit F.

2.8 Intentionally Omitted.

2.9 Base Year: Not applicable.

2.10 Tenant's Share: Except as stated herein, this lease agreement shall be considered a "Full Service Lease" and the Parties agree that there is no "Tenant's Share of Expenses."

2.11 Tenant Improvements: Landlord shall provide an improvement allowance to Tenant of Forty and 00/100 Dollars ($40.00) per USF to be used toward the Tenant Improvements. Landlord will cover costs to develop concept plans in order to create a total cost estimate of Tenant Improvements.

2.12 Security Deposit: Not Applicable.

2.13 Landlord's Address for Payment of Rent: PEG PRV 200 Freedom Office, LLC, 180 North University Avenue, Suite 200, Provo, Utah 84601

2.14 Landlord's Address for Notices: Same as above. Tel: (801) 655-1998

With a copy to:

PEG Companies, Inc.
Attn: General Counsel
180 North University Avenue, Suite 200
Provo, Utah 84601

2.15 Tenant's Address for Notices:

Provo City Redevelopment Agency
Attn: Executive Director
351 W. Center Street
Provo, UT 84601

With a copy to:

Provo City Attorney
351 W. Center Street
P.O. Box 1849
Provo, UT 84603

2.16 Tenant's Telephone Number: 801-852-6160

2.17 Tenant's Facsimile Number: Not Applicable.

2.18 Tenant's Social Security Number or Tax Identification Number: Not Applicable.

2.19 Tenant's Information:

Entity Type: Utah Community Reinvestment Agency
State of Origin: Utah
Entity ID No.:

2.20 Landlord's and Tenant's Broker(s): [X] Not Applicable; [ ] Applicable:

2.21 Guaranty: PEG Legacy Assets, LLC.

2.22 Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference:

Exhibit A: Defined Terms
Exhibit B: Floor Plan of Premises
Exhibit C: Building Rules
Exhibit D: Lease Commencement Agreement

3. PREMISES. In consideration of the mutual covenants this Lease describes and other good and valuable consideration, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon the terms and subject to the covenants and conditions of this Lease, the Premises (defined in Subsection 2.2).

4. TERM.

4.1 Term. The Term shall commence on the Commencement Date and, unless sooner terminated, shall expire upon the expiration of the Term (defined in Subsection 2.6). The terms and provision of this Lease shall become effective as of the date hereof. Any provisions in this Lease pertaining to periods of time prior to the Commencement of the Term shall be binding upon the Parties.

4.2 Intentionally omitted.

4.3 Early Termination. Tenant shall have an ongoing one-time right to terminate the Lease at seventy-two (72) months' following the Commencement Date by providing Landlord with a minimum of twelve (12) months' prior written notice. In the event that Tenant elects to utilize this one-time right to terminate, Tenant shall pay to Landlord a pro-rata portion of commissions and tenant improvements allowance which remains outstanding at the time of termination. The interest rate for this amortization shall be equal to 8% per year, compounded monthly.

5. RENT.

5.1 Base Rent. Tenant agrees to pay to Landlord the Base Rent (defined in Subsection 2.8) during the Term without notice, deduction or set-off. The schedule of Base Rent in Subsection 2.8 is based upon full calendar years during the Term.

5.2 Direct Costs. Not Applicable.

5.3 Expenses. Not Applicable.

5.4 Annual Statement. Not Applicable.

5.5 Reconciliation of Expenses. Not Applicable

5.6 Tenant's Inspection and Audit Rights. Not Applicable.

5.7 Payment of Rent. All amounts of Rent shall be paid by Tenant within the time periods as set forth in this Lease without prior notice or demand (unless otherwise set forth herein), or, if no time period is specified, within thirty (30) days after notice from Landlord of the amounts due. All Rent shall be paid without offset, recoupment or deduction (unless otherwise specifically permitted in this Lease and agreed to by Landlord), in lawful money of the United States of America to Landlord at Landlord's Address for Payment of Rent (defined in Subsection 2.13), or to such other person or at such other place as Landlord may from time to time designate. Tenant's obligation to pay any amount of Rent accruing during the Term shall survive the expiration or earlier termination of this Lease.

5.8 No "Key Money". Tenant agrees that Tenant's obligation to pay all sums owing under this Lease (including, without limitation, any sum payable prior to the Commencement Date, such as any Security Deposit under Section 6, or any sum payable thereafter, such as Base Rent under Subsection 5.1, Direct Costs under Subsection 5.2, Expenses under Subsection 5.3, or Landlord's fees and costs incurred in connection with any proposed Transfer pursuant to Subsection 16.6), are clearly stated and do not violate any applicable Laws, and Tenant hereby waives the benefit of any statute, judicial decision or other Laws that would allow Tenant to challenge Tenant's obligation to pay such sums on the basis that such sums constitute "key money" or other unlawful payments to Landlord.

6. SECURITY DEPOSIT. Not Applicable.

7. ALTERATIONS.

7.1 Acceptance of Premises.

(a) By taking possession of the Premises, Tenant acknowledges and agrees that Tenant accepts the Premises and all aspects thereof in "AS-IS" condition, subject to the terms and conditions of any punch list items, if applicable. Landlord warrants upon delivery that all HVAC, plumbing, electrical, roof and roof membrane, floor slab, and any other structural improvements are all in good working order. Tenant acknowledges and agrees that, except as specifically provided in this Lease, Landlord and any person acting on behalf of Landlord has not made, and Landlord hereby specifically disclaims, any warranty, promise, guarantee, and/or representation, oral or written, express or implied, past, present, or future, of, as to, or concerning the Premises, the Building, and the Property in any manner whatsoever.

(b) Landlord shall deliver the Premises to Tenant in a Grey-Shell Premises. As used in this Lease, a Grey-Shell Premises shall include all electrical, plumbing, and HVAC stubbed into the Premises and sufficient to meet applicable Laws; and the building core fully built-out with bathrooms, elevator lobby, two stairways, and two public elevators.

7.2 Improvement Allowance.

(a) Tenant shall be entitled to a one-time tenant improvement allowance in the amount equal to $40.00/USF of space within the Premises (the "Improvement Allowance"), which Improvement Allowance shall be applied solely toward the costs of buildout within the Premises; such as, without exception, framing, sheetrock, electrical, HVAC, lighting, paint and carpet as approved by Landlord in Tenant's Improvement Plans (the "Tenant Improvements"), and related costs. The Improvement Allowance shall not apply towards Trade Fixtures, furniture, equipment, artwork, plants, and other personal property of Tenant. Any of the Improvement Allowance not used by Tenant toward the Tenant Improvements within the Premises on or before the Commencement Date shall be deemed waived and forfeited by Tenant.

(b) Landlord shall pay the above Improvement Allowance to Tenant within thirty (30) days of (i) the completion of Tenant's Work; (ii) receipt of a properly recorded Notice of Competition & Certificate of Occupancy; (iii) unconditional lien releases, if applicable; or (iv) receipt of Tenant's as-built plans, whichever is later.

(c) Landlord shall cover the reasonable costs of developing and estimating the cost to construct the Tenant Improvements. Such cost shall not exceed $5,000.

7.3 Consent. Tenant shall not make any Alterations to the Premises without Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. Landlord may withhold its consent to such Alterations in its sole discretion if (a) the proposed Alterations would adversely affect the structure or safety of the Building, the HVAC, or the Building Systems, (b) lower the value of the Building or the Premises, or (c) the proposed Alterations would create an obligation on Landlord's part to make modifications to the Building (in order, for example, to comply with laws such as the ADA mandating Building accessibility for persons with disabilities), incur any expense, or be subject to any liability. Upon request of Landlord, Landlord and Tenant shall enter into a Work Letter pertaining to any Alterations. Any such Alterations shall be completed by Tenant at Tenant's sole cost and expense. All Alterations performed by Tenant shall be performed in a good workmanlike manner using good materials and in a diligent manner and under the supervision of a licensed architect or structural engineer and made in accordance with plans and specifications approved by Landlord. If any work outside the Premises, or any work on or adjustment to any of the Building Systems, is required in connection with or as a result of the Alterations, such work shall be performed at Tenant's expense by contractors designated by Landlord.

7.4 Liens. Tenant shall keep the Premises and the Property free and clear of all liens arising out of any work performed, materials furnished or obligations incurred by, through or under Tenant. If any such lien attaches to the Premises or the Property, and Tenant does not cause the same to be released by payment, bonding or otherwise within thirty (30) days after the attachment thereof, Landlord shall have the right but not the obligation to cause the same to be released, and any sums expended by Landlord in connection therewith shall be payable by Tenant within thirty (30) days of demand with interest thereon from the date of expenditure by Landlord at the Interest Rate. Tenant shall give Landlord at least five (5) days' notice before Tenant commences any Alterations.

7.5 Trade Fixtures. Subject to the provisions of Section 8 - *Use and Compliance with Laws* and the foregoing provisions of this Section 7—*Alterations*, Tenant may install and maintain Trade Fixtures in the Premises, provided that the Trade Fixtures do not become an integral part of the Premises or the Building. Tenant shall promptly repair any damage to the Premises or the Building caused by any installation or removal of such Trade Fixtures.

7.6 Telecommunications.

(a) Tenant may not install any Telecommunications Facilities on the roof of the Building or in any risers, shafts, equipment rooms or any other part of the Building, except as expressly provided below. If Tenant desires to install, operate or maintain any such telecommunication facilities within the Building, Tenant shall obtain approval from Landlord and enter into a separate Telecommunications License Agreement with Landlord. Notwithstanding the above, Tenant may install, maintain, replace, remove, and use Telecommunications Lines within the Premises, subject to the following: (1) the Telecommunication Lines shall use the existing facilities and telecommunications pathways located within the Premises for such Telecommunications Lines, including any existing equipment and telecommunications rooms or closets and conduits designated by Landlord to service the Premises; (2) Tenant at the origination point, every twenty-five (25) feet thereafter and at the termination point shall label the Telecommunication Lines placed within the Premises and in the telecommunications pathways and in each

telecommunications room or closet through which the Telecommunication Lines pass, with identification information including, but not limited to, the floor where cable originates and floor and room where cable terminates, the name of the Tenant, and any other information as may be required by Landlord; (3) Tenant shall obtain, at its sole cost and expense, prior to construction and work, any necessary federal, state, and municipal permits, licenses and approvals, copies of which will be delivered to Landlord prior to commencement of construction and work; and (4) all Telecommunication Lines shall satisfy all applicable Laws, including building codes, and have sufficient insulation to minimize any Interference. Upon request by Landlord, Tenant shall provide Landlord with detailed plans, schematics, and specifications identifying the Telecommunication Lines located or placed within the Premises. Landlord disclaims all responsibility for the condition or utility of any intra-building cabling network, and makes no representation regarding the suitability of such network for Tenant's intended use.

(b) The Telecommunications Lines and any other equipment placed within the Premises, including any equipment that uses wireless transmission of data, shall not cause any Interference with other communications, computing, electronic, building or life safety services in the Building or with any other tenant's or occupant's use or operation of communications, computer or electronic equipment or devices within or on the Building or neighboring properties. In the event of any Interference, Tenant shall use diligent efforts to immediately remedy the Interference. If Tenant fails to remedy the Interference within forty-eight (48) hours after notice from Landlord, Landlord shall have the right, but not the obligation, to take any reasonable actions to correct the same at Tenant's expense; provided that Landlord may take immediate action in the event any Interference causes a threat to the safety to persons or the Building or in the event of a viable claim by any third party. Tenant indemnifies, holds harmless and agrees to defend Landlord from any Claims arising from any Interference caused by the use or presence of any Telecommunications Facilities or other equipment or devices that may be placed within the Premises or the Building by Tenant or Tenant's Representatives.

(c) Tenant, at its sole cost and expense, shall maintain and repair the Telecommunication Lines exclusively servicing the Premises from the demarcation point into the Building, including within the Premises. Tenant shall remove all such Telecommunication Lines on or before the expiration or earlier termination of this Lease. If Tenant fails to remove any such Telecommunication Lines, Landlord, at is sole option, may remove such Telecommunication Lines at Tenant's expense. If Landlord elects not to remove such Telecommunication Lines, such Telecommunication Lines shall be deemed abandoned and become the property of Landlord. Tenant shall not, without the prior written consent of Landlord in each instance, grant to any third party a security interest or lien in or on such Telecommunication Lines, and any such security interest or lien granted without Landlord's written consent shall be null and void.

8. USE AND COMPLIANCE WITH LAWS.

8.1 Use. The Premises shall be used solely for the Permitted Use (defined in Subsection 2.3) and for no other use or purpose.

(a) Tenant shall not permit the following uses on or within the Premises: (i) operation of a commercial bank, savings bank, savings and loan association, credit union, a mutual or thrift association or any other institution that accepts deposits of money, (ii) operation of any sort of automated teller machine or cash dispensing machine, (iii) operation of a stock brokerage firm, (iv) operation of a mortgage broker, (v) operation of a finance company, mortgage company or any other institution that lends money, (vi) investment banking, (vii) insurance brokerage; and (viii) provision of any other financial services or sale of any financial products.

(b) Tenant shall comply with all present and future Laws relating to Tenant's use or occupancy of the Premises, and shall make any repairs, alterations or improvements to the Building as required to comply with all such Laws to the extent that such Laws relate to or are triggered by: (i) Tenant's particular use of the Premises, (ii) the Tenant Improvements, or (iii) any Alterations. Tenant shall not do, bring, keep or sell anything in or about the Premises that is prohibited by, or that will cause a cancellation of or an increase in the existing premium for, any insurance policy covering the Building or any part thereof. Tenant shall not permit the Premises to be occupied or used in any manner that will constitute waste or a nuisance, or disturb the quiet enjoyment of or otherwise unreasonably disturb other tenants in the Building. Tenant shall not, without the prior consent of Landlord, (w) bring into the Building or the Premises anything that may cause substantial noise, odor or vibration, overload the floors in the

Premises or the Building or any of the HVAC, the Building Systems, or jeopardize the structural integrity of the Building or any part thereof; (x) connect to the utility systems of the Building any apparatus, machinery or other equipment other than typical office equipment; (y) connect (directly, or indirectly through use of intermediate devices, electrified strip molding, or otherwise) to any electrical circuit in the Premises any equipment or other load with aggregate connected load requirements in excess of 20 amps; or (z) place any signs or placard on the exterior of the Premises, the Building or within any window without the prior written consent of Landlord.

8.2 Hazardous Materials.

(a) Tenant shall not cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Building by Tenant or Tenant's Representatives or Visitors except for de minimus quantities of substances that are normally associated with general office duties (such as copier fluids and cleaning supplies) or which are otherwise approved by Landlord. Tenant shall use, store, transport and/or dispose of all such Hazardous Materials in strict compliance with all Environmental Requirements, and shall comply at all times during the Term with all Environmental Requirements.

(b) Landlord indemnifies Tenant in connection with all hazardous materials which may exist within the Premises other than those created by Tenant.

8.3 Prohibited Activities. Tenant will not do any of the following or use the Property nor knowingly permit the Premises to be used in any manner that would: (a) violate any certificate of occupancy affecting the Premises; (b) make void or voidable any insurance with respect to the Property; (c) cause injury or damage to the Premises, the Building or the Property or to the person or property of any other tenant on the Property; (d) cause substantial diminution in the value or usefulness of all or any part of the Property (reasonable wear and tear excepted); (e) constitute a public or private nuisance or waste; (f) place a load on any floor exceeding the floor load which such floor was designed to carry in accordance with the plans and specifications of the Building, and not to install, operate or maintain in the Premises any safe or heavy item of equipment, except in such manner and in such location as Landlord shall prescribe so as to achieve a proper distribution of weight; (g) strip, overload, damage or deface the Premises, stairways, sidewalks, Parking Structure A, parking facilities or other parts of the Common Area of the Property, or the fixtures therein or used therewith, nor to permit any hole to be made in any of the same; (h) use any apparatus or device in or about the Premises that causes substantial noise, odor, vibration or interference without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion; (i) connect any apparatus or device to electrical current or water except through the electrical and water outlets Landlord installs in the Premises or that are approved by Landlord for installation by Tenant; (j) be a source of annoyance or embarrassment to Landlord or other tenants; (k) place or maintain any merchandise, signage, trash, refuse or other article in any vestibule or entry of the Premises, on the sidewalks or corridors adjacent thereof or elsewhere on the exterior of the Premises, nor obstruct any driveway, corridor, sidewalk, parking area or any other portion of the Common Area; (l) use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception or radio or television broadcasts on the Property, which is in any manner audible or visible outside of the Premises; or (m) solicit business in any Common Areas or in other areas of the Building except the Premises, distribute handbills or other advertising material in any portion of the Common Area or other areas of the Building (including placing the same in or upon any automobiles parking on the Property or in the Parking Structure A), exhibit any sign, placard, banner notice or other written material, solicit membership in any organization, group or association or contribution, and/or parade, patrol, picket, demonstrate or engage in conduct that might interfere with or impede the use of the Common Areas by any customer, invitee or employee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the other tenants. Tenant will obtain and maintain, at Tenant's sole cost and expense, all licenses, permits and approvals required under the Laws for Tenant's use of the Premises. In addition, Tenant shall not do or allow any of the following acts to be done in the Premises: (1) *intentionally omitted*; (2) family planning services; (3) overnight sleeping; and/or (4) *intentionally omitted*. Tenant and Tenant's Representatives and Visitors shall not smoke within the Building or on the Property. Tenant acknowledges that its use and occupation of the Premises is not dependent nor was induced upon the co-tenancy or co-occupation of the Property by any other tenant(s). If Tenant or Tenant's business operations result in any protests, riots, or disturbance of the peace, Landlord, in its sole and absolute discretion, shall have the right to: (i) require Tenant to (a) cease business operations for a reasonable period of time to cease such disturbance or (b) to discontinue the use of the Premises by any third-party invitee of Tenant whose

activities are resulting in protests, riots, or disturbance of the peace, though in either event Rent payable hereunder shall not abate; or (ii) if Tenant fails to take action under subsection (i), above, and such disturbance continues for a period of at least five (5) Business Days from the date of Landlord's notice to cease operations, such disturbance shall constitute an Event of Default (with no additional notice required to be given, notwithstanding the terms of Subsection 17.1 below), and Landlord may immediately terminate this Lease.

8.4 Transportation Management. Tenant shall fully comply with all current or future compulsory programs imposed by any public authority, intended to manage parking, transportation, or traffic in and around the Building and Property. In connection with this compliance, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any government transportation management organizations, or other transportation-related committees or entities. This provision includes programs such as the following: (a) restrictions on the number of peak-hour vehicle trips generated by Tenant; (b) encouragement of increased vehicle occupancy through employer-sponsored financial or in-kind incentives; (c) implementation of an in-house or area-wide ridesharing program and appointment of an employee transportation coordinator; and (d) flexible work shifts for employees.

9. MAINTENANCE AND REPAIRS.

9.1 Landlord's Maintenance Obligations. During the Term, Landlord is obligated to maintain or cause to be maintained in reasonably good order, condition and repair as part of the Operating Costs, the roof, foundations, exterior walls of the Building, the Building Systems (except for the portion of such systems installed by Tenant and/or located within the Premises and exclusively servicing the Premises), and the public and common areas of the Property. Landlord shall not be obligated to perform maintenance or repairs related to these obligations until a reasonable time after Landlord receives written notice from Tenant requesting such maintenance or repairs. Tenant shall pay the cost of repairs for damage occasioned by Tenant's use of the Premises or the Property or any act or omission of Tenant or Tenant's Representatives or Visitors beyond normal wear and tear, and such costs may be billed to Tenant as Direct Costs. Tenant shall promptly report in writing to Landlord any defective condition known to Tenant that Landlord is required to repair. As a material part of the consideration for this Lease, Tenant hereby waives any benefits of any applicable existing or future Law that allows a tenant to make repairs to the Building

9.2 Tenant's Maintenance Obligations. Intentionally omitted.

9.3 Landlord's Rights. Landlord hereby reserves the right, at any time and from time to time, without liability to Tenant: (a) to make alterations, additions, repairs, improvements to or in all or any part of the Building, the fixtures and equipment therein, and the Building Systems; (b) to reduce, increase, enclose or otherwise change the size, number, location, lay-out and nature of the common areas and other tenancies and premises in the Building and to create additional rentable areas through use or enclosure of common areas within the Building, (c) to install and maintain pipes, ducts, conduits, wires, lines, cables, and structural elements in the Building and the Units that serve other parts or other tenants of Landlord; and (d) to comply with any Governmental Controls, whether mandatory or voluntary, and make any alterations to the Unit or the Building related thereto. Unless Landlord's performance of the above activities requires that Tenant vacate the premises for thirty (30) or more successive calendar days, such activities by Landlord shall not constitute an eviction, constructive or otherwise, and Tenant shall not be entitled to any abatement of Rent, to terminate this Lease, nor to any waiver or release of Tenant's obligations under this Lease as a result thereof. If Landlord performs any activity on a floor of the Building where the Tenant is located, Landlord will provide Tenant with reasonable prior notice of such activity.

10. TENANT'S TAXES. Not Applicable.

11. UTILITIES AND SERVICES.

11.1 Description of Services. Landlord shall make available to the Unit(s) and/or the Premises reasonable amounts of electricity, water, heat and air-conditioning, if applicable, and sewer and water service to any restrooms and/or break rooms in the Premises. Landlord shall furnish Building Standard window washing, elevator service, and toilet room supplies. If heat and air conditioning is not provided by Landlord as part of the Building Systems, Landlord shall furnish heat, ventilation and air-conditioning during Business Hours

11.2 Payment for Utilities and Services. Intentionally omitted.

11.3 Interruption of Services. In the event of a Service Failure, the Service Failure shall not, regardless of its duration or cause (except as otherwise provided herein): (a) impose upon Landlord any liability whatsoever, (b) constitute an eviction of Tenant, constructive or otherwise, (c) entitle Tenant to an abatement of Rent or to terminate this Lease, or (d) otherwise release Tenant from any of Tenant's obligations under this Lease. Tenant waives and releases any and all Claims against Landlord associated with a Service Failure, including, without limitation, any consequential or special damages. Provided, however, if there shall be a Service Failure (i) in excess of two (2) consecutive business day after Tenant provides notice of the Service Failure to Landlord or (ii) in excess of five (5) consecutive Business Days, or (iii) in excess of twenty (20) Business Days during any 12-month period such that the Tenant and its employees cannot reasonably occupy the Premises as it relates to other Services, then Tenant shall be entitled to an abatement of rent for the period of such Service Failure. Landlord shall use good faith and diligent efforts to cure any Service Failure and restore service and utilities to the Premises. Tenant hereby waives any benefits of any applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability. A time equivalent to the period of abatement shall be added to the end of the then-current Term.

12. RELEASE AND INDEMNIFICATION.

12.1 Release. Landlord, and Landlord Parties shall not be liable to Tenant for any loss, harm, or damage to any property (including Tenant's property) in or about the Premises or the Building from any cause whatsoever, (including, but not limited to: defects in the Building or in any equipment in the Building; fire, explosion or other casualty; bursting, rupture, leakage or overflow of any plumbing or other pipes or lines, sprinklers, tanks, drains, drinking fountains or wash stands in, above, or about the Premises or the Building; or acts of other tenants in the Building), except for loss, harm or damage arising from the gross negligence or intentional misconduct of Landlord or Landlord's employees acting within the scope of their employment. Tenant hereby releases and waives all Claims against Landlord and Landlord Parties for the same, provided that Tenant does not release Landlord from any Claims for loss, harm or damage to any property (including Tenant's Property) arising from the gross negligence or intentional misconduct of Landlord or Landlord's employees acting within the scope of their employment. In no event, however, shall Landlord or Landlord Parties be liable to Tenant for any punitive or consequential damages or damages for loss of business by Tenant. The terms of this Subsection 12.1 shall not relieve Landlord of its obligations under Subsection 14.1 of this Lease.

12.2 Indemnification. Tenant shall indemnify, defend and hold Landlord and Landlord Parties harmless for, from and against Claims arising from: (a) the acts or omissions of Tenant or Tenant's Representatives or Visitors in or about the Property (including, but not limited to, any damage to the Building or the Property, the presence of Hazardous Material, and/or any Interference), or (b) Tenant's use or occupancy of the Premises, or (c) any construction or other work undertaken by Tenant on the Premises (including any design defects), or (d) any breach or default under this Lease by Tenant, or (e) any accident, injury or damage to any person or property, occurring in or about the Premises during the Term regardless of the cause; except that Tenant does not indemnify Landlord from any Claims for bodily injury solely arising from the negligent acts or omissions of Landlord or its authorized representatives. Subject to Tenant's indemnification obligations above, Landlord shall indemnify, defend and hold Tenant harmless from and against Claims solely arising from the negligent acts or omissions of Landlord or Landlord's Representatives acting in the scope of their employment resulting in any harm or injury to persons in or about the Property; except that Landlord does not indemnify Tenant from any Claims for personal injury arising in any degree from the negligent acts or omissions of Tenant, Tenant's Representatives or Visitors. Tenant's indemnification obligation is independent of Tenant's obligation to maintain insurance, and the minimum limits on Tenant's insurance coverage set forth in this Lease shall not limit the Tenant's indemnification obligations under this Lease.

12.3 Miscellaneous. The obligations of the parties under this Section 12: (a) are independent of, and will not be limited by, each other or any insurance obligations set forth in this Lease or comparative negligence statutes or principles or damages or benefits payable under workers compensation or other employee benefit acts, and (b) shall survive the expiration or earlier termination or this Lease until such time as all related Claims against the benefited parties are fully and finally barred by applicable laws. All applicable Laws affecting the validity or enforceability of any portion of the waivers, releases and indemnities contained in this Section 12 are made a part of this Section 12—

Release and Indemnification, and will operate to amend such obligations to the minimum extent necessary to bring the provisions into conformity with applicable Laws and cause the provisions, as modified, to continue in full force and effect.

13. INSURANCE.

13.1 Tenant's Insurance. Tenant shall maintain at a minimum the insurance to comply with the following insurance obligations:

(a) Tenant shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence basis with limits of not less than Two Million Dollars ($2,000,000.00) each occurrence; Two Million Dollars ($2,000,000.00) annual general aggregate, Two Million Dollars ($2,000,000.00) products and completed operations annual aggregate, One Million Dollars ($1,000,000.00) personal and advertising injury per occurrence, and One Hundred Thousand Dollars ($100,000.00) fire damage (any one fire). Tenant's liability insurance policy or policies shall: (1) be on ISO form CG 00 01 12 04 or equivalent, (2) include premises and operations liability coverage, products and completed operations liability coverage, broad form property damage coverage including completed operations, blanket contractual liability coverage, and personal and advertising injury coverage; (3) provide that the insurance company has the duty to defend all insureds under the policy (separation of insured language will not be modified); (4) provide that defense costs are paid in addition to and do not deplete any of the policy limits; and (5) cover liabilities arising out of or incurred in connection with Tenant's use or occupancy of the Premises or the Property.

(b) If Tenant maintains any corporate owned vehicles, Tenant shall maintain in full force throughout the Term, commercial automotive liability insurance providing coverage on an occurrence basis with not less than a One Million Dollars ($1,000,000.00) combined single limit covering "Any Auto."

(c) Tenant shall at all times maintain in effect with respect to any Alterations, Improvements, Trade Fixtures, equipment, and Tenant's goods, inventory and tangible personal property, commercial property insurance (cause of loss – special form) (formerly "all-risk") providing coverage for one-hundred percent (100%) of the full replacement cost of the covered property. Tenant's commercial property insurance policy or policies shall: (1) be on ISO form CP 10 30 or equivalent, (2) name Landlord and any Mortgagee (if notified by Landlord) as "insured as its interest may appear," (3) contain only standard printed exclusions, (4) contain an ordinance of law coverage endorsement; and (5) contain an equipment floater to cover Tenant's Trade Fixtures and equipment. Tenant may carry such insurance under a blanket policy, provided that such policy provides equivalent coverage to a separate policy. During the Term, the proceeds from any such policies of insurance shall be used for the repair or replacement of the Alterations, Improvements, Trade Fixtures and Tenant's goods, inventory and tangible personal property so insured. Landlord shall be provided coverage under such insurance to the extent of its insurable interest and/or as a loss payee and, if requested by Landlord, both Landlord and Tenant shall sign all documents reasonably necessary or proper in connection with the settlement of any claim or loss under such insurance. Landlord will have no obligation to carry insurance on any Alterations, Improvements, Trade Fixtures, or Tenant's goods, inventory and personal property.

(d) Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect Workers' Compensation Insurance for all of its employees who work at or visit the Premises and Employers Liability Insurance with coverage and minimum limits of: (i) bodily injury by accident ($500,000.00 each accident); (ii) bodily injury by disease ($500,000.00 policy limit); and (iii) bodily injury by disease ($500,000.00 each employee).

(e) Each policy of insurance required under this Section 13 shall: (1) be in a form, and written by an insurer, reasonably acceptable to Landlord; (2) be maintained at Tenant's sole cost and expense; (3) be endorsed as primary with the policies of Landlord and any Mortgagee (if requested by Landlord) being excess, secondary and noncontributing; (4) unless the Tenant's right to waiver of subrogation is permitted in the insurance policy, be endorsed to provide a waiver of subrogation in favor of Landlord and Landlord Parties; (5) require at least thirty (30) days' written notice to Landlord prior to any cancellation, non-renewal or modification of insurance coverage; and (6) be issued by insurance companies that have rating classifications of "A" or better and financial size category ratings of "VIII" or better according to the latest edition of the A.M. Best Key Rating Guide. All insurance companies issuing

such policies shall be licensed to do business in the state where the Property is located. Any deductible amount under such insurance shall not exceed Twenty Thousand Dollars ($20,000.00). Tenant shall provide to Landlord, upon request, evidence that the insurance required to be carried by Tenant pursuant to this Section 13, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefore have been paid.

(f) Each policy of commercial general liability insurance required by Subsection 13.1(a) shall: (1) contain a cross liability endorsement or separation of insureds clause; (2) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (3) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord and any Mortgagee; (4) provide that the coverage is available in the aggregate to the Premises pursuant to a CG 25 04 endorsement or an equivalent endorsement acceptable to Landlord; and (5) name Landlord and any Mortgagee (if requested by Landlord) and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds. All endorsements creating such additional insured status shall be acceptable to Landlord and shall be at least as broad as additional insured endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office.

(g) A review of the Tenant's insurance requirement shall be made periodically, but, not more frequently than one (1) time annually. If any Mortgagee or Landlord's insurance broker or other risk management consultant determines in the opinion of any of them that the amount of insurance then required under this Lease is not adequate, Tenant agrees to increase the amounts and limits of insurance as recommended by such professionals or any Mortgagee, so long as such increase is not in excess of current market requirements for similar Class A office.

(h) Prior to occupancy of the Premises by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance in the form of: (a) ACORD™ Form 25-S (1/95) (or its replacement) *Certificates of Liability Insurance* for liability coverages accompanied by the endorsement form CG 20 11 01 96 and the endorsement form 25 04 as referred to in (g) above, showing the required additional insureds satisfactory to Landlord in substance and form, and (b) ACORD™ Form 28 (or its replacement) *Evidence of Property Insurance* for property coverages. Each certificate of insurance must: (i) show the Landlord, the Property Manager and any Mortgagee (if requested by Landlord) as certificate holders (with Landlord's mailing address); (ii) show Tenant as the "Named Insured," (iii) show the insurance companies producing each coverage and the policy number and policy date of each coverage; (iv) name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer; (v) specify the additional insured status (on ACORD™ Form 45) and/or waivers of subrogation; (vi) show the amounts of all deductibles and self-insured retentions; (vii) show the primary status and aggregate limit per project where required; and (viii) the phrases "endeavor" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or representatives" are deleted from the cancellation provision of the ACORD™ Form 25 certificate and the following express provision added: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, 30 days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested." If the insurance carrier is unwilling to provide such certification, Tenant shall provide Landlord with thirty (30) days' prior written notice of the modification or cancellation of Tenant's insurance policies. Notwithstanding the requirements of this paragraph, Tenant shall at Landlord's request provide to Landlord a complete copy of each insurance policy required to be in force at any time pursuant to the requirements of this Lease or its Exhibits.

13.2 Insurance Coverage During Construction. During the period of any construction on, in or about Premises by, through or under Tenant, Tenant agrees to obtain, or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

(a) Workers' compensation;

(b) Employer's liability: (i) bodily injury by accident ($500,000.00 each accident); (ii) bodily injury by disease ($500,000.00 policy limit); and (iii) bodily injury by disease ($500,000.00 each employee); and

(c) Commercial General Liability policy (CG 00 01 policy) providing coverage on an occurrence basis with limits of not less than Two Million Dollars ($2,000,000.00) each occurrence; Two Million Dollars ($2,000,000.00) annual general aggregate, Two Million Dollars ($2,000,000.00) products and completed operations annual aggregate, One Million Dollars ($1,000,000.00) personal and advertising injury per occurrence, and One Hundred Thousand Dollars ($100,000.00) fire damage (any one fire). Prior to commencement of any work, Tenant or its contractor shall furnish to Landlord a certificate of insurance in the form of ACORD™ Form 25-S (1/95) (or its replacement) *Certificates of Liability Insurance* for liability coverages accompanied by the endorsement form CG 20 10 11 85. The certificate of insurance shall comply with the requirements set forth in Subsection 13.1(h) above.

(d) Commercial Automotive Liability providing coverage on an occurrence basis with not less than a One Million Dollars ($1,000,000.00) combined single limit covering "Any Auto."

(e) Independent Contractor's Liability with the same coverage as in (c) above.

(f) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work.

(g) "XCU" Hazard coverage, if applicable.

13.3 Property Insurance - Waiver of Subrogation. Landlord and Tenant each hereby waive any right of recovery against the other(s) (Tenant's waiver of subrogation shall be in favor of Landlord and Property Manager and any Mortgagee (if notified by Landlord)) and the partners, members, shareholders, officers, directors and authorized representatives of the other for any loss or damage that is covered by any policy of property insurance maintained by either party (or required by this Lease to be maintained) with respect to the Premises or the Building or any operation therein. If any such policy of insurance relating to this Lease or to the Premises or the Building does not permit the foregoing waiver or if the coverage under any such policy would be invalidated as a result of such waiver, the party maintaining such policy shall obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against either party in connection with any claim, loss or damage covered by such policy.

14. DAMAGE OR DESTRUCTION.

14.1 If all or a substantial part of the Premises is rendered untenantable or inaccessible by damage to any part of the Property from fire or other casualty then the Premises or the Building shall be repaired and restored.

14.2 Tenant's Duty to Repair. If any Alterations, Improvements, Trade Fixtures or Tenant's goods, inventory or personal property is damaged or destroyed, Tenant shall repair and/or replace such damaged items as soon as possible after the restoration of the Premises.

14.3 Landlord's Right to Terminate. Landlord may elect to terminate this Lease following damage by fire or other casualty under the following circumstances if the fire or other casualty:

(a) Results in damage to 30% or more of the Building; or

(b) Occurs during the last two (2) years of the term.

14.4 Waiver. Landlord and Tenant each hereby waive the provisions of any applicable existing or future Law permitting the termination of a lease agreement in the event of damage or destruction under any circumstances other than as expressly provided in this Section 14 above.

15. CONDEMNATION.

15.1 Effect on Lease. If the Premises, or any portion thereof, are taken by Condemnation, this Lease shall terminate as of the Date of Condemnation as to that portion of the Premises that is taken. If the portion of the Premises remaining after the Condemnation is unsuitable for Tenant's continued use as reasonably determined by the parties, then Tenant may terminate this Lease upon thirty (30) days' written notice to Landlord after the Date of

Condemnation. If the entire Premises is not taken and the Lease is not terminated by Tenant as provided herein, this Lease shall remain in effect and Landlord shall diligently proceed to repair and restore the Premises to an architecturally complete office space; provided, however, that Landlord's obligations to so repair and restore shall be limited to the amount of any Award received by Landlord and not required to be paid to any Mortgagee. Landlord shall not be obligated to repair or replace any Alterations, Improvements, Trade Fixtures, or Tenant's goods, inventory or personal property. From and after the Date of Condemnation, Tenant shall not be obligated to pay any Rent applicable to such portion of the Premises taken based upon the percentage of RSF in the Premises so taken from and after the Date of Condemnation.

15.2 Awards. Any Award made shall be paid to Landlord and Tenant hereby assigns to Landlord, and waives all interest in or claim to, any such Award, including any claim for the value of the unexpired Term; provided, however, that Tenant shall be entitled to receive, or to prosecute a separate claim for, an Award for a temporary taking of the Premises or a portion thereof by a Condemnor where this Lease is not terminated (to the extent such Award relates to the unexpired Term), or an Award or portion thereof separately designated for relocation expenses of, or for the interruption of or damage to Tenant's business or as compensation for Trade Fixtures and Tenant's personal property.

15.3 Waiver. Landlord and Tenant each hereby waive the provisions of any applicable existing or future Laws allowing either party to petition for a termination of this Lease upon a partial taking of the Premises and/or the Property.

15.4 Exclusive Taking Remedy. The provisions of this Section 15, Condemnation, are Tenant's sole and exclusive rights and remedies in the event of a Taking of any portion of the Property. To the extent permitted by the Laws, Tenant waives the benefits of any Laws that provide Tenant any abatement or termination rights or any right to receive any payment or award (by virtue of a Taking) not specifically described in this Section 15, *Condemnation.*

16. ASSIGNMENT AND SUBLETTING.

16.1 Landlord's Consent Required. Tenant shall not Transfer this Lease nor any part of the Premises, without the prior written consent of Landlord, which (subject to the other provisions of this Section 16—*Assignment and Subletting*) shall not be unreasonably withheld, conditioned, or delayed. If Tenant is a business entity, any direct or indirect transfer of twenty-five percent (25%) or more of the ownership interest of the entity (whether in a single transaction or in the aggregate through more than one transaction) shall be deemed a Transfer. Notwithstanding any provision in this Lease to the contrary, Tenant shall not mortgage, pledge, hypothecate or otherwise encumber all or any portion of Tenant's interest under this Lease. In addition, Tenant shall not make any Transfer to a Prohibited Person and any Transferee shall make the representation and warranty contained in Section 40—*OFAC Representations* hereof to Landlord and Tenant in any Transfer document.

16.2 Reasonable Consent.

(a) If Tenant complies with the following conditions, Landlord shall not unreasonably withhold its consent to the subletting of the Premises or any portion thereof or the assignment of this Lease. Prior to any proposed Transfer, Tenant shall submit in writing to Landlord (1) the name and legal composition of the proposed Transferee; (2) the nature of the business proposed to be carried on in the Premises; (3) a current balance sheet, income statements for the last two years and such other reasonable financial and other information concerning the proposed Transferee as Landlord may request; and (4) a copy of the proposed assignment, sublease or other agreement governing the proposed Transfer, which must contain the following: (i) Transferee's waiver, release and indemnification of Landlord as set forth in Section 12—*Release and Indemnification*; (ii) representation and indemnification of Landlord consistent with Section 40—*OFAC Representation*; and (iii) Transferee's agreement to maintain the insurance required by Section 13—*Insurance*, including endorsing Landlord as an additional insured on Transferee's liability insurance policy. Within fifteen (15) days after Landlord receives all such information it shall notify Tenant whether it approves or disapproves such Transfer or if it elects to proceed under Subsection 16.8.

(b) The parties hereto agree and acknowledge that, among other circumstances for which Landlord could reasonably withhold consent to a proposed Transfer, it shall be reasonable for Landlord to withhold

consent where (1) the proposed Transferee does not intend itself to occupy the entire portion of the Premises assigned or sublet, (2) Landlord reasonably disapproves of the Transferee's business operating ability or history, reputation or creditworthiness or the character of the business to be conducted by the Transferee at the Premises, (3) the proposed Transfer would violate any exclusive rights of any tenants in the Building, (4) the rental and other consideration payable by the Transferee is less than that currently being paid by tenants under new leases of comparable space in the Building, (5) the Transferee's financial strength is less than the financial strength of the minimum of other tenants in the Building, (6) the proposed use does not conform to the Permitted Use, or (7) Landlord otherwise determines that the proposed Transfer would have the effect of decreasing the value of the Building or increasing the expenses associated with operating, maintaining and repairing the Building.

16.3 Advertisement. Tenant shall not publicly offer or advertise all or any portion of the Premises for assignment or sublease at a Rent less than that then being sought by Landlord for a direct lease (non-sublease) of comparable space in the Building.

16.4 Excess Consideration. Intentionally omitted.

16.5 No Release of Tenant. No consent by Landlord to any Transfer shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment, subletting or other Transfer. Each Transferee shall be jointly and severally liable with Tenant (and Tenant shall be jointly and severally liable with each Transferee) for the payment of Rent (or, in the case of a sublease, rent in the amount set forth in the sublease) and for the performance of all other terms and provisions of this Lease. The consent by Landlord to any Transfer shall not relieve Tenant or any such Transferee from the obligation to obtain Landlord's prior written consent to any subsequent Transfer by Tenant or any Transferee. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer.

16.6 Administrative Review Fee and Attorneys' Fees. Concurrently with submitting each request for Landlord's consent to any Transfer, Tenant shall pay Landlord an administrative review fee (minimum fee of Three Hundred Dollars ($300.00) in an amount reasonably estimated (as determined by Landlord) to be equal to Landlord's costs to review Tenant's request for an Assignment. In addition to the administrative review fee, Tenant shall pay to Landlord on demand all costs and expenses (including reasonable attorneys' and consultant's fees) incurred by Landlord in connection with reviewing or consenting to any proposed Transfer. The administrative review fee and other costs are payable in connection with any request for consent to, or any waiver of Landlord's rights in connection with, any security interest in any of Tenant's property at the Premises.

16.7 Effectiveness of Transfer. Prior to the date on which any permitted Transfer (whether or not requiring Landlord's consent) becomes effective, Tenant shall deliver to Landlord a counterpart of the fully executed transfer document and Landlord's then standard form of "Consent to Assignment" or "Consent to Sublease" executed by Tenant and the Transferee in which each of Tenant and the Transferee confirms its obligations pursuant to this Lease. Failure or refusal of a Transferee to execute any such instrument shall not release or discharge the Transferee from liability as provided herein. The voluntary, involuntary or other surrender of this Lease by Tenant, or a mutual cancellation by Landlord and Tenant, shall not work a merger, and any such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of any or all of such subleases.

16.8 Landlord's Right to Space. Notwithstanding any of the above provisions of this Section 16 to the contrary, if Tenant notifies Landlord that it desires to enter into a Transfer, Landlord, in lieu of consenting to such Transfer, may elect (a) in the case of an assignment or a sublease of the entire Premises, to terminate this Lease, or (b) in the case of a sublease of less than the entire Premises, to terminate this Lease as it relates to space proposed to be subleased by Tenant. In such event, this Lease will terminate (or the space proposed to be subleased will be removed from the Premises subject to this Lease and the Base Rent and Tenant's Share under this Lease shall be proportionately reduced) on the date the Transfer was proposed to be effective, and Landlord may lease such space to any party, including the prospective Transferee identified by Tenant.

16.9 Assignment of Sublease Rents. Tenant hereby absolutely and irrevocably assigns to Landlord any and all rights to receive rent and other consideration from any sublease and agrees that Landlord, as assignee or as an attorney-in-fact for Tenant for purposes hereof, or a receiver for Tenant appointed on Landlord's application may (but shall not be obligated to) collect such rents and other consideration and apply the same toward Tenant's obligations to Landlord under this Lease; provided, however, that Landlord grants to Tenant at all times prior to occurrence of any breach or default by Tenant a revocable license to collect such rents (which license shall automatically and without notice be and be deemed to have been revoked and terminated immediately upon any Event of Default).

16.10 Transfer to Affiliate. Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's written consent, but upon prior written notice to Landlord and subject to all other provisions of this Lease, to any Affiliate, subject to all the terms of this Lease (except only that Landlord shall not be entitled to any excess consideration pursuant to Subsection 16.4 or to terminate this Lease pursuant to Subsection 16.8 upon such an assignment or sublease to an Affiliate), provided that (i) the Affiliate assumes in writing all of Tenant's obligations and rights under this Lease; (ii) the original entity executing this Lease as "Tenant" remains fully liable under this Lease (iii) Landlord receives written notification of such Transfer, and all relevant documents requested by Landlord, at least twenty (20) days prior to the effective date of such Transfer; (iv) no Event of Default is ongoing; (v) the intended Transferee has a tangible net worth, as evidenced by financial statements delivered to Landlord and certified by an independent certified public accountant in accordance with generally accepted accounting principles that are consistently applied at least equal to the minimum of other tenants in the Building net worth either immediately before the Transfer or as of the date of this Lease, whichever is greater; (vi) the nature of the business of the occupant of the Premises is reasonably acceptable and approved by Landlord; and (vii) such Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on Transfers under this Section 16. Tenant shall have the burden of establishing that all the terms of this Subsection 16.10 have been satisfied.

17. DEFAULT AND REMEDIES.

17.1 Event of Default. The occurrence of any of the following shall constitute an Event of Default by Tenant:

(a) Tenant fails to make any payment of Rent within five (5) days after the due date;

(b) Tenant abandons the Premises (as defined in Section 78B-6-815 of the Utah Code Ann., (or similar replacement provision)) or vacates the Premises;

(c) Tenant makes any material misrepresentation to Landlord including any material misrepresentation or omission in any financial statements or other information provided to Landlord by or on behalf of Tenant;

(d) Tenant violates any term or condition of Section 8—*Use and Compliance with Laws*;

(e) Tenant fails to deliver any estoppel certificate requested by Landlord within the period described in Subsection 23.1;

(f) Tenant violates the restrictions on Transfer set forth in Section 16 - *Assignment and Subletting*;

(g) Tenant violates the covenants in the Lease as enumerated in U.C.A. Section 78B-6-802 (or any replacement provision);

(h) Tenant fails to maintain the insurance required to be maintained by Tenant pursuant to Subsections 13.1 and 13.2 and/or otherwise fails to perform its obligations under such subsections;

(i) To the extent permitted by law, Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation

affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets;

(j) Tenant fails, within ninety (90) days after the commencement of any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights, to have such proceedings dismissed, or Tenant fails, within ninety (90) days after an appointment, without Tenant's consent or acquiescence, of any trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets, to have such appointment vacated;

(k) Intentionally omitted; or

(l) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (k) above, and does not fully cure such failure within fifteen (15) days after notice to Tenant or, if such failure cannot be cured within such fifteen (15) day period, Tenant fails within such fifteen (15) day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice; provided, however, that if Landlord in Landlord's reasonable judgment determines that such failure cannot or will not be cured by Tenant within such ninety (90) day period, then such failure shall constitute an Event of Default immediately upon such notice to Tenant.

17.2 Remedies. Upon the occurrence of an Event of Default, Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity, including injunctive relief:

(a) Landlord may terminate Tenant's right to possession of the Premises and/or terminate this Lease at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including re-entry into the Premises, efforts to relet the Premises, reletting of the Premises for Tenant's account, storage of Trade Fixtures and Tenant's goods, inventory and personal property, acceptance of keys to the Premises from Tenant or exercise of any other rights and remedies under this Section 17—*Default and Remedies*, shall constitute a termination of this Lease or of Tenant's rights to possession of the Premises. Upon termination, Tenant will immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, to the extent not prohibited by applicable Laws, Landlord may recover from Tenant and Tenant will pay to Landlord on demand all damages Landlord incurs by reason of Tenant's default, including, without limitation: (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) any amount necessary to compensate Landlord for any detriment proximately caused Landlord by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant's failure to perform, including, but not limited to, any Re-entry Costs; and (d) Tenant's Share of Expenses to the extent Landlord is not otherwise reimbursed for such Expenses. For purposes of this Section, Landlord will compute present worth by utilizing a discount rate equal to the lower of: (i) 6% per annum, or (ii) the discount rate published in the Wall Street Journal as of the date of Termination or judgment. Nothing in this Section limits or prejudices Landlord's right to prove and obtain damages in an amount equal to the maximum amount allowed by the Laws, regardless whether such damages are greater than the amounts set forth in this Section.

(b) Landlord may continue this Lease in effect after Tenant's breach and/or abandonment and recover Rent as it becomes due.

(c) Landlord may cure the Event of Default at Tenant's expense. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant.

(d) Landlord may maintain the Lease in full force and effect, recover the Rent and other monetary charges as they become due, and re-enter the Premises. If Landlord desires to re-enter the Premises, Landlord shall notify Tenant and Tenant shall peacefully vacate the Premises and remove Tenant's fixtures, furnishings, equipment, and personal property from the Premises within ten (10) days after Landlord's notice and grant Landlord the right to enter and possess the Premises. Landlord's re-entry into the Premises shall not be deemed

a surrender of the Premises by Tenant, an acceptance of the Premises by Landlord, a termination of the Lease, nor constructive eviction of Tenant. If Tenant fails to peacefully vacate the Premises after receipt of Landlord's notice exercising its rights under this paragraph, Landlord may obtain an order of restitution pursuant to U.C.A. Section 78B-6-812 (or any replacement provision). In such an event, Tenant hereby unconditionally stipulates to the order of restitution and waives any and all defenses and claims to the contrary and agrees that Landlord may obtain the order of restitution through summary proceedings. If Landlord pursues an action for an order of restitution, Landlord shall be entitled to recover any past due Rent, damages and reasonable attorneys' fees as permitted by U.C.A. Section 78B-6-812 (or any replacement provision). The process of obtaining an order of restitution (including the filing of notices, the pleading or finding of unlawful detainer, and the issuance of the order itself) shall not be deemed to terminate/forfeit the Lease nor operate as a surrender and acceptance of the Premises. Landlord shall have the right to make any repairs, alterations, modifications or tenant improvements to the Premises, which Landlord, in its sole discretion, deems reasonable and necessary, and to lease the Premises (which may be for a term extending beyond the term of this Lease) at such rental and upon such other terms and conditions as Landlord deems advisable using reasonable business judgment under the circumstances.

(e) Upon termination of the Lease or re-entry into the Premises by Landlord as permitted herein, Landlord may remove all of Tenant's property from the Premises, and such property may be stored by Landlord in a public warehouse or elsewhere at the sole cost and for the account of Tenant. If Landlord does not elect to store any or all of Tenant's property left in the Premises, Landlord may consider such property to be abandoned by Tenant, and Landlord may thereupon dispose of such property in any manner deemed appropriate by Landlord. Any proceeds realized by Landlord on the disposal of any such property shall be applied first to offset all expenses of storage and sale, then credited against Tenant's outstanding obligations to Landlord under this Lease, and any balance remaining after satisfaction of all obligations of Tenant under this Lease shall be delivered to Tenant.

(f) Landlord shall also have any other right or remedy available to Landlord under this Lease, at law or in equity, including, without limitation, the right to injunctive and declaratory relief.

(g) Tenant shall have any right to redeem, reinstate or restore this Lease following its termination by reason of Tenant's breach.

(h) Whether or not Landlord elects to terminate this Lease on account of any Event of Default by Tenant, as set forth in this Subsection 17.2, Landlord shall have the right to terminate any and all Transfers entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such Transfers. In the event of Landlord's election to succeed to Tenant's interest in any such Transfers, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

17.3 If as a matter of law, Landlord has no right on Tenant's bankruptcy to terminate this Lease, then the provisions of Subsection 17.2 shall be interpreted in a manner which results in a termination of this Lease in each and every instance in accordance with Subsection 17.2(a), and to the fullest extent and at the earliest moment that such termination is permitted under the federal and state bankruptcy laws, it being of prime importance to Landlord to deal only with tenants who have, and continue to have, a strong degree of financial strength and stability. If Tenant, as debtor, or its trustee, wishes to assume or assign this Lease, in addition to curing or adequately assuring the cure of all defaults existing under this Lease on Tenant's part on the date of filing of the proceedings (such assurances being described below), Tenant, as debtor, or its trustee, must also furnish adequate assurance of future performance under this Lease. Adequate assurance of curing defaults means depositing with Landlord a sum in cash sufficient to defray the costs of curing all existing defaults. Adequate assurance of future performance under this Lease means depositing a sum equal to three months' Rent including all other charges payable by Tenant hereunder, and in the case of an assignee, assuring Landlord that the assignee is financially capable of assuming this Lease and that its use of the Premises will be as provided in this Lease and for no other use. In a bankruptcy reorganization, the debtor or trustee must assume this Lease or assign it within sixty (60) days from the filing of the proceeding or it shall be deemed to have irrevocably rejected and terminated this Lease. If this Lease is assumed by a bankruptcy trustee appointed for Tenant or by Tenant as debtor-in-possession and thereafter Tenant is liquidated or files a subsequent petition for reorganization pursuant to the bankruptcy, then Landlord may, at its option, terminate this Lease and all rights of Tenant hereunder, by giving Tenant written notice of its election to so terminate no later than thirty (30) days after the

occurrence of either of such events. When, pursuant to a bankruptcy, a trustee or debtor-in-possession shall be obligated to pay reasonable use and occupancy charges for the use of the Premises or any portion thereof, such charges shall not be less than all Rent and other monetary obligations of Tenant hereunder and shall be payable, to the fullest extent permitted by the bankruptcy, within the time periods provided in this Lease.

17.4 Landlord's Default and Remedies. If Landlord fails to perform any of its obligations under the Lease, Tenant may give written notice to Landlord. Landlord shall be in default of this Lease if Landlord receives written notice of any failure to perform and Landlord fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30) day period and thereafter diligently pursues such non-performance to completion. If Landlord fails to cure a default within the time period set forth above, Tenant will provide a notice to any Mortgagee of such default pursuant to the terms and conditions of Subsection 22.2 of this Lease. In the event of a default by Landlord, Tenant, at its option, without further notice or demand and as its sole and exclusive remedies (but subject to the limitations set forth in Section 31 below), may: (i) pursue the remedy of specific performance or injunction; or (ii) seek declaratory relief; or (iii) pursue an action for actual and direct damages for loss. Notwithstanding anything herein to the contrary, Landlord shall not be subject to consequential or special damages, such as damages resulting from loss of business or revenue. Nothing herein contained shall relieve Landlord from its obligations hereunder, nor shall this Section be construed to obligate Tenant to perform Landlord's repair obligations.

18. LATE CHARGE AND INTEREST.

18.1 Late Charge. Not Applicable.

18.2 Interest. Not Applicable.

18.3 Dishonored Check. Not Applicable.

19. WAIVER. No provisions of this Lease shall be deemed waived by Landlord or Tenant unless such waiver is in a writing signed by the waiving party. The waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of such provision or of any subsequent breach of the same or any other provision of this Lease. No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, or of Tenant upon any default of Landlord, shall impair such right or remedy or be construed as a waiver. Landlord's acceptance of any payments of Rent due under this Lease shall not be deemed a waiver of any default by Tenant under this Lease (including Tenant's recurrent failure to timely pay Rent) other than Tenant's nonpayment of the accepted sums, and no endorsement or statement on any check or accompanying any check or payment shall be deemed an accord and satisfaction. Landlord's or Tenant's consent to or approval of any act requiring Landlord's or Tenant's consent or approval shall not be deemed to waive or render unnecessary Landlord's or Tenant's consent to or approval of any subsequent act.

20. ENTRY, INSPECTION AND CLOSURE. Upon reasonable oral or written notice to Tenant (and without notice in emergencies), Landlord and its authorized representatives may enter the Premises at all reasonable times to determine whether the Premises are in good condition, to determine whether Tenant is complying with its obligations under this Lease, to perform any maintenance, repair or structural enhancement of the Premises or the Building that Landlord has the right or obligation to perform, to install or repair improvements for other tenants where access to the Premises is required for such installation or repair, to serve, post or keep posted any notices required or allowed under the provisions of this Lease, to show the Premises to prospective brokers, agents, buyers, transferees, Mortgagees or tenants, or to do any other act or thing necessary for the safety or preservation of the Premises or the Building. When reasonably necessary, Landlord may temporarily close entrances, doors, corridors, elevators or other facilities in the Building without liability to Tenant by reason of such closure. Landlord shall conduct its activities under this Section 20—*Entry, Inspection and Closure* in a manner that will minimize inconvenience to Tenant without incurring additional expense to Landlord. No action by Landlord or Landlord's Representatives pursuant to this Section 20—*Entry, Inspection and Closure* shall constitute an eviction of Tenant (constructive or otherwise), entitle Tenant to an abatement of Rent or to terminate this Lease or otherwise release Tenant from any of Tenant's obligations under this

Lease, and Landlord shall not be liable in any manner for any inconvenience, loss of business or other damage to Tenant or other persons.

21. SURRENDER AND HOLDING OVER.

21.1 Surrender. Upon the expiration of the Term of this Lease or termination for any other reason, Tenant shall surrender the Premises and all Improvements and Alterations (which shall then automatically become the property of Landlord at such time) to Landlord broom-clean and in good order, condition and repair, except for reasonable wear and tear, damage from casualty or Condemnation and any changes resulting from approved Alterations. Notwithstanding the above or anything to the contrary contained in this Lease, prior to the expiration or termination of this Lease, Tenant shall remove from the Premises all (a) telephone, computer, and other cabling installed in the Building by Tenant, (b) Trade Fixtures, and (c) Tenant's goods, inventory and personal property, and if requested by Landlord, all Alterations and Improvements, and repair any damage caused by such removal. If such removal is not completed before the expiration or termination of the Term, Landlord shall have the right (but no obligation) to remove the same, and Tenant shall pay Landlord on demand for all costs of removal and storage thereof and for the Rent value of the Premises for the period from the end of the Term through the end of the time reasonably required for such removal. Tenant will release, indemnify, defend (with counsel reasonably acceptable to Landlord) protect and hold harmless Landlord from and against any Claim resulting from Tenant's delay in so surrendering the Premises, including, without limitation, any Claim made by any succeeding occupant based on such delay. Landlord shall also have the right to retain or dispose of all or any portion of such property if Tenant does not pay all such costs and retrieve the property within ten (10) days after notice from Landlord (in which event title to all such property described in Landlord's notice shall be transferred to and vest in Landlord). Tenant waives all Claims against Landlord for any damage or loss to Tenant resulting from Landlord's removal, storage, retention, or disposition of any such property. Upon expiration or termination of this Lease or of Tenant's possession, whichever is earliest, Tenant shall surrender all keys to the Premises or any other part of the Building and shall deliver to Landlord all keys for or make known to Landlord the combination of locks on all safes, cabinets and vaults that may be located in the Premises. Tenant's obligations under this Subsection 21.1 shall survive the expiration or termination of this Lease.

21.2 Holding Over. If Tenant (directly or through any Transferee or other successor-in-interest of Tenant) remains in possession of the Premises after the expiration or termination of this Lease, Tenant's continued possession shall be on the basis of a tenancy at the sufferance of Landlord. In such event, Tenant shall continue to comply with or perform all the terms and obligations of Tenant under this Lease, except that the monthly Base Rent during Tenant's holding over shall be one hundred fifty percent (150%) of the Base Rent payable in the last full month prior to the termination hereof. Acceptance by Landlord of Rent after such termination shall not constitute a renewal of this Lease; and nothing contained in this provision shall be deemed to waive Landlord's right of re-entry or any other right hereunder or at law. Tenant shall indemnify, defend and hold Landlord harmless from and against all Claims arising or resulting directly or indirectly from Tenant's failure to timely surrender the Premises, including (a) any rent payable by or any loss, cost, or damages claimed by any prospective tenant of the Premises, and (b) Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises by reason of such failure to timely surrender the Premises.

22. ENCUMBRANCES.

22.1 Subordination. This Lease is expressly made subject and subordinate to any Encumbrance; provided, however, that such subordination shall only be effective, as to future Encumbrances if the holder of the Encumbrance agrees that this Lease shall survive the termination of the Encumbrance by lapse of time, foreclosure or otherwise so long as Tenant is not in default under this Lease. Provided the conditions of the preceding sentence are satisfied, Tenant shall execute and deliver to Landlord, within fifteen (15) days after written request therefor by Landlord and in a form reasonably requested by Landlord, any additional documents evidencing the subordination of this Lease with respect to any such Encumbrance and the non-disturbance agreement of the holder of any such Encumbrance. If the interest of Landlord in the Property is transferred pursuant to or in lieu of proceedings for enforcement of any Encumbrance, Tenant shall immediately and automatically attorn to the new owner, and this Lease shall continue in full force and effect as a direct lease between the Purchaser and Tenant on the terms and conditions set forth in this Lease.

22.2 Mortgagee Protection. Tenant agrees to give any Mortgagee, by registered mail, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of notice of assignment of rents and leases, or otherwise) of the address of such Mortgagee. If Landlord shall have failed to cure such default within thirty (30) days from the effective date of such notice of default, then Mortgagee shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default (including the time necessary to foreclose or otherwise terminate its Encumbrance, if necessary to effect such cure), and this Lease shall not be terminated so long as such remedies are being diligently pursued.

22.3 Changes Requested By Lender. If, in connection with obtaining financing for the Property, Landlord's lender shall request reasonable modifications in this Lease as a condition to the financing, Tenant will not unreasonably withhold or delay its consent, provided that the modifications do not materially increase the obligations of Tenant or materially and adversely affect the leasehold interest created by this Lease.

23. ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS.

23.1 Estoppel Certificates. Within ten (10) days after written request therefor, Tenant shall execute and deliver to Landlord, a certificate stating that this Lease is in full force and effect, describing any amendments or modifications hereto, acknowledging that this Lease is subordinate or prior, as the case may be, to any Encumbrance and stating any other information Landlord may reasonably request, including the Term, the monthly Base Rent, the date to which Rent has been paid, the amount of any Security Deposit or prepaid Rent, whether either party hereto is in default under the terms of the Lease, and whether Landlord has completed its construction obligations hereunder (if any), and providing such other information concerning this Lease or the Premises as Landlord may reasonably request. Any person or entity purchasing, acquiring an interest in or extending financing with respect to the Property shall be entitled to rely upon any such certificate. If Tenant fails to deliver such certificate within ten (10) days after Landlord's written request therefor, (a) Landlord may execute and deliver the statement to any third party on behalf of Tenant, and (b) such failure constitutes an Event of Default under this Lease. Further, if Tenant fails to timely deliver the statement, Landlord and any lender, prospective lender, investor or purchaser may conclusively presume and rely, except as otherwise represented by Landlord: (i) that the terms and provisions of this Lease have not been changed; (ii) that this Lease has not been canceled or terminated; and (iv) that Landlord is not in default in the performance of any of its obligations under this Lease. In such event, Tenant is estopped from denying the truth of such facts. In addition, Tenant shall be liable to Landlord for any damages incurred by Landlord including any profits or other benefits from any financing of the Property or any interest therein which are lost or made unavailable as a result, directly or indirectly, of Tenant's failure or refusal to timely execute or deliver the estoppel certificate.

23.2 Financial Statements. Not Applicable.

24. NOTICES.

24.1 Notices Generally. Any notice, demand, request, consent or approval that either party desires or is required to give to the other party under this Lease shall be in writing and shall be served personally, delivered by messenger or courier service (such as Federal Express or any other overnight delivery service), or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the other party at the party's address for notices set forth in Subsections 2.13 and 2.14 of the Basic Lease Terms. Notices delivered personally will be effective immediately upon receipt (or refusal of delivery or receipt); notices sent by independent messenger or courier service will be effective one (1) day after acceptance by the independent service for delivery; notices sent by mail in accordance with this Section 24—*Notices* will be effective three (3) days after mailing. Either party may change its address for notices hereunder by a notice to the other party complying with this Subsection 24.1. If Tenant sublets the Premises, notices from Landlord shall be effective on the subtenant when given to Tenant pursuant to this Subsection 24.1.

24.2 Replacement of Statutory Notice Requirements. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Subsection 24.1 shall replace and satisfy the statutory service-of-notice procedures.

25. ATTORNEYS' FEES.

25.1 Disputes between Landlord and Tenant. Tenant will reimburse and compensate Landlord on demand and as Additional Rent for any actual loss Landlord incurs in connection with, resulting from or related to any breach or default of Tenant under this Lease, regardless whether the breach or default constitutes an Event of Default, and regardless whether suit is commenced or judgment is entered. Such loss includes all reasonable attorneys' and paralegal fees, and legal costs and expenses (including investigative and discovery costs, witness fees, and other professional fees and expenses) Landlord incurs investigating, negotiating, settling or enforcing any of Landlord's rights or remedies or otherwise protecting Landlord's interests under this Lease. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, but not limited to, reasonable attorneys' and paralegal fees, investigative and discovery costs, witness fees, and other professional fees and expenses, Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including, without limitation, any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy. In the event of any Legal Proceedings involving Landlord and Tenant related to this Lease, the Prevailing Party shall be entitled to recover reasonable attorneys' fees and court costs in addition to any other relief which may be granted.

25.2 Other Litigation. If Landlord, without fault on Landlord's part, is made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any Transferee or other occupant of the Premises, or otherwise arising out of or resulting from any act or transaction of Tenant or of any such Transferee or occupant, Tenant shall hold Landlord harmless from any judgment rendered against Landlord or the Premises or any part thereof, and reimburse Landlord upon demand for all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection with such litigation.

26. QUIET ENJOYMENT. Subject to Tenant's full and timely performance of all of Tenant's obligations under this Lease and subject to the terms of this Lease, including Section 22 - *Encumbrances*, Tenant shall have the quiet enjoyment of the Premises throughout the Term as against any persons or entities lawfully claiming by, through or under Landlord.

27. BUILDING RENOVATIONS. Notwithstanding the covenant of quiet enjoyment granted by Landlord, Tenant acknowledges and agrees that Landlord has made no representation or warranty to Tenant and has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, the Building, the Property, or any part thereof and that no representations respecting the condition of the Premises, the Building or the Property have been made by Landlord to Tenant, except as specifically set forth in this Lease or in the Work Letter (if any). Tenant hereby acknowledges and agrees that Landlord may during the Lease Term make Renovations to the Property, the Building and/or the Units (excluding the Premises) including without limitation the Parking Structure A, Common Areas, systems and equipment, roof, and structural portions of the same, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building or at the Property, limit or eliminate access to portions of the Property, including portions of the Common Areas, or perform work in the Building or at the Property, which work may create noise, vibrations, dust or leave debris in the Building or at the Property. Tenant hereby agrees that such Renovations and the actions of Landlord in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent or any damages whatsoever, unless such renovations preclude Tenant from using the Premises for more than thirty (30) successive calendar days, in which case, Tenant shall be credited for pro-rated rent for the period of time in which the premises were unusable. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations or the actions of Landlord in connection with such Renovations, or for any inconvenience or annoyance occasioned by such Renovations or such party's actions.

28. FORCE MAJEURE. If Landlord or Tenant is delayed, interrupted or prevented from performing any of its obligations under this Lease, including its obligations under the Work Letter (if any), and such delay, interruption or

prevention is due to fire, act of God, governmental act or failure to act, labor dispute, unavailability of materials or any cause outside the reasonable control, respectively, of Landlord or Tenant, then the time for performance of the affected obligations of Landlord or Tenant shall be extended for a period equivalent to the period of such delay, interruption or prevention.

29. SIGNS.

29.1 Tenant shall be permitted signage on the interior of the Building next to the door to the Premises. Such signage shall be positioned on common area wall(s) that frame the Premises.

29.2 Prohibited Signage and Other Items. Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Except as otherwise provided in this Lease, Tenant may not install any signs on the exterior or roof of the Building or the common areas of the Property. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises or Building, shall be subject to the prior approval of Landlord, in its sole discretion.

29.3 Building Directory. A building directory will be located in the lobby of the Building. Tenant shall have the right, at Tenant's sole cost and expense, to designate name strips to be displayed under Tenant's entry in such directory, provided that in no event shall Tenant be entitled to use a percentage of such directory that exceeds Tenant's Share.

30. RULES AND REGULATIONS. Tenant shall be bound by and shall comply with the Building Rules. Landlord shall not be responsible to Tenant or to any person for any violation of, or failure to observe, the Building Rules by any other tenant or person.

31. LANDLORD'S LIABILITY. From and after the date of any conveyance of title to the Unit(s) of which the Premises are a part, the transferor Landlord shall be automatically relieved of all liability with respect to Landlord's obligations to be performed under this Lease after the date of such conveyance or transfer. Notwithstanding any other term or provision of this Lease, the liability of Landlord for its/their obligations under this Lease is limited solely to Landlord's interest in the Unit(s) of which the Premises are a part as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord, nor against Landlord's partners, members or Affiliates or their respective partners, trustees, shareholders, members, directors, officers or managers on account of any of Landlord's obligations or actions under this Lease. Any claim, demand, or right of any kind by Tenant arising under the terms and conditions of this Lease (excluding any claims based upon Landlord indemnifications set forth in this Lease or claims by third parties) shall be barred unless Tenant commences an action thereon within six (6) months after the expiration or termination of this Lease. Landlord does not waive any of its rights or defenses under this Lease, at law or in equity regarding any such claim. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Representatives shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

32. NONDISCLOSURE OF LEASE TERMS. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its partners, officers, directors, employees and attorneys shall not intentionally and voluntarily disclose the terms and conditions of this Lease to any other tenant or apparent prospective tenant of the Building or Property, either directly or indirectly, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease, and as required under applicable law.

33. CONSENTS AND APPROVALS.

33.1 Determination in Good Faith. Wherever the consent, approval, judgment or determination of Landlord is required or permitted under this Lease and no express standard is specified (e.g., "reasonableness"),

Landlord shall exercise Landlord's business judgment in good faith in granting or withholding such consent or approval or in making such judgment or determination. If it is determined that Landlord failed to give its consent where it was required to do so under this Lease, Tenant shall be entitled to injunctive or declaratory relief but shall not to be entitled to monetary damages or to terminate this Lease for such failure.

33.2 Limitation of Review. The review and/or approval by Landlord of any item or matter to be reviewed or approved by Landlord under the terms of this Lease or any Exhibits or Addenda hereto shall not impose upon Landlord any liability for the accuracy or sufficiency of any such item or matter or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting Landlord's interest in the Property, and no third parties, including Tenant or Tenant's Representatives or Visitors or any person or entity claiming by, through or under Tenant, shall have any rights as a consequence thereof.

34. PARKING. Tenant is provided the number of Parking Access Rights in the Parking Structure A as set forth Subsection 2.4 of this Lease. The Parking Access Rights run with the Lease for the sole benefit of Tenant and Tenant's employees and permitted Transferees and may not be transferred or used by any other person or entity. Upon request by the Landlord, Tenant and any of Tenant's employees that use a Parking Access Right will sign a parking agreement with the owner of the Parking Structure A or the operator of the Parking Structure A whereby Tenant and its employees agree to abide by the parking rules and regulations. Failure of Tenant and/or its employees to abide by such parking rules and regulations shall constitute a default under this Lease. Tenant acknowledges and agrees that the Parking Structure A may need to be maintained, repaired, reconfigured, remodeled, demolished and/or redesigned in the future (such as due to damage/destruction or condemnation). Tenant waives any claims related to any inconvenience or disruption in Tenant's use of the Parking Access Rights or the Parking Structure A related to any such activities.

35. BROKERS. Intentionally omitted.

36. RELOCATION OF PREMISES. Intentionally Omitted.

37. ENTIRE AGREEMENT. This Lease, including the Exhibits and any Addenda attached hereto, and the documents referred to herein, if any, constitute the entire agreement between Landlord and Tenant with respect to the leasing of space by Tenant in the Building, and supersede all prior or contemporaneous agreements, understandings, proposals and other representations by or between Landlord and Tenant, whether written or oral. Neither Landlord nor Landlord's Representatives have made any representations or warranties with respect to the Premises, the Building, the Property or this Lease except as expressly set forth herein, and no rights, easements or licenses shall be acquired by Tenant by implication or otherwise unless expressly set forth herein. The submission of this Lease for examination does not constitute an option for the Premises and this Lease shall become effective as a binding agreement only upon execution and delivery thereof by both Landlord to Tenant.

38. INDEPENDENT COVENANTS/CONTROLLING NATURE OF LEASE. The parties agree that the terms and conditions of the Lease define and control their relationship and obligations regarding the Premises, the Building, and the Property. This Lease shall be construed as though the covenants of Tenant are independent and Tenant hereby expressly waives the benefit of any laws to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord (unless that right is expressly set forth herein); provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof. In addition, Tenant hereby waives any benefits of any applicable existing or future Laws that may permit the termination of this Lease due to any Service Failure or other interruption or failure of any utility or other service, or due to any damage or destruction to or partial taking of the Premises or the Building under any circumstances.

39. REPRESENTATION OF AUTHORITY. In the event the Tenant hereunder is a corporation, a limited liability company or some other legal entity, the person signing this Lease on behalf of Tenant hereby represents and warrants that he/she has the full right, power and authority to enter into this Lease without the consent or approval of any other entity or person and make these representations knowing that Landlord will rely thereon, and that this Lease is a binding contract and obligation on Tenant.

40. SECURITY INTEREST.

(a) As consideration for this Lease, Tenant hereby grants Landlord a security interest in the Collateral. This provision shall operate as a security agreement creating a security interest in such Collateral pursuant the Code and specifically U.C.A. Sections 70A-9a-102 and -315 and Landlord is authorized to file a financing statement (UCC-1) and any other public notice, including a fixture filing, on such Collateral. Tenant shall do all acts that may be necessary to maintain, preserve and protect the Collateral. Tenant hereby represents and warrants that Tenant's name is its full and complete name and that the Tenant's address and other information provided by Tenant in Section 2 - *Basic Lease Terms* is accurate and true. The rights, powers and remedies of Landlord are cumulative as contemplated by the Code. Upon the occurrence of an event of default under the Lease, Landlord shall have the immediate right to take possession of the Collateral upon written notice to Tenant and pursue all of the rights and remedies under the Code and other applicable law with respect to the foreclosure of Landlord's security interest in the Collateral. Any forbearance, failure or delay by Landlord in exercising any right, power or remedy shall not preclude the further exercise thereof, and every right, power or remedy of Landlord shall continue in full force and effect until such right, power or remedy is specifically waived in a writing executed by Landlord. Except as otherwise provided in the Code, Tenant waives any right to require Landlord: (i) to proceed against any person, firm or corporation; (ii) to exhaust any Collateral it may hold at any time; (iii) to apply any Collateral in any order; or (iv) to pursue any other remedy whatsoever in Landlord's power. Tenant agrees to execute instruments consistent with the above to facilitate the intent of the parties contained herein.

41. OFAC REPRESENTATION. Tenant represents and warrants as of the date of this Lease and continuing throughout the Term of this Lease that neither Tenant nor any of its respective Affiliates is a Prohibited Person and Tenant and all of its respective Affiliates are in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury. Tenant hereby indemnifies, holds harmless and agrees to defend (with counsel acceptable to Landlord) Landlord from any claims, fines, penalties, judgments, costs, and expenses (including, but not limited to attorney and paralegal fees and costs) that may arise from any violation or alleged violation of the above representation and warranty. In the event of a breach of this representation or warranty, Landlord may immediately terminate this Lease.

42. SECURITY OF PREMISES. Tenant, at its sole cost and expense, shall be solely responsible for providing and maintaining any security systems servicing solely the Premises. Any alarms emanating from or in connection with the Premises shall be promptly answered and responded to by Tenant. Neither Landlord nor any of Landlord's Representatives shall be responsible for or required to take any action to prevent, stop, protect against, apprehend, detain or otherwise become involved with any person or persons engaged in any robbery, pilferage, theft, burglary or other illegal action committed against or with respect to the Premises, the contents within the Premises, Tenant, Tenant's Representatives or Visitors, notwithstanding the possibility that Landlord may maintain a security system within the Building. Tenant assumes all risk of loss to any of Tenant's inventory and property within the Premises and indemnifies, holds harmless, acquits, releases and waives Landlord and Landlord's Representatives for, from, and against all Claims (including damage to the business of Tenant) associated therewith. Landlord agrees to reasonably cooperate with Tenant in order for Tenant to develop its own emergency action plans for the Premises, which shall work in conjunction with the Building plans, by providing such information with respect to the Building as Tenant may reasonably request from time to time

43. OTHER OCCUPANTS. Landlord reserves the absolute right to affect such other tenancies in the Property and the Building in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Property. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building, Property, or Property.

44. BUILDING NAME AND SIGNAGE. Tenant shall not use the name of the Property or the Building or use pictures or illustrations of the Property, or the Building, in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

45. MISCELLANEOUS. This Lease may not be amended or modified except by a writing signed by Landlord and Tenant. Subject to Section 16—*Assignment and Subletting* and Section 31—*Landlord's Liability*, this Lease shall

be binding on and shall inure to the benefit of the parties and their respective successors, assigns and legal representatives. The determination that any provisions hereof may be void, invalid, illegal or unenforceable shall not impair any other provisions hereof and all such other provisions of this Lease shall remain in full force and effect. The unenforceability, invalidity or illegality of any provision of this Lease under particular circumstances shall not render unenforceable, invalid or illegal other provisions of this Lease, or the same provisions under other circumstances. This Lease shall be construed and interpreted in accordance with the Laws (excluding conflict of laws principles) of the State of Utah. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party. If the parties delete any provision appearing in any prior drafts of this Lease, this Lease shall be interpreted as if the deleted language were never part of this Lease. When required by the context of this Lease, the singular includes the plural. Wherever the term "including" is used in this Lease, it shall be interpreted as meaning "including, but not limited to" the matter or matters thereafter enumerated. The captions contained in this Lease are for purposes of convenience only and are not to be used to interpret or construe this Lease. If more than one person or entity is identified as Tenant hereunder, the obligations of each and all of them under this Lease shall be joint and several. Time is of the essence with respect to this Lease, except as to the conditions relating to the delivery of possession of the Premises to Tenant. Neither Landlord nor Tenant shall record this Lease. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and when combined together shall constitute one and the same instrument. Any facsimile or copies of original signatures (including those in electronic medium, such as .pdf, .tif or other electronic files) shall be considered and treated as if they were original signatures.

46. INTENTIONALLY OMITTED.

47. SEVERABILITY. If any covenant, condition, provision, term or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Lease, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

48. NO RECORDING. Tenant will not record this Lease or a Memorandum of this Lease without Landlord's prior written consent, which consent Landlord may grant or withhold in its sole and absolute discretion.

49. CONSTRUCTION OF LEASE AND TERMS. The terms and provisions of this Lease represent the results of negotiations between Landlord and Tenant, each of which are sophisticated parties and each of which has been represented or been given the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Lease must be interpreted and construed in accordance with their usual and customary meanings, and Landlord and Tenant each waive the application of any rule of law that ambiguous or conflicting terms or provisions contained in this Lease are to be interpreted or construed against the party who prepared the executed Lease or any earlier draft of the same. Landlord's submission of this instrument to Tenant for examination or signature by Tenant does not constitute a reservation of or an option to lease and is not effective as a lease or otherwise until Landlord and Tenant both execute and deliver this Lease. The parties agree that, regardless of which party provided the initial form of this Lease, drafted or modified one or more provisions of this Lease, or compiled, printed or copied this Lease, this Lease is to be construed solely as an offer from Tenant to lease the Premises, executed by Tenant and provided to Landlord for acceptance on the terms set forth in this Lease, which acceptance and the existence of a binding agreement between Tenant and Landlord may then be evidenced only by Landlord's execution of this Lease.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the date first above written.

LANDLORD:
PEG PRV 200 FREEDOM OFFICE, LLC
By: PEG OZII GP, LLC, its Managing Member
By: PEG Capital Partners, LLC, its Manager

By:_____
Craig Bingham
Manager

TENANT:
Provo City Redevlopment Agency

By: _____
Name (Print): _____
Title: _____

EXHIBIT "A"

DEFINED TERMS

"**Above-Standard Improvements**" mean any improvements or Alterations, fixtures, equipment, furnishings, components, or systems, as the case may be, that exceed the Building Standard and are not Standard Tenant Finishes, including any extra ordinary improvements, such as any special or unique improvement, alteration, equipment, fixtures, furnishings or finishes, such as vaults, stairwells, etc.

"**Additional Rent**" means any charge, fee or expense, including any parking charges, Tenant's Share of Expenses, any late fees, and/or interest, but excluding Base Rent, payable by Tenant under this Lease, however denoted.

"**Affiliate**" means any corporation, person or other entity that, directly or indirectly controls, is controlled by, or is under common control with Tenant or Landlord, or to any corporation or other entity resulting from a merger or consolidation with Tenant or Landlord, as the case may be. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"**Alterations**" mean any additions, alterations, improvements, modifications, or changes to the Premises (including installation of any security system or telephone or data communication wiring), including the Tenant Improvements.

"**Award**" shall mean all compensation, sums, or anything of value awarded, paid or received on a total or partial Condemnation.

"**Base Rent**" means the base rent specified in Subsection 2.8.

"**Base Year**" means the base year specified in Subsection 2.9.

"**Basic Lease Terms**" mean the basic lease terms set forth in Section 2—*Basic Lease Terms* of this Lease.

"**Building**" means the building described in Subsection 2.1.

"**Building Rules**" mean the Declaration of Covenants, Conditions and Restrictions of the Building as well as the rules and regulations attached to and made a part of this Lease as Exhibit C or any reasonable rules and regulations hereafter adopted by Landlord for all tenants of the Building, upon notice to Tenant thereof.

"**Building Standards**" mean the Construction Standards and Rules for the Building.

"**Building Systems**" mean the mechanical, elevator, plumbing, electrical, fire protection, life safety, security or other systems in the Building.

"**Business Days**" mean weekdays except not more than twelve (12) holiday days per calendar year as designated by Landlord and any holidays or non-working days designated by executive order or necessitated by war, riots, civil disturbances, emergencies, a risk of health or safety (as reasonably determined by Landlord in its sole discretion), or natural catastrophes. In designating holidays Landlord will, as closely as possible, follow the state and national holidays.

"**Business Hours**" mean the business hours set forth in the Building Rules attached hereto as Exhibit C.

"**Capital Improvements**" mean improvements to the Building or the Property (excluding any maintenance, repairs, replacements of components of Building Systems, and any improvements that cost less than $25,000) that are required to be capitalized over a period in excess of 10 years.

"**Claims**" mean claims, actions, demands, liabilities, damages, costs, penalties, fines, losses, or expenses, including, without limitation, reasonable attorneys' and paralegal fees, consulting fees, expert and witness fees, investigative and discovery costs, copy costs, and other costs incurred in defending against the same.

"**Code**" means U.C.A. Section 70A-9a-101 *et seq*.

"**Collateral**" means any and all Alterations, Improvements, and Trade Fixtures located in the Premises from time to time, and Tenant's goods, accounts, and deposit accounts (as such terms are defined by U.C.A. Section 70A-9a-102).

"**Commencement Date of Term**" means the date set forth in Basic Terms as the Commencement Date of the Term, subject to the terms and conditions of Section 4 - *Term*.

"**Condemnation**" means (a) a permanent taking (or a temporary taking for a period extending beyond the end of the Term) pursuant to the exercise of the power of condemnation or eminent domain by any Condemnor, whether by Legal Proceedings or otherwise, or (b) a voluntary sale or transfer by Landlord to any such authority, either under threat of condemnation or while Legal Proceedings for condemnation are pending.

"**Condemnor**" means any public or quasi-public authority, private corporation or individual having the power of condemnation.

"**Corporate Successor**" means (i) an entity that acquires all or substantially all of the assets or ownership interests (stock or ownership interest) of Tenant, or (ii) an entity that is the surviving entity of a merger or consolidation with Tenant.

"**Date of Condemnation**" means the earlier of the date that title to the property taken is vested in the Condemnor or the date the Condemnor has the right to possession of the property being condemned.

"**Dedicated HVAC Unit**" means a system dedicated to the Premises, Tenant's computers or other equipment.

"**Direct Costs**" mean all costs and expenses incurred by Landlord related to the maintenance or repair of the Premises or for the sole benefit of Tenant that are not included as Operating Costs.

"**Dishonored Check**" means any check or draft not honored for lack of sufficient funds or any other reason by the institution upon which it is issued.

"**Encumbrance**" means any mortgage, deed of trust, ground lease, underlying lease or like encumbrance affecting any part of the Property or any interest of Landlord therein which is now existing or hereafter executed or recorded.

"**Environmental Requirements**" mean all present and future Laws, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

"**Event of Default"** means the occurrence of any of the events specified in Subsection 17.1 of this Lease.

"**Expenses**" mean the total amount of: Direct Costs and Excess Expenses, if any, due and payable with respect to the Property during any calendar year of the Term.

"**Full Service Lease**" means Landlord is responsible for all maintenance associated with normal wear and tear, Operating Costs, taxes on real property, and property insurance related to the Building, which includes the Premises. However, Tenant shall be responsible for the maintenance of its own equipment, Tenant's Taxes, its own liability insurance and other insurance applicable to Tenant's performance of professional duties. Further, Tenant shall be responsible for those additional expenses and costs associated with its negligence, whether that negligence is contributory, comparative, sole, or joint as well as all Operating Cost Exclusions.

"**Final Plans**" mean the final plans and specifications for the Tenant Improvements and any Alterations, or any other improvements to the Building, as the case may be, that reflect the agreed upon resolution of Landlord's Comments.

"**Governmental Controls**" mean mandatory or voluntary controls or guidelines on Landlord or the Property relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions or reduction or management of traffic or parking related to the Property.

"**Grey-Shell Premises**" shall have the meaing provided for the same in Subsection 7.1(b) of the Lease.

"**Hazardous Materials**" mean any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or containment under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

"**HVAC**" means the heating, ventilating and air-conditioning systems of the Building.

"**Improvements**" mean the Tenant Improvements.

"**Insurance Costs**" means the costs and expenses associated with obtaining and maintaining property (including coverage for earthquake and flood if carried by Landlord), liability, rent income, boiler and machinery, and any and all other insurance, including deductibles relating to the Property, and expenditures for deductible amounts paid under such insurance, as the same may be calculated pursuant to Subsection 13.3.

"**Interest Rate**" means the rate of eighteen percent (18%) per annum or the maximum lawful rate that Landlord may charge to Tenant under applicable Laws, whichever is less.

"**Interference**" means any electromagnetic field, radio frequency, audio frequency, radiation, or other emission that may interfere with, disrupt, or adversely affect the use or operation of any electronic or other equipment or devices.

"**Landlord**" means the entity identified as the Landlord in the first introductory paragraph of this Lease, and its successors and assigns; provided, however, as used in this Lease, so far as covenants or agreements on the part of Landlord are concerned, the term Landlord shall be limited to mean and include only the owner or owners of Landlord's interest in this Lease at the time in question, and in the event of any transfer or transfers of such interest Landlord herein named (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of the assumption of all responsibility on the part of Landlord contained in this Lease thereafter to be performed.

"**Landlord Parties**" means the Landlord, the Property Manager, any Mortgagee and any Affiliates of the foregoing, and all of their respective officers, directors, employees, shareholders, members, partners, agents, servants, and contractors.

"**Landlord's Knowledge**" means the actual knowledge of the Property Manager's manager of the Building.

"**Landlord's Representatives**" mean Landlord, its employees, agents, and servants.

"**Laws**" mean any law, regulation, rule, order, statute or ordinance of any governmental or private entity in effect at any time during the Term and applicable to the Property and Tenant's use thereof, including, but not limited to, building, fire and safety codes and regulations, conditional use permits, certificates of occupancy, Environmental Requirements, and the Americans with Disabilities Act.

"**Lease**" means this Office Lease Agreement.

"**Lease Year**" means the period commencing the first day of the first calendar month following the Commencement Date of the Term and continuing for twelve consecutive calendar months.

"**Legal Proceedings**" mean any arbitration, litigation or judicial proceeding including any bankruptcy proceeding and appeals.

"**NNN Lease**" or "**triple net lease**" means a lease agreement that designates the Tenant as being solely responsible for all the costs relating to the Premises leased, in addition to the Base Rent, including, but not limited to, building insurance, taxes, and common area maintenance expenses.

"**Mortgagee**" means the holder of any Encumbrance covering any part of the Property.

"**Operating Costs**" mean all costs of managing, operating, insuring, maintaining, repairing, renewing, and replacing the Unit(s), including, without limitation, all costs, expenditures, fees and charges for: (a) operation, maintenance and repair of the Unit(s); (b) utilities and services (including telecommunications facilities and equipment, recycling programs and trash and garbage removal), and associated supplies and materials; (c) compensation (including employment taxes and fringe benefits) for persons who perform duties in connection with the management, operation, maintenance and repair of the Premises; (d) licenses, permits and inspections; (e) complying with the requirements of any Laws related to the real property or Landlord's obligations with respect thereto; (f) amortization of Capital Improvements, with interest on the unamortized balance at the rate paid by Landlord on funds borrowed to finance such Capital Improvements (or, if Landlord finances such Capital Improvements out of Landlord's funds without borrowing, the rate that Landlord would have paid to borrow such funds, as reasonably determined by Landlord), over such useful life as Landlord shall reasonably determine; (g) property management fees (which may be paid to an Affiliate of Landlord), or in lieu of such management fees, a reasonable administrative fee to compensate Landlord for managing the Unit(s); (h) accounting, legal and other professional services incurred in connection with the operation of the Building and the calculation of Expenses; (i) contesting the validity or applicability of any Laws that may affect the Unit(s); (j) the Unit(s)'s share of any shared or common area maintenance fees and expenses (including, without limitation, fees and expenses relating to common areas and facilities shared with other occupants in the Building); and (k) any other expense or charge, which in accordance with generally accepted property management practices would be considered an expense of managing, operating, maintaining, repairing and replacing the Premises, the Building Systems servicing the Premises and the components thereof; excluding, however, any Operating Costs Exclusions, Direct Costs, and Excess Expenses. The above enumeration of services and facilities shall not be deemed to impose an obligation on Landlord to make available or provide such services or facilities except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to make the same available or provide the same.

"**Operating Cost Exclusions**" mean (a) costs of special services rendered to individual tenants (including Tenant) for which a special charge is made; (b) interest and principal payments on loans or indebtedness secured by the Unit(s); (c) costs of leasehold improvements for Tenant or other tenants within the Unit(s); (d) costs of services or other benefits of a type which are not available to Tenant but which are available to other tenants or occupants, and costs for which Landlord is reimbursed by other tenants of the Unit(s) other than through payment of tenants' shares of increases in Expenses; (e) leasing commissions, attorneys' fees and other expenses incurred in connection with leasing space in the Unit(s) or enforcing such leases; (f) costs, fines or penalties incurred due to Landlord's violation of any Law; (g) advertising and promotional expenses, (h) any Assessments against the Unit(s) (which costs are separately included as part of the Expenses); (i) repairs or other work needed due to fire, windstorms, or other casualty or cause actually insured against by Landlord.

"**Parking Access Right**" means an unreserved right to park one (1) passenger motor vehicle on a first-come, first-served basis.

"**Permitted Use**" means the use set forth in Subsection 2.3.

"**Preliminary Plans**" mean proposed plans and specifications for the Premises, which must satisfy the Construction Standards for the Building, and which are prepared and/or certified by a licensed and qualified architect.

"**Preliminary Term**" a period commencing as of the Commencement Date of the Preliminary Term and ending the day immediately preceding the Commencement Date of the Primary Term.

"**Premises**" means the premises described in Subsection 2.2.

"**Prevailing Party**" means the party receiving substantially the relief desired whether by settlement, dismissal, summary judgment, judgment, or otherwise.

"**Prohibited Person**" means any person or entity: (a)listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order; (c) with whom Landlord is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order; (d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; (e) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, www.ustreas.gov/offices/enforcement/ofac or at any replacement website or other replacement official publication of such list; or (f) who is an Affiliate of or affiliated with a person or entity listed above.

"**Primary Term**" means the period of time commencing as of the Commencement Date of the Primary Term and continuing for the period of time set forth in Subsection 2.6.

"**Prime Rate**" means the prime lending rate published in the Wall Street Journal. If the Wall Street Journal is no longer published or no longer publishes the Prime Rate, the parties shall mutually agree upon a substitute publication or financial institution.

"**Property**" means the Building and the real property upon which the Building is built including adjacent walkways, sidewalks, landscaping, etc.

"**Property Manager**" means the entity appointed from time to time to act as the property manager for the Building.

"**Purchase Price**" means that value agreed upon by the Parties or determined pursuant to Section 4.2 of this Agreement to be the fair market value of the entire Premises, without exclusion or exception.

"**Renovations**" means any demolition, renovations, remodeling, repairs, alterations, improvements or modifications made to the Building or the Property, including the establishment of construction zones on the Property, the adjacent property, the parking areas servicing the Building and within the Building to accommodate the proposed construction and repair activity.

"**Rent**" means Base Rent and Additional Rent.

"**RSF**" means Rentable Square Feet, the total number of square feet of both the Building and the Premises, including an allocation of common area, in accordance with the method for calculating "rentable area" under the Building Owners and Managers Association Standard Method for Measuring Floor Area in Office Buildings (ANSI Z65.1-1996).

"**Rental Tax**" means rent, excise, sales or transaction privilege taxes arising out of this Lease (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources) imposed by any taxing authority upon Landlord or upon Landlord's receipt of any Rent payable by Tenant pursuant to the terms of this Lease.

"**Security Deposit**" means the amount set forth in Subsection 2.12.

"**Service Failure**" means an interruption in, a disruption of, or failure or inability to provide any services or utilities to the Premises or Building for any reason.

"**Standard Tenant Finishes**" mean all Tenant Improvements and Alterations of substantially the same quality and nature as the other Tenant Improvements constructed within the Building by other tenants and in compliance with the Building Standards.

"**Taxes**" mean: all real property taxes and general, special or district assessments or other governmental impositions, of whatever kind, nature or origin, imposed on or by reason of the ownership or use of the Property; governmental charges, fees or assessments for transit or traffic mitigation (including area-wide traffic improvement assessments and transportation system management fees), housing, police, fire or other governmental service or purported benefits to the Property; personal property taxes assessed on the personal property of Landlord used in the operation of the Property; service payments in lieu of or in substitution for existing or additional real or personal property taxes on the Property or the personal property described above; any increases in the foregoing caused by changes in assessed valuation, tax rate or other factors or circumstances; and the reasonable cost of contesting by appropriate proceedings the amount or validity of any taxes, assessments or charges described above. To the extent paid by Tenant or other tenants as Tenant's Taxes, Tenant's Taxes shall be excluded from Taxes.

"**Telecommunication Equipment**" means satellite dishes, antenna, or other equipment and related devices, associated with the transmission of data (either analog or digital).

"**Telecommunication Facilities**" mean Telecommunication Lines and Telecommunication Equipment.

"**Telecommunication Lines**" mean telecommunication, telephone, speaker, or data lines, cables, wires, or conduits.

"**Tenant**" means the person or entity identified as the tenant in this Lease.

"**Tenant Delays**" mean any delays caused by Tenant's failure to comply with the time deadlines set forth in the Lease or the Work Letter, if applicable, Tenant's failure to provide any plans, comments or approvals when due hereunder or the Work Letter, if applicable, Tenant's requests for any change orders, Tenant's failure to deposit any amounts to be deposited with Landlord hereunder, or the Work Letter, if applicable, or Tenant's acts, failure to act or interference of any kind that causes a delay the completion of any Tenant's Improvements or the performance of Landlord's obligations under the Lease or the Work Letter, if applicable.

"**Tenant's Broker**" means the broker retained by Tenant and described in Subsection 2.20.

"**Tenant's Representatives**" means Tenant, its partners, members, managers, officers, directors, employees, agents, servants, contractors, assigns, representatives, licensees, and permitted subtenants.

"**Tenant's Share**" means a fraction, the numerator of which is the RSF of the Premises and the denominator of which is the RSF of the Unit(s). An approximation of Tenant's Share as of the date of this Lease is set forth in Subsection 2.10.

"**Tenant's Taxes**" means (a) all taxes, assessments, license fees and other governmental charges or impositions levied or assessed against or with respect to Tenant's Trade Fixtures and Tenant's goods, inventory and personal property in the Premises, whether any such imposition is levied directly against Tenant or levied against Landlord or the Property, (b) Taxes incurred by Tenant as a result of its business operations, employment of others, resulting from sales or services, or otherwise unrelated to real property, and (c) any increase in Taxes attributable to inclusion of a value placed on Tenant's Trade Fixtures and Tenant's goods, inventory and personal property.

"**Term**" means the Preliminary Term and the Primary Term.

"**Trade Fixtures**" mean any and all furnishings, fixtures, equipment, Lines, movable partitions, business equipment and other trade fixtures.

"**Transfer**" means an assignment, mortgage, pledge, hypothecation or encumbrance of this Lease or any interest therein, or subletting or granting a license, concession or any other interest in the Premises, or permitting the use or

occupancy of the Premises or any part thereof by or for the benefit of anyone other than Tenant, or in any other manner transferring all or any part of Tenant's rights or interests under this Lease.

"**Transferee**" means an assignee, mortgagee, subtenant, licensee, concessionaire, user or other transferee.

"**Unit(s)**" means the rentable square footage of the Premises.

"**Visitors**" mean Tenant's guests, customers, visitors, and invitees.

"**Work Letter**" means any Work Letter entered into between Landlord and Tenant pertaining to any Alterations.

EXHIBIT "B"

FLOOR PLAN OF PREMISES

EXHIBIT "C"

BUILDING RULES

Building Hours - Monday through Friday 7:00 a.m. until 7:00 p.m.; Saturday 8:00 a.m. until 1:00 p.m., except on Building holidays.

EXHIBIT "D"

LEASE COMMENCEMENT AGREEMENT

THIS COMMENCEMENT AGREEMENT ("**Agreement**") is made and entered into as of the ____ day of _____, 2020, by PEG PRV 200 Freedom Office, LLC, a Delaware limited-liability company ("**Landlord**"), and Provo City Redevelopment Agency, a _____ ("**Tenant**").

WHEREAS, Landlord and Tenant are parties to that certain Office Lease Agreement dated _____, 2020, (the "**Lease**") concerning certain real property located at 125 West 200 North, Provo, Utah 84601, and commonly known as the Freedom Commons (Phase 1) Office Building (the "**Property**").

WHEREAS, the Lease provided for the execution of a Commencement Agreement establishing the actual date of the commencement of the Lease for the Term of the lease, which date is also used to fix the duration of the Term of the Lease.

NOW THEREFORE, in consideration of the above recitals, which are incorporated herein, and other good and valuable consideration, Landlord and Tenant agree as follows:

1. For the purposes of the Lease the "Commencement Date" shall mean _____, 2021.

2. Tenant hereby accepts the Property and approves of the work and condition of the Property as provided by the Landlord.

3. Landlord hereby acknowledges receipt of the Security Deposit described in Section 2.12 of the Lease in the amount of $0.00.

4. All capitalized terms used but not otherwise defined herein shall bear the meaning ascribed to such terms in the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

TENANT	**LANDLORD**
Provo City Redevelopment Agency	PEG PRV 200 Freedom Office, LLC
By: _____	By: _____
Name: _____	Name: Cameron Gunter
Title: _____	Title: _____

EXHIBIT "E"

REDEVELOPMENT PLAN

EXHIBIT "E"

GUARANTY

(See attached)

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: DWALTER
Department: Development Services
Requested Meeting Date: 12-15-2020

SUBJECT: A resolution authorizing the Chief Executive Officer to sign a joint development agreement with PEG Development for the development of office space in Downtown Provo. (20-249)

RECOMMENDATION: Approve the Joint Development Agreement with PEG Development and authorize the Chief Executive Officer to sign the Agreement.

BACKGROUND: The Redevelopment Agency has been working to increase the sustainablity and attractiveness of downtown Provo by encouraging additional commercial development and by acquiring and holding property. The Agency worked with PEG to effecutate the development of the State Court facility and PEG Is now ready to add to the continued enrichment of downtown Provo by construcing a new office complex and ancilllary structure parking that will be available for public use. The attached Joint Development Agreement will facilitate that construction.

FISCAL IMPACT: The Redevelopment Agency will transfer property to PEG for the development

PRESENTER'S NAME: David Walter

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Pursue economic development initiatives
Job Creation and Diversification
Increase Parking

CITYVIEW OR ISSUE FILE NUMBER: 20-249

Provo City *(Redevelopment)*

Staff Memorandum

Downtown Development

December 2, 2020

Department Head Bill Peperone 852-6402 **Presenter** David Walter 852-6167 **Required Time for Presentation** 15 Minutes **Is This Time Sensitive** No **Case File # (if applicable)** Not applicable	**Purpose of Proposal** • Approval of Joint Development Agreement with PEG Development **Action Requested** • Staff recommends that the Redevelopment Agency Board approve the attached resolution approving the proposed Joint Development Agreement between the Redevelopment Agency of Provo City and PEG Development and authorizing the Chief Executive Officer to sign the proposed Joint Development Agreement **Relevant City Policies** • Pursue economic development initiatives • Job Creation and Diversification • Increase Parking **Budget Impact** • The Agency will transfer property to PEG Development who will then develop the property **Description of this item** • In 2016 the Provo Redevelopment Agency (Agency)signed a Land Transfer Development Agreement with PEG Development to help facilitate the development of a new State of Utah court facility and to plan for additional office space and structured parking in downtown Provo. In 2018 the Agency signed a Settlement Agreement with Utah County to work to provide parking for the Utah County Convention Center.

	The Agency worked to make property it owned in the downtown into an office building with an associated parking structure that would serve the needs of the Convention Center, the proposed office complex and the general public when they come to downtown for business or pleasure. ● The Agency has worked with PEG Development to develop the property and will transfer the property for development under the terms of a Joint Development Agreement. PEG has obtained approvals for the office building and associated parking structure ● Tonight's item is asking for the Agency to consider signing the actual Joint Development document itself. PEG has committed to working with the Agency to find alternative users to the Agency before taking possession of the office space. Staff believes once the project in sunder construction it will be easier for potential office users to visualize themselves in the building as opposed to looking at the plans ● Staff recommends that the Redevelopment Agency Board approve the attached resolution authorizing the Chief Executive Officer of the Agency to sign the attached Joint Development Agreement with PEG Development.
Attachments	**Resolution approving the Joint Development Agreement with PEG Development and authorizing the Chief Executive Officer to sign said Joint Development**

RESOLUTION 2020-RDA.

A RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO SIGN A JOINT DEVELOPMENT AGREEMENT WITH PEG DEVELOPMENT FOR THE DEVELOPMENT OF OFFICE SPACE IN DOWNTOWN PROVO. (20-249)

WHEREAS, Provo City (the "City"), created the Redevelopment Agency of Provo City (the "Agency") pursuant to the provisions of, and the Agency continues to operate under, Title 17C of the Utah Code, the Limited Purpose Local Government Entities-Community Reinvestment Agency Act and its predecessor statutes (the "Act"); and

WHEREAS, the success of local businesses is integral to the economic vitality of Provo City; and

WHEREAS, new local businesses and entrepreneurial ventures have contributed and continue to contribute significantly to both the economy and resident quality of life in Provo City; and

WHEREAS, the Agency owns property in downtown Provo and has worked to find a developer to construct new office facilities with ancillary parking that will continue to make downtown Provo a vibrant and attractive location within Utah County; and

WHEREAS, the addition of new office space will add to the vibrancy of downtown Provo City; and

WHEREAS, the Agency has an obligation to provide three hundred and fifty (350) parking spaces for the Utah County Convention Center; and

WHEREAS, PEG Development (PEG) will build a new office building and associated parking structure which will take the obligation of the 350 parking spaces and fulfill the Agency's obligation under that certain Settlement Agreement by and between Utah County and the Agency, dated August 14, 2018; and

WHEREAS, PEG has obtained approvals for the office building and associated parking structure; and

WHEREAS, it is proposed that the Agency enter into a Joint Development Agreement (the "Agreement") with PEG Development regarding the described development; and

WHEREAS, on December 15, 2020, the Governing Board of the Agency held a duly noticed public meeting to ascertain the facts regarding this matter, which facts and comments are found in the public record of the Board's consideration; and

WHEREAS, all persons for and against the proposed agreement were given an opportunity to be heard; and

WHEREAS, after considering the facts presented, the Governing Board of the Redevelopment Agency of Provo finds (i) the Joint Development Agreement attached hereto as Exhibit 1 should be approved; (ii) the Chief Executive Officer, or her designee, should be authorized to execute the Agreement; and (iii) said Agreement reasonably furthers the health, safety and general welfare of the citizens of Provo.

NOW, THEREFORE, be it resolved by the Governing Board of the Provo City Redevelopment Agency as follows:

PART I:

The Chief Executive Officer, or her designee, is authorized to sign the Joint Development Agreement with PEG Development (attached hereto as Exhibit 1) for the proposed office development. The Chief Executive Officer is also authorized to make minor changes and sign any additional paperwork as may be necessary for this action.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

EXHIBIT 1

JOINT DEVELOPMENT AGREEMENT

AMONG

REDEVELOPMENT AGENCY OF PROVO CITY CORPORATION,

PROVO CITY, UTAH

AND

PEG PRV 200 FREEDOM OFFICE, LLC, PROPERTY ENHANCEMENT GROUP, INC., FREEDOM PLAZA LAND, LLC,

THIS JOINT DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Redevelopment Agency of Provo City Corporation ("Agency"); Provo City, Utah ("City"); and PEG PRV 200 Freedom Office, LLC ("PRV"), a Delaware Limited Liability Company, Property Enhancement Group, Inc.("PEG"), a Utah corporation, and Freedom Plaza Land, LLC, ("FPL") a Utah limited liability company (jointly herein, "Developer"). The Agency and the Developer (jointly, the "Parties," or individually a "Party") agree as follows:

I. [§ 100] DEFINITIONS

"Agency" as used herein shall have the meaning assigned to the same in the preamble to the Agreement, being a reference to the Redevelopment Agency of Provo City Corporation. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Utah Neighborhood Redevelopment Agencies Act (subsequently renamed the Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act) Utah Code Annotated, 1953, as amended. The principal office of the Redevelopment Agency is located at 330 West 100 South, Provo, Utah 84601.

"Agreement" as used herein shall have the meaning assigned to the same in the preamble to the Agreement, being a reference to this Joint Development Agreement entered by and between Agency, City, and Developer.

"City" as used herein shall have the meaning assigned to the same in the preamble to the Agreement, being Provo City, Utah, as well as its various agencies, municipal bodies, and departments and the case may be. The City is a general law city exercising governmental functions and powers, and organized and existing under the laws of the State of Utah, and is an intended third Party beneficiary of this Agreement. The principal office of the City is located at, 351 West Center Street, Provo, Utah 84601.

"Developer" as used herein shall have the meaning provided in the introductory paragraph of this Agreement. The principal office of the Developer is located at 180 North University Avenue, Suite 200, Provo, UT 84601. Wherever the term "Developer" is used herein, such term

shall include any permitted nominee or assignee as herein provided.

"Developer Provisions" as used herein shall have the meaning assigned to the same in the § 201, herein, meaning those portions of the Redevelopment Plan that apply to Phase 1.

"Drawings" are hereby defined as those architectural drawings, landscaping plans, and related documents submitted for architectural review and written approval by the Agency which are provided in sufficient detail to obtain a building permit from the City.

"Franchise Agreements" as used herein shall refer to such have the meaning assigned to the same in § 506.

"Imposition" or "Impositions" as used herein, shall mean, each, in the singular sense, and all, in the plural sense, ad valorem taxes, assessments, franchises, excises, license, permit fees, charges and levies, general and special, ordinary or extraordinary, unforeseen and foreseen, of any kind and nature whatsoever imposed by a governmental entity.

A "lender" referenced herein shall include any and all creditors providing financing for the Project of whom the Agency has received prior, written notice from Developer and to whom, upon such written notice, Agency has certain duties and obligations defined in this Agreement.

The "Office Building" as used herein shall refer to that certain multi-story office building of approximately 130,000 square foot to be constructed by Developer, its affiliates, assigns, agents, subsidiaries, or contracted parties within Phase 1.

The "Parcel" shall mean that certain parcel having Parcel No. 39:251:0003 as recorded in the Office of the Utah County Recorder.

The "Parking Facility" as used herein shall refer to that certain multilevel parking facility of containing at least 575 parking spaces to be constructed by Developer, its affiliates, assigns, agents, subsidiaries, or contracted parties within Phase 1.

"Party" or "Parties" as used herein, shall, whether in the singular or plural sense, have the meaning provided for the same in the preamble to this Agreement

"Phase 1" includes the Parcel, certain rights of way, and utility easements as shown on Attachment No. 1, the "Office Building," and the "Parking Facility." The land to be developed in Phase 1 is legally described in the "Legal Description of the Parcel Subject to Phase 1 Development" (Attachment No. 2).

"Phase 2" includes portions of those certain parcels having Parcel Nos. 04:085:0001, 04:085:0002, 04:085:0003, and 04:085:0004 as recorded in the Office of the Utah County Recorder.

The "Project" consists of the Office Building, Parking Facility, and associated on-site and other improvements on Phase 1.

The "Project Area" is located in Provo City, Utah. The boundaries of the Project Area are described in the Redevelopment Plan.

"RC Willey Property" shall mean, as used herein, that certain parcel having Parcel No. 04:085:0001 as recorded in the Office of the Utah County Recorder.

"Redevelopment Plan" As used herein, "Redevelopment Plan" means the Redevelopment Plan for the Freedom Plaza Community Development Project Area that was approved and adopted on November 9, 1976, by Ordinance No. 491, and re-adopted with larger boundaries on July 18, 1979, by Ordinance No. 711 of the City Commission of Provo City.

"SAR" as used herein shall mean that certain Settlement and Release Agreement signed by the City, the Agency, and PEG, and attached hereto as Attachment No. 7, as it may be amended from time to time by the written consent of the parties thereto.

The "Site" is a portion of the Project Area shown on the Site Map (Attachment No. 1) and consists of two phases, Phase 1 and Phase 2.

"TIF" as used herein refers to certain tax increment generated by the Expanded CDA, as defined by Section 5.2 of the SAR, having a 15-year term.

"Undergrounding Project" as used herein shall have the meaning provided for the same in § 506 of this Agreement.

II. [§ 200] SUBJECT OF AGREEMENT

A. [§ 201] Purpose of the Agreement

The purpose of this Agreement is to effectuate the provisions of the Redevelopment Plan applicable to Phase 1 (the "Developer Provisions") by providing for the development and operation of the Office Building and Parking Facility on a portion of the Project Area that has been acquired by the Developer, as shown on the site plan attached hereto as Attachment No. 1. The fulfillment generally of this Agreement and specifically the terms of the SAR, is in the vital and best interests of the City and the health, safety, morals, and welfare of the City's residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. [§ 202] Attachments to this Agreement

The following documents are attached to this Agreement and are incorporated herein as a part of this Agreement:

Attachment No. 1: Site Map
Attachment No. 2: Legal Description of the Parcel Subject to Phase 1 Development
Attachment No. 3: Scope of Development
Attachment No. 4: Intentionally Deleted

Attachment No. 5: Schedule of Performance
Attachment No. 6: Redevelopment Plan
Attachment No. 7: Downtown Provo Parking Settlement and Release Agreement
Attachment No. 8: Current Office Building and Parking Facility Elevation with Notes

C. [§ 203] The Redevelopment Plan

This Agreement is subject to the Redevelopment Plan. The entire Redevelopment Plan as re-adopted is incorporated into this Agreement by this reference, and attached hereto as Attachment No. 6; *provided, however*, only the Developer Provisions of the Redevelopment Plan shall be binding on the Developer.

D. [§ 204] Basic Conditions.

Neither the Developer nor the Agency shall have any responsibility to carry out any provisions of this Agreement unless: (i) the Developer provides the legally-binding commitments for financing of the Project; and (ii) the Developer purchases or provides options for the purchase of Parcel 1.

E. [§ 205] Conflict with SAR.

In the event the terms or provisions of this Agreement conflict with, or inconsistent with, any terms or provisions contained in the SAR, the terms of the SAR shall govern and control.

III. [§ 300] OWNERSHIP OF THE SITE

A. [§ 301] Present Ownership.

All of Phase 1 is presently owned by PEG PRV 200 Freedom Office, LLC.

The Developer shall construct or cause to be constructed Phase 1 . Developer may not transfer or assign any parcels that have been conveyed to Developer by Agency until construction of the Project is completed except (i) where that transfer is to an entity controlled by Developer or (ii) with the express written consent of Agency, which consent shall not be unreasonably withheld.

1. [§ 302] Payment of Taxes

The Developer agrees to pay the property taxes on Phase 1 when they are due and payable. It is agreed that if the State, Utah County or any other taxing entity modifies or discontinues the property tax system, thereby eliminating the Agency's access to tax increment contemplated in this Agreement, then the Developer shall make payments to Agency in lieu of taxes in an amount equal to that year's taxes until the tax increment authority terminates pursuant to State law.

2. [§ 303] Maintenance of Parking Facility

The Developer shall be responsible to maintain the Parking Facility in accordance with the

provisions of the SAR.

3. [§ 304] Deed Covenants

The terms and conditions pertaining to the Parking Facility and the public parking use and benefit set forth in the SAR may be summarized and recorded with the Utah County Recorder as deed restrictions so as to bind the Developer as well as any successor or assigns.

B. [§ 305] Form of Deed

The Agency shall convey to the Developer, or its assignee, title to those portions of the Site that are currently owned by the Agency, as specified in the Schedule of Performance (Attachment No. 5). The provisions of the deed or deeds shall be mutually satisfactory to the Developer, to the Title Insurance Company agreed upon by the Parties which will insure the title therein, and to the Agency, and shall be consistent with the terms of this Agreement and the SAR.

C. [§ 306] Taxes and Assessment

Impositions, if any, on the portions of the Parcels levied, assessed, or imposed for any period prior to the conveyance of title from Agency to Developer or delivery of possession thereto from Agency to Developer, shall be the responsibility of Agency. All such Impositions levied or imposed for any period after such conveyance of title or delivery of possession shall be paid by the Developer.

D. [§ 307] Occupants of the Site

All parcels acquired by Developer with the assistance of the Agency shall be conveyed to Developer free of any possession or right of possession.

E. [§ 308] Submission of Evidence of Financing Commitments

The Developer shall submit to the Agency evidence that the Developer has obtained firm and binding commitments for the construction and permanent financing of the Project in accordance with this Agreement and as outlined in the Schedule of Performance (Attachment No. 5).

F. [§ 309] Condition of the Soil.

Developer shall have sole responsibility for the conditions of the soil and structures on the Site.

G. [§ 311] Demolition of Structures

Developer shall have sole responsibility for demolition of any structures to be demolished during Phase 1.

III. [§ 400] DEVELOPMENT OF PARCELS BY THE DEVELOPER

A. [§ 401] Scope of Development of Phase 1

Phase 1 shall be developed by the Developer in accordance with the "Scope of Development" attached hereto as Attachment No. 3.

B. [§ 402] Basic Concept Drawings

Developer has prepared and submitted to the Agency, and Agency has accepted basic concept drawings and related documents containing the overall plan for Phase 1 . These drawings include a perspective rendering reflecting design concepts and a site plan showing the general location of improvements (including the Parking Facility) as they are to be initially constructed upon Phase 1.

C. [§ 403] Final Working Drawings and Related Documents

Developer shall prepare and submit to the Agency Drawings for architectural review and written approval by the Agency (which review and approval shall not be unreasonably withheld or delayed), as and at the respective times established therefore in the Schedule of Performance (Attachment No. 5). Any items so submitted and approved in writing by such Party shall not be subject to subsequent disapproval.

During the preparation of Drawings and plans, the Agency and the Developer shall hold regular progress meetings to keep Agency apprised of and, to the extent necessary, coordinate the execution of construction plans and related documents.

If any revision or correction of Drawings or plans approved by the Agency or Developer shall be required by any government official, agency, department, or bureau having jurisdiction, or any lending institution involved in financing, Developer and the Agency shall cooperate in efforts to obtain a mutually acceptable revision or correction.

D. [§ 404] Approval of Plans, Drawings, and Related Documents

Subject to the terms of this Agreement, the Agency shall have the right of reasonable architectural review of Drawings.

The Agency shall promptly (within ten (10) days of submission by Developer) approve or disapprove Drawings, plans and related documents. If no response is received within the ten-day period, such plans shall be deemed approved by the Agency. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency requests to be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 3) and any items previously approved or deemed approved hereunder. Developer, upon receipt of a disapproval, shall revise the plans and Drawings, and shall resubmit them to the Agency as soon as possible after receipt of the notice of disapproval. Plans approved shall be deemed in all respects to be in accordance with the Redevelopment Plan for the Project.

If the Developer desires to make any substantial change in the Drawings or plans after their approval by the Agency, such proposed change shall be submitted to the Agency for approval,

which shall not be unreasonably withheld or delayed. If the Drawings or plans, as modified by the proposed change, conform to the requirements of this Agreement and the Scope of Development (Attachment No. 3), the proposed change shall be approved and the Developer shall be notified in writing within ten (10) days after submission to the Agency. Such change in the Drawings or plans shall, in any event, be deemed approved by the Agency unless rejected, in whole or in part, by written notice thereof setting forth in detail the reasons therefor, and such rejection shall be made within said ten (10) day period.

In no event shall the Agency's involvement under this subsection give the Agency control over or the right to stop or alter work at the Project.

E. [§ 405] Method of Financing

The cost of Phase 1 development shall be borne by Developer, except for financing or work expressly set forth in this Agreement or the SAR to be performed by the Agency, the City, or others.

F. [§ 406] Construction Schedule of Performance

After Developer has obtained title to Phase 1, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of Phase l improvements and the development thereof as provided in the Scope of Development (Attachment No. 3), within the time specified in the Schedule of Performance (Attachment No. 5) or within such reasonable extensions thereof. The Schedule of Performance (Attachment No. 5) is subject to revision from time to time as mutually agreed upon in writing between Developer and the Agency.

During periods of construction, Developer shall submit to the Agency a written report of the progress of the construction when and as requested by the Agency. The report shall be in such form and detail as may be reasonably required by the Agency.

In no event shall the Agency's involvement under this subsection give the Agency control over or the right to stop or alter work at the Project.

G. [§ 407] Indemnification and Insurance

1. [§ 408] Indemnification

To the fullest extent permitted by law the Developer shall indemnify, defend and hold harmless Agency and City, and its past, present and future agents, representatives and employees from and against all claims, damages, losses, liabilities, liens, cost, citations, penalties, fines and expenses, including but not limited to attorneys' fees, arising out of or resulting from the demolition of existing structures and construction of the Office Building and Parking Facility, provided that such claim, damages, loss, liability, lien, cost, citation, penalty, fine or expense is caused in whole or in part by the negligent act or omission of Developer, Developer's General Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether liability is imposed upon such

indemnified Party by applicable laws, rules, or regulations regardless of the negligence, omissions, or other fault of such indemnified Party. This indemnity obligation is intended to include the indemnification of Agency and City indemnified hereunder for damages apportioned to the Developer, Developer's General Contractor, any subcontractor, any sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity, which may otherwise exist in favor of the Agency and/or City. In any and all claims against the Agency and/or City, or any of its past, present or future agents, representatives or employees by any employee of the Developer, Developer's General Contractor, any subcontractor, any sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or types of damages, compensations or benefits payable by or for the Developer, Developer's General Contractor, any subcontractor, any sub- subcontractor under the worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.

To the fullest extent by law throughout, the Developer shall indemnify, defend and hold harmless the Agency and City and any past, present and future agents, representatives and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, directly or indirectly arising out of or based in whole or in part upon:

a. Developer's breach of any covenant or warranty of this Agreement;

b. Any damage or loss to any property caused in whole or in part by the Developer, Developer's General Contractor, any subcontractor, any sub-subcontractor or any one directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damages or loss attributable solely to acts or omissions of the Agency or City or its agents or employees and not attributable to the fault or negligence of the Developer;

c. The Developer's failure to comply with any applicable law, rule or ordinance;

d. The use of the RC Willey Property for construction staging, parking, and other Project-related activities by Developer, by its successors, affiliates, or assigns, or by third parties contracting with Developer; and,

e. The indemnity obligations of this paragraph are in addition to the indemnity obligation of the Developer under any other section.

2. [§ 409] Insurance

Developer or its General Contractor shall provide the following minimum insurance coverage from companies holding a General Rating of "A" or better as set forth in the most current issue of Best's Key Rating Insurance Guide written for not less than the following, or greater if required by law,

and all such insurance shall be primary to any insurance maintained by Agency or City, and shall name Agency and City as additional insureds with waiver of subrogation:

a. Worker's Compensation Insurance which shall be written for not less than the statutory limits for Utah, and the General Contractor's Employer's Liability Insurance shall be written for not less than $1,000,000.

b. Comprehensive Automobile Liability Insurance which shall be written with combined single limits of not less than $1,000,000 each occurrence.

c. Comprehensive General Liability Insurance with general aggregate limits of $1,000,000; products/completed operations aggregate of $2,000,000; and $1,000,000 each occurrence.

d. The General Contractor shall not commence any work under this Agreement until all of the insurance required herein shall have been obtained by the Developer or General Contractor. The Developer or General Contractor shall furnish to the Agency Certificates of Insurance verifying that such insurance has been obtained. Such certificates will provide that Agency and City will receive prompt written notice of any material change in, cancellation of, or non-renewal of such insurance.

H. [§ 410] City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site (but not necessarily before the conveyance of title), Developer shall (at its own expense) secure, or cause to be secured, any and all permits which may be required by the City or any other governmental agency having jurisdiction over such construction, development or work thereon. The Agency shall provide all proper assistance to Developer in securing these permits. Developer in no event shall be obligated to commence construction (the Schedule of Performance Attachment No. 5 notwithstanding) if any such permit is not issued despite good faith effort by Developer. In the event there is a delay beyond the usual time for obtaining any such permits due to no fault of Developer, the entire Schedule of Performance (Attachment No. 5) shall be extended to the extent such delay prevents or hinders any action which could not legally or would not in accordance with reasonable business practices be expected to occur before such permit was obtained. The Agency will use its best efforts to work with the Developer and the City to reduce the permit fees and City impact fees, as may be permitted by law.

I. [§ 411] Rights of Access

Representatives of the Agency shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the improvements; provided that such representatives shall first have come to Developer's construction office located thereon, having identified themselves, and are accompanied by a representative of Developer while on the Site. Such representatives of the Agency shall be those who are so identified in writing by the Director of the Agency. This limitation of access shall not apply to City inspectors or other employees and officers acting within their legal authority.

J. [§ 412] Local, State and Federal Laws

Developer shall carry out the construction of all improvements in conformity with all applicable laws, including all applicable United States, State, and local government laws.

K. [§ 413] Antidiscrimination During Construction

Developer for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, that Developer will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, ancestry, or national origin, and that Developer will comply with all applicable local, state, and United States fair employment laws and regulations.

L. [§ 414] Responsibility of the Agency

The Agency, without expense to the Developer or assessment or claim against the Site, shall perform all Agency action specified herein and in the Scope of Development (Attachment No. 3) for the Agency to perform, within the times specified in the Schedule of Performance (Attachment No. 5). The costs of performing all such other work specified herein and in the Scope of Development (Attachment No. 3) to be performed by the Agency, shall be borne by the Agency.

M. [§ 415] Certificate of Completion

Promptly after completion of all construction and development by Developer of the improvements upon Phase 1, as required by the Scope of Development (Attachment No. 3), the Agency shall furnish Developer with a letter ("*Certificate of Completion*") stating Developer has met its obligations related to Phase 1, upon written request by Developer. The Certificate of Completion shall not replace or be included in any certificate of occupancy, or similar, issued by the City.

The Agency shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon such Phase 1, and of full compliance with the terms of this Agreement with respect thereto.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, nor to any insurer of a mortgage securing money loaned to finance the improvements upon the Site.

IV. [§ 500] TAXES, ASSESSMENTS, AND OTHER CHARGES AGAINST PARCELS

A. [§ 501] Utilities

Developer agrees to pay or cause to be paid, as and when they become due and payable, all charges for water, gas, light, heat, telephone, electricity and other utility and communication services rendered or used on or about the Project at all times during the term of this Agreement.

B. [§ 502] Payment Generally

Developer shall, with regard to the Project, pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all Impositions

C. [§ 503] Tax Increment Assistance

The Developer and Agency agree that all Tax Increment (as defined in the Redevelopment Plan) received by Agency from Utah County shall be immediately transferred to the Developer.

D. [§ 504] Tax Receipts

Developer shall furnish to the Agency and City, within forty-five (45) days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to the Agency and the City evidencing payment thereof.

E. [§ 505] No Street Closure Fees

In light of the substantial improvements being made by Developer to 200 North street in or around the Project Area, City agrees to waive all street closure fees associated with the development of the Project.

F. [§ 506] Costs for Undergrounding Electric and Telecommunications Lines

The City's Energy Department is currently undergoing a project to bury overhead utility lines on the east side of 200 West from 650 North to 200 North and on the south side of 200 North from University Avenue to 200 West (the "Undergrounding Project"). Under the terms of various franchise agreements (the "Franchise Agreements"), the City will exercise its right to require telecommunications companies to bury their lines currently on City poles as a part of the City's Undergrounding Project at the telecommunications companies' expense. Although Developer will be obligated to pay the cost of the portion of the Undergrounding Project located on or adjacent to the Project, the City will invoke the provisions of the Franchise Agreements to require the telecommunications companies to pay for the cost of burying their lines in that portion of the Undergrounding Project located in or adjacent to the Project.

G. [§ 507] Use of TIF Generated by Project.

The Parties agree that Developer may, with the consent of Agency, apply the TIF to such rent obligations as may arise from Agency's tenancy in the Office Building, if any. Such tenancy shall be pursuant to the terms of a negotiated lease agreement executed by PEG PRV 200 Freedom Office, LLC and Agency. In the event Developer requests and Agency consents to this use of the TIF, the Parties shall use commercially reasonable efforts to coordinate with and secure the execution of such additional documents, whether between them or with a third party, as are necessary to allow the use of the TIF in this manner.

V. [§ 600] DEFAULTS, REMEDIES, AND TERMINATION

A. [§ 601] Defaults - General

Subject to the extensions of time, failure or delay by any Party to perform any term or provision of this Agreement constitutes a default under this Agreement. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay upon written notice from the injured Party, as describe below, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing (see D, and §708, below) shall not be in default. With respect to the performance of the obligations hereunder, time is of the essence.

The injured Party or Parties shall give written notice of default to the Party in default, specifying the default complained of by the injured Party or Parties. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failures or delays by any Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default or of any such rights or remedies. Delay by any Party in asserting any of its rights and remedies shall not deprive any Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§ 602] Legal Actions

1. [§ 603] Institution of Legal Actions

In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court of the County of Utah, State of Utah, or in any other appropriate court in that county.

2. [§ 604] Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

3. [§ 605] Acceptance of Legal Process

In the event that any legal action is commenced by Developer against the Agency, service of process on the Agency shall be made by personal service upon the Chairman, Director or Secretary of the Agency, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against Developer, service of process on Developer shall be made by personal service upon the general partner, manager or other lawful agent of Developer or in such manner as may be provided by law, and shall be valid whether made within or without the State of Utah.

C. [§ 606] Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other Party.

D. [§ 607] Damages

If any Party defaults with regard to any of the provisions of this Agreement, the non-defaulting Party or Parties shall serve written notice of such default upon the defaulting Party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting Party shall be liable to the non-defaulting Party or Parties for any actual damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting Party with respect to such default.

E. [§ 608] Specific Performance

If any Party defaults with regard to any of the provisions of this Agreement, the non-defaulting Party or Parties shall serve written notice of such default upon the defaulting Party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the non-defaulting Party or Parties, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such defaults.

F. [§ 609] Additional Remedies of the City and Agency

If Developer defaults with regard to any of the provisions of this Agreement, the City and/or Agency shall serve written notice of such default upon Developer. If the default is not commenced to be cured within thirty (30) days after service of notice of default and is not cured promptly in a continuous and diligent manner within reasonable period of time after commencement, the City and/or Agency, at its option, may thereafter (but not before):

1. Correct or cause to be corrected said default and charge the costs therefor to the account of the Developer;

2. Correct or cause to be corrected said default and pay the costs thereof from the proceeds of any insurance; or in the event that Developer has obtained a faithful performance bond indemnifying the City and/or Agency, City and/or Agency may call upon the bonding agent to correct said default and pay the cost thereof;

3. Exercise its right to maintain any and all actions at law or suits in equity to compel Developer to correct or cause to be corrected said default;

G. [§ 610] Rights of Termination Prior to Commencement of Construction

1. [§ 611] Termination by Developer

a. Developer at its option may terminate this Agreement if City or Agency does not deliver possession of those portions of the Property in the manner and condition and by the date provided in this Agreement, and such failure is not cured within thirty (30) days after written demand by Developer.

b. Developer at its option may terminate this Agreement if the actions to be carried out by the City or Agency in [§ 204] have not occurred on or before the established dates set forth in the Schedule of Performance (Attachment No. 5).

c. Developer at its option may terminate this Agreement if the Developer is unable, after reasonably good faith effort, to obtain financing for the Project.

d. Developer at its option may terminate this Agreement if the Developer is unable, after reasonably good faith effort, to obtain a building permit for the Project.

In the event Developer terminates this Agreement or it is terminated for any other reason, Developer agrees to assign its development rights to the Project and to sell its interest in the Project, including its interest in Phase 1 identified herein, to Agency or a third party selected by Agency for an amount equal to the amount expended by Developer in closing costs in purchasing its interest in the Site.

2. [§ 612] Termination by Agency

a. Agency at its option may terminate this Agreement if Developer assigns or attempts to assign and/or convey this Agreement (or any rights therein), or the Parcel identified herein (or any rights therein), in violation of this Agreement.

b. The Agency at its option may terminate this Agreement if Developer does not submit Drawings and related documents, as required by this Agreement, and such breach is not cured within thirty (30) days after the date of written demand therefor by the Agency.

c. The Agency at its option may terminate this Agreement if Developer does not submit to the Agency evidence that Developer has financial commitments sufficient to enable Developer to finance construction of the improvements to be constructed on Phase 1 under the Scope of Development (Attachment No. 3) on or prior to the date set forth therefor in the Schedule of Performance (Attachment No. 5) and such breach is not cured within thirty (30) days after the date of written demand therefor by the Agency..

d. The Agency at its option may terminate this Agreement if all of the actions to be performed by the Agency and Developer included in the Schedule of

Performance (Attachment No. 5) have not occurred on or before the dates therefor set forth and such breach is not cured within thirty (30) days after the date of written demand therefor by the Agency.

e. The Agency at its option may terminate this Agreement if any of the Conditions in [§ 204] are not fulfilled and such breach is not cured within thirty (30) days after the date of written demand therefor by the Agency.

H. [§ 613] Attorney's Fees and Court Costs

In the event that either the Agency, City or Developer shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against any Party arising from any default under or violation of this Agreement, then the prevailing Party shall be entitled to and shall be paid reasonable attorney's fees and court costs therefor.

VI. [§ 700] GENERAL PROVISIONS

A. [§ 701] Notices, Demands and Communications Between the Parties.

Formal notices, demands and communications between the Agency and Developer shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and Developer. Such written notices, demands, and communications may be sent in the same manner to such other addresses as each Party may from time-to-time designate by mail as provided in this Section.

Whenever not otherwise stipulated, when any approval or consent is required under this Agreement (including any exhibits attached to this Agreement), such approval or consent shall not be unreasonably withheld or unduly delayed, and shall be deemed to have been given within fifteen (15) business days if no response is received within such period by the Party requesting the same.

B. [§ 702] Conflict of Interests

No member, official, or employee of the Agency or Provo City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

C. [§ 703] Warranty Against Payment of Consideration for Agreement

Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys.

D. [§ 704] Non-liability of City and Agency Officials and Employees

No member, official, or employee of the Agency or the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the Agency, or for any amount

which may become due to Developer or successor, or on any obligation under the terms of this Agreement.

E. [§ 705] Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes and lock-outs not directly related to Developer's Project; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; quarantine restrictions; freight embargoes; a general lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when both Parties are faultless) of any contractor, subcontractor or supplier; acts of the other Party; acts or the failure to act, of any public or governmental agency or entity (other than acts or failure to act of the Agency shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

F. [§ 706] Submission of Documents for Approval

Whenever this Agreement requires one Party to submit plans, drawings or other documents to the other Party for approval, which shall be deemed approved if not acted on by the receiving Party within the time specified in the Agreement, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected within the stated time.

G. [§ 707] Broker’s Commission

The Agency shall not be liable for any real estate commissions or brokerage or finder’s fees, if any, which may arise herefrom.

H. [§ 708] Mortgage Protection

Notwithstanding any other provision contained in this Agreement to the contrary, prior to exercising any right or remedy under this Agreement (including, without limitation, any right of termination, or demand or suit for damages or specific performance), the Agency shall give the Developer written notice of such failure, outlining in reasonable detail the default of which the Agency complains or any other reason serving as the basis for the exercise of such right or remedy. The Developer shall have thirty (30) days after the receipt of such notice to cure such default or to eliminate such basis, or in which to commence to cure such default or to eliminate such basis, or in which to commence to cure such default or to eliminate such basis and to thereafter diligently prosecute the same to completion. If the Developer fails to cure such default or to eliminate such basis within such thirty (30) day period and to thereafter diligently prosecute the same to completion, the Agency shall give written notice of such fact to any lender of which the Agency has received written notice, outlining in reasonable detail the default of which the Agency

complains or any other reason serving as the basis for the exercise of such right or remedy. Any lender shall have thirty (30) days after the receipt of such notice to cure such default or to eliminate such basis or in which to commence to cure such default or to eliminate such basis and to thereafter diligently prosecute the same to completion, including the institution and completion of foreclosure proceedings if possession of the Site or a portion of the Site is necessary in order to effect such cure. If no lender cures such default or eliminates such basis within such thirty (30) day period, or commences to cure such default or eliminate such basis within such thirty (30-day period and to thereafter diligently prosecute the same to completion, the Agency may exercise its rights and remedies under this Agreement.

The Agency shall, within fifteen (15) days after the Developer's request, execute and deliver to the Developer an estoppel certificate in favor of the Developer and such other persons as the Developer shall request setting forth the following: (a) a ratification of this Agreement; (b) that this Agreement is in full force and effect; (c) that all obligations under this Agreement to be performed by the Developer have been satisfied, or in the alternative, those claimed by the Agency to be unsatisfied; (d) that no defenses or offsets exist against the enforcement of this Agreement by the Developer, or, in the alternative, those claimed by the Agency; and (e) such other information as the Developer may request. Any lender shall be entitled to reply upon any estoppel certificate executed by the Agency.

The Agency shall from time to time if so requested by the Developer and if doing so will not materially adversely affect the Agency's economic interests under this Agreement, join with the Developer in amending this Agreement so as to meet the needs or requirements of any lender. Likewise, at the request of Agency, Developer shall join with Agency in amending this Agreement to meet Agency's needs, if doing so will not materially adversely affect the Developer's economic interests under this Agreement. Any sale, assignment or transfer of the Developer's default under a debt obligation, shall be subject to this Agreement and the Agency shall accrue to the Developer's successors and assigns and shall recognize such successors or assigns as the Developer under this Agreement, regardless of any rule of law to the contrary or absence of privity of contract.

I. [§ 709] Effect and Duration of Covenants

The covenants regarding uses established in this Agreement shall, without regard to technical classification and designation, be binding on Developer and any successor in interest to the Site or any part thereof, for the benefit and in favor of the Agency, its successors and assigns.

J. [§ 710] Severability

If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

K. [§ 711] Prohibition on Transfer or Assignment; Binding Effect

No voluntary or involuntary successor in interest shall acquire rights or powers under this Agreement, except as expressly set forth herein. If permitted by this Agreement, or if mutually

agreed to by the Parties in writing and signed by both Parties, this Agreement and the terms, provisions, promises, covenants and conditions hereof, shall then be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

VII. [§ 800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in duplicate originals, each of which is deemed to be an original.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and Developer.

VIII. [§ 900] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within 30 days after the date of signature by Developer, or this Agreement may be withdrawn by Developer on written notice to the Agency. The date of this Agreement shall be the date when this Agreement shall have been signed by the Agency.

[SIGNATURES ON FOLLOWING PAGE]

By their respective signatures, each of the undersigned affirms he or she is authorized to bind the respective entity for which he or she signs this agreement:

PEG PRV 200 FREEDOM OFFICE, LLC

By: PEG OZII GP, LLC
Its Manager

By: PEG Capital Partners, LLC
Its Manager

By: _____
Name: Craig Bingham
Its: Manager

PROPERTY ENHANCEMENT GROUP, INC.

By:_____
Name: Robert Schmidt
Its: President

FREEDOM PLAZA LAND, LLC

By:_____
Name: Cameron Gunter
Its: Manager

[Signature page continues]

REDEVELOPMENT AGENCY OF PROVO CORPORATION

By:_____
Name: Michelle Kaufusi
Its: CEO

Attest:

By:_____
Name: _____
Its: City Recorder

PROVO CITY, UTAH

By:_____
Name: Michelle Kaufusi
Its: Mayor

Attest:

By:_____
Name: _____
Its: City Recorder

Approved as to form and legality:

By:_____
Name: _____
Its: _____

ATTACHMENT NO. 1

SITE MAP

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE PARCEL SUBJECT TO PHASE 1 DEVELOPMENT

ALL OF LOT 3 OF FREEDOM PLAZA – PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

SCOPE OF DEVELOPMENT

The Project shall be designed and developed as a Class A office and parking facility which will have architectural excellence in its design, landscape and development.

I. DEVELOPMENT OF OFFICE

Subject to all of the terms and conditions of this agreement, the Developer shall cause to be designed, and following the Agency's approval of the design, the Developer shall cause to be constructed a Class A office building containing approximately 130,000 square feet of office space.

II. DEVELOPMENT OF PARKING FACILITIES

The Developer shall design and construct a parking facility that shall contain at least 575 spaces as described on Attachment No. 8 - Office Building and Parking Facility Elevation with Notes.

A. Design, Plans, and Construction of the Parking Facility

The parking facility and the office building shall be interrelated in design, physical operation, and economics with each other. Subject to all the terms and conditions herein, the Developer shall have prepared the Basic Concept Drawings for the Parking Structure.

B. Operation and Maintenance of Parking Facility

The Developer shall operate and maintain the parking facility.

C. Architecture and Design

The building and parking facility shall be of high architectural quality and with landscaped areas. The structures must be effectively and aesthetically designed. The plans and proposals submitted for approvals shall describe in reasonable detail the architectural character intended for Phase 1 and shall be substantively consistent with the Office Building and Parking Facility Elevation with Notes (Attachment No. 8).

D. Landscaping

Landscaping shall be provided. Landscaping includes such materials as paving, trees, shrubs, and other plant materials, landscape containers, topsoil, soil preparation, automatic irrigation, and landscape and pedestrian lighting.

Landscaping shall carry out the objectives and principles of the Agency's desire to accomplish an

aesthetically acceptable environment.

E. Signs

During construction, all signs are prohibited except those which are recognized as appropriate for announcing the construction of the building and those which are appropriate for leasing or sales. Both during and after construction, all signs must conform with the Provo City Zoning Ordinance and the Agency's requirements.

The size, color, lighting, location, etc., of the signs are of special concern to the Agency and are subject to approval by the Agency, which approval shall not be unreasonably withheld. Developer shall post such informational and directional signs for public parking as may be requested by Agency.

F. Controls and Restrictions - Miscellaneous

Controls and restrictions consistent with the Agreement, including but not limited to minimum size parking spaces and the maximum height of the building, shall be mutually agreed upon by the Agency and the Developer prior to the commencement of the development.

G. Federal Regulations

The Developer shall not be required to publicly request bids for the construction of the parking facility unless and except as otherwise required by law or regulation. If necessary and appropriate, the Parties will work together to obtain any necessary waivers to a bid requirement.

H. Relocation of Provo City Rights-of-Way

The Agency and the Developer shall work together with Provo City to relocate the existing Provo City rights-of-way and easements, if any, to complete the improvements contemplated by this Agreement.

I. Demolition

Developer shall demolish, remove and properly dispose of all improvements (including foundations) on Phase 1 at Developer's cost after obtaining the necessary authorizations and permits.

ATTACHMENT NO. 4

INTENTIONALLY DELETED

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

Executed Construction Contract: November 30, 2020

Obtain Construction Financing: December 31, 2020

Construction Schedule:

December 2020 to April 2022

ATTACHMENTNO. 6

REDEVELOPMENT PLAN

ATTACHMENT NO. 7

DOWNTOWN PROVO PARKING SETTLEMENT AND RELEASE AGREEMENT

ATTACHMENT NO. 8

OFFICE BUILDING AND PARKING FACILITY ELEVATION WITH NOTES