



Staff Report

PLANNING DIVISION

DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Appeals Hearing Officer
From: Daniel Echeverria, Planning Manager/Zoning Administrator
daniel.echeverria@slc.gov, 801-535-7165
Date: August 20, 2026 (hearing date), August 14, 2026 (publication)
Re: PLNAPP2026-00553, Landscape Maintenance Civil Enforcement Appeal

Appeal of Administrative Decision

PROPERTY ADDRESS: 1200 S 2100 E (approximate)

PARCEL ID: 16-10-352-029-0000

ZONING DISTRICT: R-1/7,000 Single-Family Residential

ORDINANCE SECTION(S): 9.16.040-.050

APPELLANT(S): Tupakk and Stephanie Renteria

ISSUE:

Whether the Zoning Administrator erred in determining that Appellant, the property owner of parcel 16-10-352-029-0000 at 1200 S 2100 East (the “Private Property”), is responsible for the landscape maintenance, and therefore weeds maintenance, of the Private Property and the abutting park strip (collectively hereafter the “Property”).

ADMINISTRATIVE DECISION:

The Zoning Administrator found that there was no condition applied to the original development approval for the Property that required the Harvard Park Homeowners Association (hereafter “Harvard Park HOA”) to maintain the landscaping on the Property. As such, the generally applicable landscape maintenance requirements of Salt Lake City Code (“City Code”) apply to Appellant, which requirements make Appellant responsible for maintaining the landscaping on the Property. Even if the City did require the Harvard Park HOA to maintain the Property in connection with the development approval for the Harvard Park development, the City’s decision not to enforce that covenant is not an appealable land use decision.

JURISDICTION & STANDARDS OF REVIEW

This is an appeal of an administrative decision made by the Zoning Administrator.

The appeals hearing officer, established pursuant to City Code Section 21A.06.040, is the City’s designated land use appeal authority on appeals of administrative decisions.

As per City Code Section 21A.16.030.A, an appeal made to the appeals hearing officer shall identify “the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error.”

The standard of review for an appeal of an administrative decision is de novo. City Code 21A.16.030.I. It is an appellant’s burden to prove that the decision made by the Zoning Administrator was incorrect as per Section 21A.16.030.J.

An appeal under City Code Section 21A.16 is the correct process for an appeal of this matter for three procedural and substantive reasons. First, an appeal to the City's land use appeal authority is appropriate because Appellant's arguments largely concern the application of a 1986 Board of Adjustment decision, which is the predecessor body to the land use appeals hearing officer, which officer only renders decisions about the application and interpretation of the City's zoning ordinances. *See* City Code 21A.16.010.A. Second, the enforcement action undertaken by the City was based on a decision by the Zoning Administrator as to who has the obligation to maintain landscaping according to the City's landscaping regulations, particularly City Code 21A.48.080.C. *See* City Code 21A.16.010.A.1. Third, the City's regulation of private property landscaping is largely pursuant to its regulatory authority under the Utah Municipal Land Use Development and Management Act, Utah Code Chapter 10-20 ("MLUDMA"), which purposes and through which such authority is exercised under Title 21A of City Code. *See* City Code 21A.02.020. The City's land use appeal authority reviews decisions made pursuant to the City's authority under MLUDMA.

ATTACHMENTS:

- A. [ATTACHMENT A: Vicinity Map](#)
- B. [ATTACHMENT B: Property Photos](#)
- C. [ATTACHMENT C: Appellant Brief](#)
- D. [ATTACHMENT D: Adversely Affected Party Brief](#)
- E. [ATTACHMENT E: City Code Section 51-6-10, 1986](#)
- F. [ATTACHMENT F: PUD Application](#)
- G. [ATTACHMENT G: BOA Minutes Sept. 2, 1986](#)
- H. [ATTACHMENT H: PC Minutes and Staff Report, Sept. 11, 1986](#)
- I. [ATTACHMENT I: BOA Minutes Sept. 15, 1986](#)
- J. [ATTACHMENT J: BOA Minutes Nov. 10, 1986](#)
- K. [ATTACHMENT K: Staff and Director Plan Review Communication, Dec. 1986](#)
- L. [ATTACHMENT L: Approved Landscape Plan, Signed Dec. 19, 1986](#)
- M. [ATTACHMENT M: Building Permit Record 1986-73355](#)
- N. [ATTACHMENT N: BOA Minutes Aug. 17, 1987](#)
- O. [ATTACHMENT O: Landscape Plan, Received Aug. 17, 1987](#)
- P. [ATTACHMENT P: PC Minutes and Staff Report, Aug. 27, 1987](#)
- Q. [ATTACHMENT Q: Recorded Harvard Park Subdivision Plat, Oct. 1, 1987](#)
- R. [ATTACHMENT R: Recorded Harvard Park CC&Rs, Oct. 1, 1987](#)
- S. [ATTACHMENT S: BOA Findings and Order, Recorded Oct. 20, 1986](#)
- T. [ATTACHMENT T: R-3A Zoning Code, 1986](#)
- U. [ATTACHMENT U: City Code Sections 51-5-16 & 51-5-19, 1986](#)
- V. [ATTACHMENT V: City Code Section 51-3-6, 1986](#)
- W. [ATTACHMENT W: Memo to Mayor Requesting Signature, Sept. 29, 1987](#)
- X. [ATTACHMENT X: City Recorder Stamp Examples on CC&Rs, 1989 and 1994](#)
- Y. [ATTACHMENT Y: Draft Harvard Park Plat from Subdivision Petition File, July 10, 1987](#)

Z. [ATTACHMENT Z: Example of Findings and Order Disclaimer Language, 1986](#)

BACKGROUND

On June 18 and June 24, 2026, Appellant received a Civil Enforcement Notice and Order (a civil enforcement order) for a weeds maintenance violation pertaining to the Property. The Notice and Order was based on City Code Sections 9.16.040 and 9.16.050 which require that weeds be maintained at a height of no more than 6 inches. The weeds on the Property exceeded this height. The Notice and Order is located in Appellant Exhibit A.

The Notice and Order to Appellant was based on a determination from the Zoning Administrator that Appellant, as the property owner, is the party responsible for such maintenance and not the neighboring property owner, the Harvard Park HOA. Appellant subsequently filed this appeal in response to the Notice and Order and argues that they are not the responsible party for the weeds and other associated landscaping maintenance due to a Board of Adjustment approval for a Planned Unit Development from 1986, being Case No. 319-B (hereafter the “PUD”), which Appellant alleges assigned responsibility for such maintenance in perpetuity to the Harvard Park HOA.

Board of Adjustment Case Background

The Property was initially part of a “Planned Unit Development” that received preliminary Board of Adjustment approval in 1986. At that time, the Property was located in the “R-3A” zoning district. Planned Unit Developments were allowed by Section 51-6-10 of the City Zoning Code (see [Attachment E](#) for the 1986 code.) The application for the PUD encompassed both the Private Property and all of the property currently owned by the Harvard Park HOA. A map identifying these properties is below.



The Private Property owned by Appellant is outlined in yellow at 1200 S 2100 East. The associated abutting park strip is outlined in red. Appellant also owns the neighboring property to the west at 2074 E Laird Drive (labeled 2074 on the map). The Harvard Park HOA property is outlined in blue with an address of 2091 E Harvard Oaks Circle. Please note that the property boundaries shown are approximate. A survey would be required to verify the exact location of the property boundaries in relation to the landscape area that is the subject of this appeal.

Key Case 319-B Planned Unit Development Dates and Actions

A timeline of key process dates and associated actions for the PUD is below.

- **Aug. 18, 1986:** Dan Lofgren of Prowswood Ltd. (“Developer”), authorized by the property owner Donald Lloyd, applies for a Planned Unit Development. A Planned Unit Development approval was needed because the Developer proposed that the buildings in a proposed Harvard Park development be located closer together than what was allowed by the underlying zoning district. The legal description in the application encompasses the current Harvard Park HOA property and the Private Property. (See [Attachment F](#) for application showing legal description.)
- **Sept. 2, 1986:** Board of Adjustment reviews the application and tables the proposal to obtain a recommendation from the Planning Commission (see [Attachment G](#) for minutes.)
- **Sept. 11, 1986:** Planning Commission reviews the proposal and makes a recommendation to the Board of Adjustment (see [Attachment H](#) for minutes and Staff Report.)
- **Sept. 15, 1986:** Board of Adjustment approves the PUD with conditions, notably that if the Developer intends to individually sell the buildings in the development he will need subdivision approval. (See [Attachment I](#) for minutes of approval.)
- **Sept. 16, 1986:** Donald Lloyd sells the Harvard Park HOA property to Harvard Park Corporation, leaving the Private Property as a remainder property (see Appellant Exhibit G for deed.)
- **Oct. 30, 1986:** Donald Lloyd sells the Private Property to David Pack (the owner at the time of the adjacent 2074 E Laird Drive) (see Appellant Exhibit H for deed.) Nothing in the deed reflects a covenant by Lloyd or any affiliate of Lloyd to perpetual maintenance of the Private Property.
- **Nov. 10, 1986:** Board of Adjustment provides their “Committee of the Board” approval of the plans, including the landscape plan (see minutes in [Attachment J](#)). No copy of the specific plans reviewed by the Board on that date could be located in City archives.
- **Dec. 1, 1986:** Planning Department Staff subsequently requests that City Staff provide a review of the plans. These were reviewed by staff, and the Planning Director sent the Developer a list of corrections (see communications in [Attachment K](#); also in Appellant Exhibit C).
- **Dec. 19, 1986:** The Planning Director signs the landscape plan (see plan sheet in [Attachment L](#), a clearer copy of Appellant Exhibit C-3.)
- **Dec. 23, 1986:** The first permit for the PUD is issued under Permit #73355 for address 2069 E Harvard Oaks Circle (see [Attachment M](#).)

There were additional meetings held regarding the PUD by the Planning Commission and Board of Adjustment in 1987.

- **Aug. 17, 1987:** The Board of Adjustment holds a follow-up meeting regarding the project. This is the first point in the record where there is any indication that the Board became aware that part of the property included in the application was proposed to be sold off, but the record isn’t clear whether the Board was discussing the Private Property (that had already been sold to Pack ten months earlier) or some other “triangular property to the north” including the triangular portion that still is part of the Harvard Park development. In this follow-up meeting the Developer requests modifications to their plans. The Board approves the modification with three additional conditions (see minutes in [Attachment N](#) and updated landscape plan dated as received Aug. 17, 1987 in [Attachment O](#)). The conditions did not address landscape

maintenance responsibilities and no references to landscape maintenance are in the minutes. Staff found no additional follow-up meetings of the Board regarding the Harvard Park development.

- **Aug. 27, 1987:** The Planning Commission hears and issues a decision on the preliminary subdivision plat. The Planning Director was “authorized to grant final plat approval administratively upon satisfaction of the departmental conditions and ordinance requirements.” (See [Attachment P](#) for the minutes and Staff Report.) No references to landscape maintenance were made in the associated minutes or Staff Report.
- **September 1987:** Throughout September 1987 signatures are obtained from numerous City staff, including the then-mayor Palmer DePaulis, on the final plat of Harvard Park, a Planned Unit Development Subdivision, which was recorded on October 1, 1987. The CC&Rs for the PUD were also routed with the plat and approved as to form by Mayor DePaulis. Notably neither the plat nor the CC&Rs includes the Property. (See [Attachment Q](#) for the final recorded subdivision plat and [Attachment R](#) for the final recorded CC&Rs.)

Most Recent Related Activity

Both Appellant and the Harvard Park HOA contacted the City at various times starting in 2025 regarding landscape maintenance responsibility for the Property. While the City met with and exchanged informal correspondence with the parties prior to the Notice and Order, ultimately the Zoning Administrator determined that responsibility for the landscaping fell on Appellant, rather than the neighboring Harvard Park HOA.

The City’s Civil Enforcement Division subsequently issued a Notice and Order for lack of maintenance of weeds to Appellant based on the responsibility determination of the Zoning Administrator. The Notice and Order required Appellant to maintain the Property or the City would conduct an abatement of the over-height weeds and seek reimbursement from Appellant.

Appellant then submitted this appeal and requested a stay order from the appeals hearing officer to prevent the City from abating the weeds. The appeals hearing officer issued a decision on the stay, denying the request to stay any abatement work, but granting the request to stay assessment or collection of the costs of such work. Before the City’s contractor could be dispatched to cut the weeds they were cut by an unknown third party. Consequently, Civil Enforcement closed its enforcement case. While no enforcement is currently pending against Appellant, the City would suggest that the appeal is not moot. A matter is moot before a court if a “decision cannot affect the rights of the parties before [the court].” *Widdison v. State*, 2021 UT 12, ¶ 12. The City would suggest that the decision of the appeals hearing officer can affect the rights of the parties because it will affect to whom the City issues future landscaping maintenance violations for the Property, at least as between Appellant and the Harvard Park HOA. Furthermore, principles of judicial economy would also tend towards issuing a decision in this matter because without a decision requiring either Appellant or the Harvard Park HOA to maintain the Property it is likely that the City will need to issue another Notice and Order, and in the very near future given that the growing season is far from over.

APPEAL

Appellant claims that the Zoning Administrator erred in determining that Appellant is responsible for the landscape maintenance of the Property. Appellant claims that responsibility for maintenance of the landscaping was permanently assigned to the Harvard Park HOA by the Board of Adjustment as part of the PUD approval and therefore Appellant is not the responsible party for the landscape maintenance.

Appellant's full appeal materials are located in [Attachment C](#). Please note that as a potentially "adversely affected party" the neighboring Harvard Park HOA has also supplied a written response to the appeal which is located in [Attachment D](#).

If the appeals hearing officer overturns the Zoning Administrator's decision and determines the Board of Adjustment PUD approval did require the Harvard Park HOA to maintain the landscaping on the Property then the City will enforce the City's landscaping regulations as to the Property against the Harvard Park HOA.

PLANNING DIVISION RESPONSE TO APPEAL CLAIMS

To assist the appeals hearing officer in reviewing the appeal, the Planning Division has provided the following responses to the Appellant's arguments. The Appellant's appeal and information related to these claims are located in [Attachment C](#).

Appellant's Claim 1: Development Conditions Issued by the Board of Adjustment Make the Harvard Park HOA Perpetually Obligated to Maintain the Property

Appellant claims that the PUD approval permanently assigned responsibility for maintenance of the Property to the Harvard Park HOA and that therefore City Code Sections 9.16.040-050 have been superseded as to the Property by that approval. Sections 9.16.040-.050 are provided in full below and unambiguously require the property owner of record to maintain weeds and to cure violations after notice by the City.

9.16.040: WEED CONTROL SPECIFICATIONS:

- A. *Weeds shall be maintained at a height of not more than six inches (6") (15.2 cm) at all times, and the cuttings shall be promptly cleared and removed from the premises. Low-growing puncturevine, poison ivy, and bindweed must be removed regardless of height.*
- B. *Weeds which are eradicated by chemicals must be done so before their height exceeds six inches (6") (15.2 cm), or they must be cut at a level not exceeding six inches (6") (15.2 cm) in height.*
- C. *Weeds which are rototilled or removed by the root must be buried under the soil or removed from the property.*
- D. *The control of low growing weeds such as puncturevine, poison ivy, and bindweed must be implemented by eradication.*
- E. *When, in the opinion of the inspector, the large size of the property makes the cutting of all weeds impractical, the inspector may, by written order, allow and limit the required cutting of weeds to a firebreak of not less than fifteen feet (15') (4.6 m) in width cut around the complete perimeter of the property and around any structures existing upon the property. (Ord. 55-18, 2018)*

9.16.050: NOTICE OF VIOLATION AND CORRECTIVE MEASURES:

- A. *If an inspector conducts an examination of the property and determines it is in violation of the specifications set forth in section [9.16.040](#) of this chapter, the inspector shall serve written notice on the property owner as set forth in subsection B of this section.*
- B. *The written notice described in subsection A of this section shall:*
 - 1. *Identify the property owner of record according to the records of the Salt Lake County Recorder;*
 - 2. *Describe the property and the nature and results of the examination and investigation conducted in accordance with subsection A of this section; and*

3. *Require the property owner to eradicate or destroy and remove the item(s) identified in the notice in a time period designated by the inspector that is no less than ten (10) days after the date the notice is personally served or the date it is postmarked.*
- C. *Once notice has been served upon the property owner during any calendar year directing the cutting and removal of weeds on the property owner's property, no further notice need be served upon the property owner to compel weed cutting and removal on the same property during that calendar year.*
- D. *Such written notice issued by the inspector shall be deemed sufficient and complete when served upon the property owner personally by the inspector or the inspector's duly authorized agent, representative or designee; or mailed, by certified mail to the last known address of the property owner according to the records of the County Recorder.*

Appellant makes no claim that they are not the property owner of record for the Private Property.

Nevertheless, Appellant cites the following as evidence that the City imposed a real covenant against the Harvard Park HOA to maintain the landscaping (an entity that does not own and has never owned the Property) under Claim 1 and Supplemental Claim I:

- The plans showing landscape and irrigation lines to the landscape area.
- The Planning Director's letter to the Developer requiring those improvements.
- The statement in the Harvard Park Declaration of Covenants, Conditions & Restrictions (hereafter "CC&Rs") regarding landscape maintenance responsibility.
- The City Recorder's stamp on the CC&Rs.
- A condition by the Board to not sell off property and an associated Findings and Order note regarding "additions or reductions" not impacting private covenants.

These claims are addressed below.

Appellant Misconstrues the Landscape Plans and the Planning Director's Letter Imposing Normal Installation Conditions as a Real Covenant for Landscaping Maintenance

The City acknowledges that the Board and the Planning Director imposed certain landscaping installation conditions on the Property. Those conditions were as reflected in the approved landscaping plan ([Attachment L](#), also Appellant Exhibit C-3) and a letter from the Planning Director ([Attachment K](#), also Appellant Exhibit C-1). Specifically, the conditions pertaining to the Property likely included: "3. Landscape, irrigate and provide street trees within the 2100 East Street parking strip. To maintain streetscape continuity, Norway Maples planed at 30' O.C. (2" cal. min.) shall be the street tree specie selection. 4. Provide a complete landscaping plan and irrigation plan illustrating all the details of such installations. Plans are to include the existing vegetation/hillside area, all developed areas, parking strip and entire strip between existing stream concrete conduit and Laird Drive." ([Attachment K](#)). Regarding the landscape plans and the Planning Director's letter to the Developer requiring the landscape plan changes, those did not by themselves create a real covenant against the Harvard Park HOA. These were instead normal development improvement installation requirements, and they make no mention of maintenance obligations.

For background, the PUD application and initial 1986 approval by the Board that was subsequently recorded describe an overall property boundary that includes both the Harvard Park HOA property and the Property (see legal descriptions in the application [Attachment F](#) and recorded Findings and Order in [Attachment S](#).) As such, the entire site was subject to the normal development requirements of the City, as set forth in the Zoning Code.

The Board of Adjustment approved the PUD on September 15, 1986 and listed several conditions, including that the final plans, including the landscape plans be approved by the “Committee of the Board.” The “Committee of the Board” is a follow-up board meeting to review and approve more fully developed plans. The Board subsequently approved the landscape plans at their November 10, 1986 “Committee of the Board” meeting (see minutes in [Attachment J](#)). The Board did not add any conditions of approval or note any other requirements. While the City’s records are unclear about exactly what landscape plan the Board approved at their meeting, landscape plans that were provided to the City and that later received review comments from the Planning Director merely reflect what the Developer was required to install as a condition of overall approval of the PUD.

Planning Division Staff subsequently requested additional reviews from other divisions of the plans in December 1986. These are documented in the memo from Doug Wheelwright, the Transportation Division’s review letter, and the Planning Director’s review letter (see [Attachment K](#).) This is a normal course of action for plans undergoing a permit review and in fact the first permit was issued for the proposal on December 23, 1986 (see [Attachment M](#).)

The Appellant specifically cites as evidence of a maintenance requirement the following review comment provided by the Planning Director in their landscape plan review letter noting the areas required to be landscaped (emphasis added):

4. Provide a complete landscaping plan and irrigation plan illustrating all the details of such installations. Plans are to include the existing vegetation/hillside area, all developed areas, parking strip and entire strip between existing stream concrete conduit and Laird Drive.

Following this letter and condition, a revised plan set was submitted to the City and it was signed by the Planning Director under a “Committee of the Board” approval signature block. The plans indicate landscaping and irrigation extending to Laird Drive and include a written notation reflecting that (see Landscape Plan in [Attachment L](#), a clearer version of Appellant Exhibit C-3; see also Irrigation Plan in Appellant Exhibit C-4.)

Appellant argues that the Planning Director’s written comment and the associated approved plan set constitute a real covenant benefitting the Property and burdening the Harvard Park HOA property. However, this comment and the plans do not reflect a real covenant for a maintenance obligation and were in fact a normal improvement requirement for property being developed and subject to the Zoning Code.

Specifically, the Zoning Code required a site to be landscaped, and the review included comments requiring such landscaping. The applicable R-3A zone (see R-3A code in [Attachment T](#)) required that a development be landscaped in Section 51-15A-8(8) (*emphasis added*):

All parts of the site not occupied by structures, paved pedestrian or vehicular access, paved parking surface and recreation areas shall be fully and permanently landscaped following the requirement as specified in Section 51-5-19. Particular attention shall be given to protection of adjoining properties and street from noise, glare and appearance of parking and service areas.

The referenced Section 51-5-19 (see [Attachment U](#)) includes the following requirements regarding the required landscaping:

SEC. 51-5-19. LANDSCAPING REQUIRED. When an area is required to be landscaped under the terms of this ordinance the requirement shall be met by the installation and maintenance of improvements as set forth below:

- (1). The installation of lawn, shrubs, or a combination of shrubs, trees, vines, lawn, or other growing ground cover or water surfaces and paved or graveled surfaces provided that such area shall not cover more than ten percent of the area required to be landscaped;*
- (2). The installation of a permanent sprinkling system to insure adequate maintenance;*
- (3). Planted materials shall be selected from among those species and varieties known to thrive in the Salt Lake climate;*
- (4). Whenever public property is to be landscaped, only lawn or trees, flowers, or shrubs, as approved by the Salt Lake City Urban Forester shall be installed.*

As noted in the Zoning Code, all areas of the development site not occupied by structures were required to be landscaped and such areas also required the installation of an irrigation system. The “site” was the entire area legally described in the original approval that was proposed for development, which included both the Harvard Park HOA property and the Property. Requiring landscaping and irrigation of the site was not an unusual or special condition and reflected a normal development requirement.

The Board’s orders and Director’s review comments and approved landscape plans merely required the Developer to install landscaping and associated irrigation, which requirements implemented generally applicable City Code provisions related to development approvals. There is no evidence in the record before the Board or the Planning Director that the City intended to create a restrictive covenant burdening the Harvard Park HOA property for the benefit of the Property to require the Harvard Park HOA to maintain the landscaping. Real covenants, also called restrictive covenants, “are agreements to do, or refrain from doing, certain things with respect to real property.” 21 C.J.S. Covenants § 6. “[A] “real covenant” creates a servitude upon the realty, in other words, a servient estate, for the benefit of another parcel of land or the dominant estate.” *Id.*

There is no evidence in the record to suggest that the Board or Planning Director’s installation requirements would have the effect of relieving any future owner of the Private Property from responsibility for subsequent maintenance of those installations or imposed an ongoing maintenance obligation solely against the Harvard Park HOA property for the benefit of the Private Property rather than just generally requiring any and all future owners of the property subject to the approval to maintain the landscaping. Appellant’s leap in logic to assume that because landscaping conditions were being applied to property no longer owned by the applicant (but within the scope of the original Planned Unit Development application) meant that the City intended those obligations to exclusively burden the applicant’s property (the Harvard Park HOA property) for the sole benefit of the owner of the Private Property ignores the fact that (1) the Board’s September 15, 1986 decision (the only document in the City’s records pertaining to this matter that was actually recorded against the Private Property) was made the day before Lloyd conveyed the Harvard Park HOA property to the Harvard Park Corporation and more than a month before Lloyd conveyed the Private Property to David Pack, and (2) the record is absolutely silent about whether (much less when) the City even knew that Lloyd had sold the Private Property to David Pack. Instead, in considering the record as a whole, the Planning Director’s comments and the Board’s approval reflect not an intent to saddle the Developer, Donald Lloyd (or by virtue of the CC&Rs, the Harvard Park HOA) with a maintenance covenant on property no longer owned by Lloyd, but rather the assumption that Lloyd still owned the Private Property and the Private Property would be part of the overall development. The record reflects that the Board did not become aware that Lloyd was even considering selling off a portion of the property covered by the original application until August 1987, long after the Board’s initial approval of the

PUD, the Board's approval of the landscaping plans, and the Planning Director's landscaping comments to the Developer.

While the Board may initially have had jurisdiction to impose development conditions against both the Harvard Park HOA property and the Private Property because it was all owned by Lloyd when the Board rendered its September 15, 1986 decision, the Board lost jurisdiction over the Private Property after it was conveyed to Pack because Pack did not join in any future PUD or subdivision application. In a land use application process, if the property owner does not join an application, then a municipality does not have the authority to issue a land use decision applicable to such property because only the property's owner (or the owner's designee) can be a land use applicant. See MLUDMA 10-20-102 (38), (39) (2026); *see also Gunnell v. Hurst Lumber Company*, 30 Utah 2d 209 (1973) (cities may approve *legislative* decisions as to non-applicants). While such concepts are legally enshrined now in MLUDMA, City Code in 1986 still required the Board to give notice to "the parties in interest" before conducting hearings. See City Code Section 51-3-6 in [Attachment V](#). While a member of the Pack family may have received notice of the initial Board hearing due to being included in a property owner mailing list in the original PUD application form, there is no evidence of subsequent notices to or any participation in any other Board or Commission meetings by Pack during which time he was owner of the Private Property or any other subsequent property owners of the Private Property during the 1987 proceedings. It is anathema to concepts of due process that the Board would have continuing jurisdiction to issue and impose development conditions on the Private Property without the owner of the Private Property actually consenting to or participating in the development application.

Even if there was evidence that the Board had intended to impose a maintenance covenant on the Developer or Donald Lloyd (and through them, the Harvard Park HOA) such a condition would properly be considered as exceeding the authority of the Board and would work absurd results if enforced. Appellant fails to cite any authority for the proposition that the Board had the authority to create such a maintenance covenant. Again, the record suggests that the Board was not intending to create a maintenance covenant because it likely instead believed that it was just requiring the Developer and Lloyd to comply with generally applicable City ordinances related to landscaping installation for new development, being unaware that title to the Private Property had in fact changed hands. It is highly unlikely that the Board intended to create a maintenance covenant against the Developer/Harvard Park HOA/Lloyd because enforcing that obligation would seriously interfere with Lloyd's right to alienate property, seems likely to expose the Developer/Harvard Park HOA/Lloyd to trespass liability, would interfere with any owner of the Private Property's right to exclude, and enforcing such a covenant would quickly become absurd. *See InnoSys, Inc. V. Mercer*, 2015 UT 80, ¶ 33 ("[A] trespass on a right of property is actionable upon any physical invasion of it, regardless of whether the invasion causes measurable damage. The presumption of harm flows from the very nature of a property right, which at its core is a right to exclude others.").

For example, if the CC&Rs had not been created would Lloyd have had to maintain the Property even though it was owned by Pack? And upon Lloyd's death would his estate have had to maintain it? Even if Harvard Park HOA had such a maintenance obligation, what if Pack had wanted to donate the Private Property? Could the Harvard Park HOA have prevented that and sought City enforcement because the area was supposed to be landscaping, even though the Harvard Park HOA did not own it and the CC&Rs are not recorded against the Property? What happens when the Harvard Park property is redeveloped? Will all future owners of that land have to maintain the Property even when no longer receiving the benefits conferred by the PUD? Requiring a non-owner, even if such non-owner was a predecessor in interest, to continue to maintain property it did not own and had no rights to use or

any benefit to the non-owner to continue to maintain such property would be so anathema to Utah's land use regulations or real property laws that it is difficult to understand on what basis the Board could possibly justify such an obligation (and again the record is silent on the Board imposing such a covenant, much less an explanation of why it might be appropriate). However, as set forth in this Staff Report, the Zoning Administrator concluded that no such maintenance covenant was ever imposed by the City, and instead either (1) the PUD approvals ultimately did not apply to the Private Property because Pack was never involved in the approval process after the Private Property was conveyed by Lloyd and the Private Property was not included in the subsequent Harvard Park plat and the CC&Rs were not recorded against the Private Property, or (2) any maintenance obligation runs with the land subject to the PUD in the manner that future property owners are obligated to maintain the portion of the PUD that they in fact own. Either result is wholly consistent with Utah's laws related to vested rights and that future owners, in order to keep the prior governmental development approval, must comply with the conditions of that approval. *See Keith v. Mountain Resorts Development, LLC*, 2014 UT 32 ("When a county approves property for development but then that property is sold to someone else, no additional approval is necessary 'so long as the [new owner's] use [is] consistent with that that had already been approved.'").

In *Keith v. Mountain Resorts Development, LLC*, 2014 UT 32, the Utah Supreme Court had occasion to rule on what happens to local government development conditions when properties that previously received development approval were no longer developed together. In that case Ms. Keith and United Park City Mines ("UPCM") collectively as tenants in common owned 321 acres in Wasatch County. Both Keith and UPCM applied for a large real estate development and received preliminary development approval in 2002. Subsequently, Keith and UPCM could not agree on how to develop and in 2005 pursuant to a settlement agreement in a partition action Keith received an undivided interest in one of three parcels (Parcel A) and UPCM received an undivided interest in the two other parcels (Parcels B and C). After the transaction UPCM believed that it had retained all of the development rights conferred by Wasatch County and that Ms. Keith had no rights under that approval. The Court agreed with UPCM that Keith had not received any development rights because (1) nothing in the deed from UPCM included any such rights and (2) the development approval from Wasatch County lapsed because the property on which the approval was granted was divided into two parts, there was no agreement between the parties to continue to develop the properties together, and Ms. Keith's Parcel A was not the underlying property upon which the approval was granted. These changed conditions, the Court reasoned, destroyed the approval and Parcel A alone had no vested right to develop pursuant to the 2002 Wasatch County approval. In this appeal, no party asserts that the City's PUD approval as to the Harvard Park HOA property lapsed given that building permits, the Harvard Park plat, and CC&Rs were subsequently pursued to completion. Accordingly the appeals hearing officer should conclude that no interested party, whether it be the City, Pack, Lloyd, or the Developer considered the Private Property an important component of the Harvard Park development. Rather, the more reasonable conclusion is that the City ultimately approved eliminating the Private Property from the development and any previously expressed conditions pertaining to the Private Property lapsed.

Regarding the park strip maintenance itself, the City Code in effect and applicable to the original development in section 51-5-16 (see [Attachment U](#)) stated the following regarding parking strip landscaping and abutting property owner responsibility (emphasis added):

SEC. 51-5-16. USE AND LANDSCAPING OF PARKING STRIPS:

*The parking strip or the area of the right of way located between the curb line and the private property line shall be **completely landscaped** with vegetation living*

*materials such as lawn, approved ground covers, and approved trees **and maintained by the abutting property owner.** Said area shall be kept free of all hard surfacing, including stone or aggregate, except for approved driveway and sidewalk areas. The location and spacing of vegetation shall allow for adequate access and visibility of driveways, intersections, and signs so as not to constitute a safety hazard. In those circumstances where it is not appropriate or desirable to meet the above criteria, the Planning Commission, with the approval of the Mayor, may grant exceptions, based on compliance with parking strip standards as adopted by the Planning Commission. Three copies of the current parking strip standards adopted by the Planning Commission, shall be on file with the official records of the Planning Commission.*

The Board of Adjustment did not modify this regulation through the PUD process and City Staff can find no other record of a modification. As there was no modification to this requirement, the abutting property owner would have been responsible for the park strip maintenance due to the Zoning Code requirement. The requirement for the abutting property owner to maintain a park strip remains a requirement today, with the requirement being located in City Code 21A.48.080.C.

In sum, instead of imposing a maintenance covenant on the Developer, to which Appellant asserts the Harvard Park HOA succeeded pursuant to the CC&Rs, the record instead tends to reflect that the development conditions for the PUD either (1) did not end up applying to the Property because the Property was ultimately removed from the PUD, or (2) that just as the Harvard Park HOA inherited the development approval conditions as to the Harvard Park HOA property Pack inherited the development conditions as to the Property. In either case, development conditions expressed in the documents issued by the City (and not the CC&Rs that the City merely approved as to form) do not express a maintenance covenant and there is substantial evidence to refute Appellant's assertion that the City imposed a maintenance covenant that obligates the Harvard Park HOA to maintain property it does not own and has never owned.

Any Maintenance Covenant in the CC&Rs was Not Required by the City and is a Private Covenant

Appellant in Claim 1 and Supplemental Claim I.B, identifies provisions in the CC&Rs adopted by the Harvard Park HOA in 1987 after the PUD was approved as proof that maintenance by the Harvard Park HOA of the Property was required by the City, arguing that the CC&Rs memorialized such a condition. Appellant also points to a City "Approved" stamp as evidence to suggest a formal memorialization or recognition of such a condition.

The following statement is on page 6 of the original CC&Rs (see [Attachment R](#) for full CC&Rs, excerpted in Appellant Exhibit I):

The association shall maintain or cause to be maintained the landscape area including the park strip (area between the back of curb and the property line) to Laird Drive as outlined in the Salt Lake City Board of Adjustment Case No. 319-B and the final landscaping plan approved by the Board.

Appellant also references a general governmental approval statement on page 21 of the CC&Rs (see [Attachment R](#) for full CC&Rs, excerpted in Appellant Exhibit I):

Owners, the Board of Trustees, and the Committee acknowledge that Harvard Park Planned Unit Development Subdivision obtained approval for the Development from

the Salt Lake City Board of Adjustment, Case No., 319-B and any modifications to the approved Plan are subject to the review and approval of the Board of Adjustment.

The City disagrees that these statements memorialized or otherwise formally recognized a maintenance covenant imposed by the City on the Harvard Park HOA, as (1) the City cannot find any evidence of such a requirement in the record to be memorialized and (2) the City did not approve the content of the CC&Rs. If the City had intended to create the maintenance covenant in favor of any future owner of the Private Property then it makes little sense why the City (1) did not require the CC&Rs to be recorded against the Private Property, (2) did not give the City or the owner of the Private Property any consent rights in the CC&Rs in the event that the Harvard Park HOA wanted to change them, (3) did not give Pack or his successors any authority to enforce the terms of the CC&Rs to have the Harvard Park HOA maintain the Property or (4) did not require language to be included in the CC&Rs that gave the Harvard Park HOA an easement over the Private Property, akin to the easement that the Harvard Park HOA has over the lots in the Harvard Park subdivision, to maintain the landscaping. See CC&Rs at 16 and 19 (the only parties with any enforcement authority include the declarant, any owner, or the Harvard Park HOA).

As noted in Claim 1, the Zoning Administrator was unable to find any order or condition in the approval record from the Planning Director, Planning Commission, or Board of Adjustment that required landscape maintenance of the Private Property by the HOA, as opposed to any future owner of the Private Property. There were several opportunities wherein these entities could have established a condition for maintenance, but the record does not show such a condition was applied.

Appellant also points to an “Approved” stamp on the CC&Rs by the City Recorder and suggests this indicates a formal approval, recognition or memorialization by the City of such a condition. Appellant has provided an affidavit from a former City Planning Director Allen Johnson (see Appellant Affidavit Exhibit) in support of the “Approved” stamp meaning an approval as to the content of the CC&Rs. Mr. Johnson maintains that the “Approved” stamp meant “that the City had officially accepted that document...[including] the document’s contents as consistent with, or approved in connection with, an underlying City permit, decision, or requirement to which the document related.” Mr. Johnson’s affidavit does little to bolster Appellant’s argument. The City acknowledges that the CC&Rs generally were approved as to form in connection with the Harvard Park plat approval and that they, in general, are consistent with the PUD approval, but that Mr. Johnson’s statements (when he acknowledges he has no personal knowledge of the PUD approval) cannot be taken to mean that each and every provision in the CC&Rs was subject to approval by the City or reflected development conditions imposed by the City.

The City disagrees that the “Approved” stamp means that the City imposed a maintenance covenant applicable to land that the CC&Rs would not even be recorded against. The CC&Rs themselves include a signature block by the Mayor titled “Approval as to Form.” This indicates that the City’s approval, regardless of any other “Approved” stamp by the Recorder, is as to the form of the CC&Rs and not to their content. In addition to stamping “Approved” on the CC&Rs themselves, the Recorder also stamped “Approved” on the memo briefing the Mayor regarding the subdivision materials, to which there would be no actual approval needed or conferred (see [Attachment W](#)). This indicates that the stamp was used more generally to indicate approval as to City recording purposes by the City Recorder.

Further, a review of similar subdivision related materials submitted to the City Recorder indicates that such documents were stamped with “Approved” from at least 1987 to 1991. Based on these materials, the City Recorder changed their practice around 1991 to stamp “Recorded” in place of the “Approved”

stamp. A specific example demonstrating this change are condominium amendments for the same development from both 1989 and 1994 in [Attachment X](#). Where an “Approved” stamp is used in 1989, a “Recorded” stamp is used in the same document locations in 1994.

The City acknowledges that the CC&Rs are the best, and really only evidence that a maintenance obligation was created in favor of the owner of the Private Property. However, based on a review of the City’s records, the Zoning Administrator must conclude that the Harvard Park HOA created this maintenance covenant for itself. Before the CC&Rs were amended to remove this covenant it was merely a private covenant, concerning which the City has no enforcement role and had no obligation to act in derogation of its ordinances to recognize a private covenant. See City Code 21A.04.020.B (“The provisions of this title are not intended to interfere with, abrogate or require enforcement by the City of any legally enforceable easements, covenants, or other agreements between private parties that may restrict the use of land or dimensions of structures more than the provisions of this title.”) Because the City’s approval documents did not include this maintenance covenant the City cannot attempt to impose such a requirement now. See Utah Code 10-20-902(1)(h).

Statements by the Board Related to Proposed Triangular Parcel Sale and “Reduction or Addition” Language Did Not Create a Maintenance Covenant

Appellant in Supplemental Claim I.B argues that a maintenance covenant was reinforced by subsequent Board of Adjustment findings and conditions from 1987. Appellant highlights a statement in the Board of Adjustment’s August 17, 1987, meeting minutes whereby Lloyd requested to “sell the triangular property to the north to the abutting property owners.” The Board in response added a condition of approval that “None of the land is sold off so long as this is part of a cohesive development...”

Appellant proposes that the triangular property referred to was the Private Property and therefore a prohibition on selling the triangular property implied a covenant that the Harvard Park HOA must maintain the Private Property in perpetuity. Appellant goes on to speculate that the Board knew it was creating a maintenance covenant against the Harvard Park HOA because of an additional statement in the Findings and Order which states “...provided such reduction or addition does not conflict with any private covenants or easements which may be attached to or apply to the property...” The City disagrees that this no sale condition and associated statement represented a maintenance covenant.

The City acknowledges that the referenced “triangular property” may have been referring to an area that includes the Private Property and in fact found a draft version of the plat which excludes a triangular area of the plat, as well as the Private Property (see [Attachment Y](#).) However, no maintenance requirement was added by the Board that acknowledges the sale of the Private Property to Pack and there are no records to reflect that the City made any attempt to get the Developer or Lloyd to convey the Private Property to Harvard Park Corporation and in fact the Private Property, which was sold ten months prior to the Board’s August 1987 meeting, was never conveyed back to Lloyd or his agents and has since remained separate. The Board in fact qualified their “no sale” condition in purporting to put a stop to the proposed conveyance “so long as this is part of a cohesive development,” leaving the potential for a sale open if it wasn’t “cohesive” to the development. Yet, even when presented with the possibility of Lloyd selling off part of the project area the Board still did not express a condition that if property was sold it would still need to be maintained by the Developer, Lloyd, or the Harvard Park HOA. Appellant’s “implied covenant” reading of the Board’s actions is strained. If the Board believed the Private Property was part of the “cohesive development” as Appellant argues, then it makes little sense why the City would have approved CC&Rs and a plat that did not include the Private Property in the development. Assuming without conceding that the triangular property

included the Private Property, a more reasonable conclusion regarding the impact of the Board's decision is that the City should have revoked the PUD if the Private Property was not included in the Harvard Park plat, not that the City would enforce a maintenance covenant against a non-owner. Regardless of what future action should have been undertaken to implement the Board's decision the parties appear to agree that no express maintenance covenant was imposed by the Board at its August 1987 meeting.

Finally, the language referenced by Appellant in the Findings and Order specifically states that "... provided such reduction or addition does not conflict with any private covenants or easements which may be attached to or apply to the property..." (see Appellant Exhibit C-7.) Appellant argues that this was intentionally directed at the preservation of a maintenance obligation requirement even if the Private Property (part of the triangular parcel) was sold off (reduced).

However, this statement was in fact not added by the Board of Adjustment as a condition (see minutes in [Attachment N](#)) and is a general boilerplate statement that was added to all Board of Adjustment Findings and Order documents by City Staff as a disclaimer. The statement is found on both the original Findings and Order from August 1986 (see Appellant Exhibit C-5) and the September 1987 Findings and Order (see Appellant Exhibit C-7.) It is also similarly located on other Findings and Order documents from that era (see example in [Attachment Z](#).) As such, the statement was not purposefully added as an acknowledgement of a specific associated covenant.

If the intention of the Planning Director or Board of Adjustment was to require the Harvard Park HOA to maintain the Property for the perpetual benefit of a third party property owner, there were two other opportunities after the initial approval process in 1986 to create that obligation. These were when (1) the Developer returned to the Board of Adjustment for adjustments to their plan and (2) when the preliminary subdivision plat was taken to the Planning Commission for approval. In neither case was action taken to do so, such as a condition of approval, or other representation in the record that there was a maintenance obligation imposed on the Harvard Park HOA. The records of those proceedings are located in [Attachment P \(Commission\)](#) and [Attachment N \(Board\)](#).

Claim 2: The Orders are Illegal and Not Supported by Substantial Evidence

The Appellant claims that the Civil Enforcement order was illegal as the condition to maintain the Property was established in the PUD approval and was never appealed by the Developer. As noted in Claim 1, the City disagrees with that conclusion, as there is no evidence in the approval record establishing that the City required the Harvard Park HOA to maintain the landscaping of the Property. Because no maintenance covenant was created by the City, the Developer had no reason to appeal it. Rather, the Developer installed the landscaping improvements as required by the Board and the Planning Director, but that installation did not by itself create a City required maintenance obligation. Instead, generally applicable City ordinances took over at that point, which required the property owner (then Pack) to maintain the landscaping on the Property. As such, the Developer did not have a City required maintenance condition to object to and appeal.

Appellant also cites City letters issued to both the Appellant and Harvard Park HOA last year which the City acknowledges were unclear and were made before the full record, including relevant subdivision records, were found in City archives. Rather than follow the City's advice to obtain a formal interpretation of the PUD approval conditions, through the City's Administrative Interpretation process in City Code Chapter 21A.12, Appellant refused to do so and instead the City was forced to issue the Notice and Order to pursue abatement of the over-height weeds that posed a fire risk. The City issued the Notice and Order with the full City record having been reviewed.

Claim 3: The City is Barred by Equitable Estoppel from Enforcing the Notice and Order

Appellant claims under Claim 3 and Supplemental Claim V, that the City is barred by the legal doctrine of equitable estoppel from enforcing the weeds Notice and Order. Appellant notes that they have made improvements to the Private Property, such as fencing and sprinkler installations, on the basis that the City required the Property to be maintained by the Harvard Park HOA. In order to prevail on a claim of equitable estoppel against a government entity Appellant must satisfy the following elements: “(1) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted; (2) reasonable action or inaction by the other party taken or not taken on the basis of the first party’s statement, admission, act or failure to act; and (3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.” *S. Weber City v. Cobblestone Resort LLC*, 2022 UT App 63, ¶¶ 26-27 (quotations omitted). “Generally, the doctrine of estoppel is not assertable against the state and its agencies.” *McLeod v. Retirement Board*, 2011 UT App 190, ¶ 20, 257 P.3d 1090 (quotation simplified). However, there is a narrow exception to this general rule for “unusual circumstances where it is plain that the interests of justice so require.” *Eldredge v. Utah State Ret. Board*, 795 P.2d 671, 675 (Utah Ct. App. 1990) (quotation simplified).

The City disagrees that the doctrine of equitable estoppel applies to this case as there was no representation from the City regarding a maintenance covenant in any of the City issued approvals when the PUD was approved between 1986 and 1987. As noted in the City’s response to Claim 1, the maintenance obligation in the CC&Rs was not required or represented by the City. There was no requirement imposed as part of the PUD or subdivision plat process by the City, and City Staff can find no record of the City representing such a requirement in the original approval records. The maintenance requirement can only be found in the CC&Rs, which are a private covenant among the HOA property owners and not a representation by the City. As there was no representation of such a maintenance requirement by the City, the doctrine of equitable estoppel does not apply to this case. The City acknowledges that Appellant may have reliance arguments against the Harvard Park HOA, but they do not have them against the City and the City takes no position on what remedies Appellant may have to seek performance of the maintenance obligation privately. *See WDIS, LLC as Tr. of MDMG Tr., Dated Apr. 25, 2016 v. Hi-Country Ests. Homeowners Ass’n*, 2022 UT 33, ¶ 19, 515 P.3d 432, 437 (“Another reason for applying the presumption is that voiding even defective covenants will upset certain reliance interests. And in some cases, like this one, where the covenants have existed for decades, those interests may be especially substantial.”)

Appellant further fails to satisfy the elements of equitable estoppel because their claims fail to amount to a true injury, much less a circumstance in which the interests of justice favor them. Appellant claims that they previously re-built a fence in its current location, on the basis that the Private Property in front of the fence would be maintained by the Harvard Park HOA. Appellant suggests that if Appellant is required to maintain the Property going forward then they would rebuild the fence again closer to the sidewalk line to fully incorporate the Private Property into their yard. This injury claim fails because (1) Appellant is not required to fence the Private Property, and (2) without a survey of the Private Property, the exact location of Appellant’s property line is not known – as in, the Private Property may largely already be incorporated behind Appellant’s fence. The sidewalk location does not always correspond with the location of private property lines. It is possible that the fence already incorporates most of the Private Property into the Appellant’s back yard and the area in front of it may be fully within City right-of-way. Since the City requires that fences be “...erected entirely within the property lines of the property they are intended to serve” as per City Code 21A.40.120.B, the fence may not be allowed to extend out closer to the sidewalk. Thus, any expense relating to rebuilding the fence would be both

a self-imposed expense and is purely speculative. Next, Appellant also identifies irrigation system installation costs as a potential financial harm they would incur if they are required to maintain the Property. According to the brief of the Harvard Park HOA, irrigation lines remain on the Property and Appellant will merely need to connect those lines to the Appellant's water lines. Appellant offers no evidence to identify what this expense might entail. Furthermore, under the City's landscaping ordinances significant irrigation is not required and many drought tolerant plant species can be installed. Ultimately, Appellant's speculative injuries substantively amount to property maintenance obligations that any private property owner faces in the City and the interests of justice do not support continuing to require the Harvard Park HOA to bear that expense for the benefit of Appellant.

The City's subsequent correspondence in 2025 also does not give rise to a successful equitable estoppel claim because Appellant cannot point to any injury they suffered in 2025 resulting from the City's informal correspondence. Rather, all of Appellant's assertions of injury occurred before 2025. In order to prevail on an equitable estoppel claim Appellant has the burden to marshal the evidence and cannot make bald assertions of reliance and injury. *See R.O.A. Gen. Inc. v. Salt Lake City Corp.*, 2022 UT App 141, ¶ 32. The record reflects that the City's informal 2025 correspondence was made without the benefit of the entire City record and when the City directed Appellant to apply for an administrative interpretation that would give Appellant the type of certainty that could be relied upon for estoppel purposes, Appellant refused. Appellant makes no attempt to show how it changed positions in reliance on the City's 2025 correspondence, rather, it appears that Appellants merely continued not to maintain the Property in the same pattern as in past years. Therefore, no injury was sustained by the City's 2025 correspondence.

Appellant's position also fails to account for how estopping the City from enforcing maintenance requirements against Appellant seems likely to result in the impairment of the City's governmental powers. Estoppel not available against the government if governmental powers will be impaired. *See Monarrez v. Utah Dep't of Transp.*, 2016 UT 10, ¶ 35. Appellant treats the Harvard Park development and the Harvard Park HOA as a development and entity that will exist forever. However, Appellant's implied maintenance covenant will quickly become unenforceable if the Harvard Park HOA ceased to exist or the Harvard Park HOA property redevelops such that PUD approval lapses. If either of those things were to happen then maintenance responsibility for the Property would effectively enter a kind of legal limbo and the City would have no party against which it could enforce the alleged maintenance covenant.

Supplemental Claim I: Substantial Evidence Demonstrates Harvard Park's Permit Conditions Created a Maintenance Obligation that Runs with the Land and Remains Binding Today

Appellant argues that there is substantial evidence demonstrating a maintenance obligation condition. This claim is addressed in the City's response to Claim 1 above.

Supplemental Claim II: The PUD Permit Conditions Cannot be Overridden by the City's General Ordinances

Appellant argues against a potential City claim that the current City ordinances override any prior permit conditions. The City's argument on this point is twofold. First, that the City did not in fact impose a development condition on the Harvard Park development to perpetually maintain the Private Property. Second, even if such development condition existed, it lapsed for purposes of City enforcement when the Private Property was not included as part of the Harvard Park development as shown on the plat. Third, even if such development condition existed, the City has elected not to enforce

it because such a condition exceeded the authority of the Board. Such a decision not to enforce the claimed maintenance obligation in favor of Appellant is not an appealable land use decision. *See Fuja v. Woodland Hills*, 2022 UT App 140, ¶ 15.

Supplemental Claim III: The HOA's Obligation to Maintain the Maintenance Area Did Not Violate Public Policy Then and It Does Not Violate Public Policy Now

Appellant argues against a potential City claim regarding a Utah State Code provision in Section 10-20-604 preventing the City from requiring an HOA to be responsible for a public amenity. The City is not making this claim.

Supplemental Claim IV: The City Should Reject Outright Any Challenge by the HOA as Time-barred

Appellant argues that the City should reject any challenge by the HOA regarding landscaping responsibility as their time to appeal the original approval and any associated conditions have long expired. As noted in the City's response to claim 1, the evidence does not demonstrate that a landscape maintenance covenant was imposed on the Harvard Park HOA by the City. The Developer installed the associated landscape improvements as required by the Director and City Code, but that installation did not in itself create a maintenance covenant in favor of Appellants. As such, the Developer did not have a City required maintenance covenant to object to and appeal.

Supplemental Claim V: Appellants Relief on the Recorded Permit Conditions Such that the City should be Estopped from Requiring Appellants to Maintain the Property

Appellant claims that the City is barred by the legal doctrine of equitable estoppel from enforcing the weeds maintenance enforcement order. This claim is addressed in Claim 3 above.

CONCLUSION

Based on the evidence in the record, there was no landscape maintenance covenant required by the City and imposed on the Harvard Park HOA for the benefit of the Property.

The materials cited by Appellant as evidence of such a maintenance covenant do not demonstrate that the City imposed any development conditions related to landscaping aside from certain installation obligations, which the Developer complied with. Requiring landscaping and irrigation to be extended into a property that was part of the overall development property when those conditions were imposed did not obligate the Harvard Park HOA to maintain all of that property in perpetuity or waive obligations of the owner of the Private Property to maintain the Private Property as any other private property owner in the City is required to. The CC&Rs, while containing a maintenance requirement, are private covenants that the City is not a party to, and the evidence does not demonstrate that the City required the Developer to insert such a condition into that document nor that the City's approval of the CC&Rs made all of the language in the CC&Rs a development condition of the City's. While the Harvard Park HOA's decision to no longer maintain the Property is an understandably difficult adjustment for Appellant, the City has done nothing to make Appellant rely on the continuity of the HOA doing so and Appellant's claims of harm for relying on the Harvard Park HOA's maintenance covenant in the CC&Rs tend to show that the equities lie in favor of the Harvard Park HOA to be relieved of the expense of a maintenance obligation on property it does not own, has no right to use, and that does not appear to confer any benefit to the Harvard Park community. Appellant should be required to maintain their property as every other property owner and has many options to maintain

the Property including fencing it for Appellant's exclusive use, installing no or low watering ground cover, and can utilize the existing irrigation system installed by the Harvard Park HOA to the extent irrigation is needed to maintain the Property.

As such, Appellant's arguments should be rejected by the appeals hearing officer and the decision of the Zoning Administrator upheld.

NEXT STEPS

If the administrative decision is upheld, Appellant will be responsible for the landscape maintenance of the Property, and they will be subject to future enforcement by the City if the Property is not maintained in accordance with City Code.

If the administrative decision is overturned, the Harvard Park HOA will be responsible for the landscape maintenance of the Property and it will be subject to future enforcement by the City if the Property is not maintained in accordance with City Code.

The decision of the appeals hearing officer can be appealed to Third District Court within 30 days of the decision.

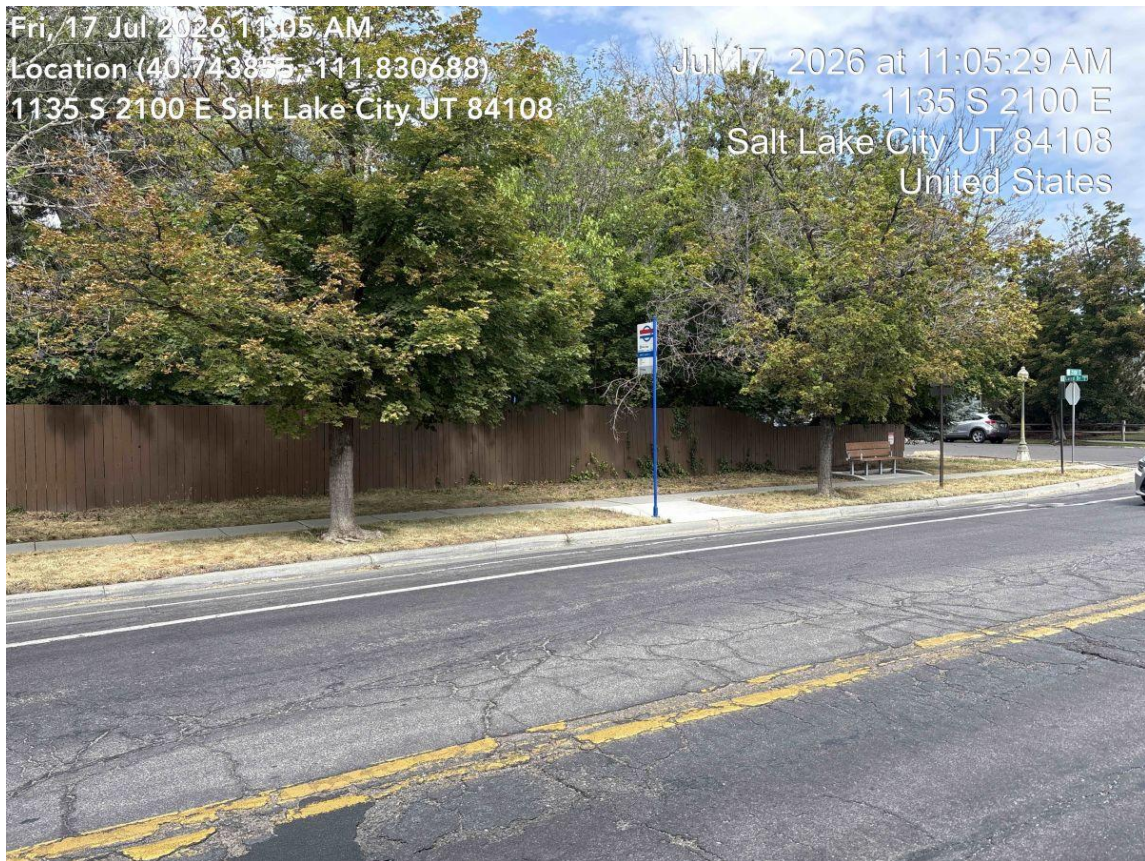
ATTACHMENT A: Vicinity Map

[illegible]

ATTACHMENT B: Property Photos



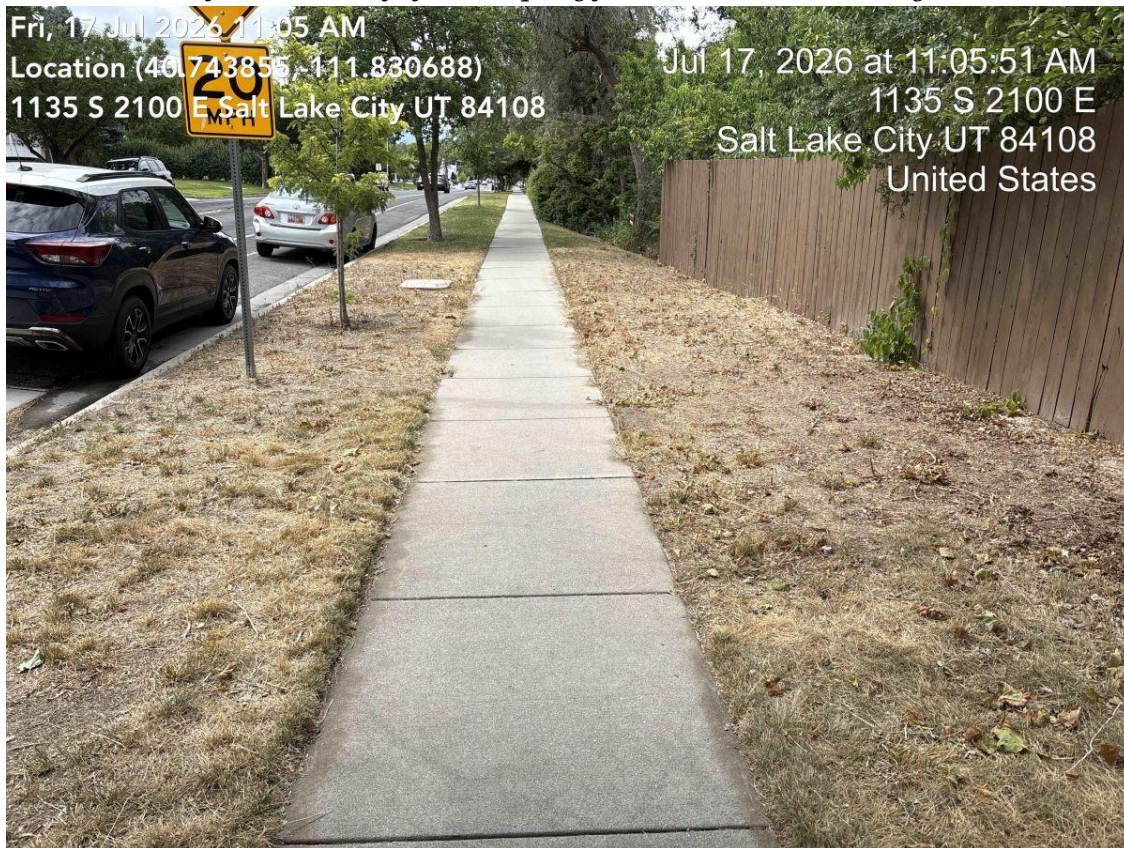
*Aerial view of the Property looking west. Please note that property line locations shown are approximate.
(Credit: EagleView, October 22, 2025)*



View of the north half of the Property, looking north-west.



View of the north half of the Property from the sidewalk, looking north.



View of the south half of the Property from the sidewalk, looking south.

ATTACHMENT C: Appellant Brief

Please see separate PDF for materials filed by the Appellant:

1. Initial Brief (“Request for Initial Determination/Appeal of Decision of Case No. HAZ2026-02466”)
2. Supplemental Brief
3. Exhibits A to HH
4. Affidavit of Allen C. Johnson

ATTACHMENT D: Adversely Affected Party Brief

Please see separate PDF for materials filed by the Harvard Park HOA representative:

1. Brief (“Harvard Park Homeowners Association’s Response to Renteria’s Request for Determination/Appeal of Decision of Case No HAZ2026-2466”)
2. Exhibits 1 to 4

ATTACHMENT E: City Code Section 51-6-10, 1986

not less than thirty (30) feet and a landscaped side yard on both sides of not less than ten (10) feet;

(3). The area to be developed into a recreational area must be of such size, shape and so located as to not cause any undue infringement on the privacy of the abutting residential areas and be in keeping with the design of the neighborhood in which the recreational area is to be situated;

(4). A solid wall or substantial fence shall be required around the entire recreational area to a height of not less than four (4) feet nor more than six (6) feet, the fence across the front of the property to be constructed at the required front setback line;

(5). Under no condition can any admission charge be made for the use of any of the facilities in the recreational area;

(6). Under no condition can any type of retail or business facilities, including vending machines, be permitted in the recreational area, except those specifically approved by the Board of Adjustment;

(7). Club houses or any type of nighttime indoor facilities will not be permitted;

(8). Before authorizing the recreational facility, complete plans for the development of the area must be submitted to the Salt Lake City Planning Commission and their recommendation submitted to the Board of Adjustment. Together with the plans, there must be submitted a detailed outline showing how the area is to be financed and maintained. If any restriction or requirement placed as a condition upon which the recreational area is approved is not complied with, the authorization will be void and the property shall not be used for a private recreational area;

(9). The Board of Adjustment shall have the authority to place whatever additional conditions or restrictions it may deem necessary to protect the character of the residential district and to ensure the proper development and maintenance of such a residential area, including the plans for disposition or reuse of the property if the recreational area is not maintained in the manner agreed upon or is abandoned by the developers.

SEC. 51-6-10. RESIDENTIAL GROUP OR PLANNED UNIT DEVELOPMENTS, EXCEPTIONS FOR APARTMENT AND GROUP DWELLINGS.

(1). Availability in specified districts. As a special exception to the zoning ordinances, the Board of Adjustment may, pursuant to this section, permit land in the following designated use districts to be used for residential planned unit

developments, (including planned community apartments, condominiums or subdivisions of attached or detached structures) wherein individual residential buildings front on private roads or courts, and/or clustered developments which may front upon public developments, "PUD(s)" or clustered developments may be considered as special exceptions to the permitted uses in the Preservation "P-1", Residential "R-1A", "R-1C", "R-2A", "R-3A", "R-4", "R-5", "R-6", and "R-7". No such development shall be approved unless the Board of Adjustment finds that such development is in accord with the general purposes and intent of the comprehensive zoning ordinances and other applicable ordinances of this City and that approval of the development is in the best interest of the community.

(2). Application and review. Every request for approval of such special exceptions shall be accompanied by an application, proposed plans, and fees. Said application shall also require a declaration as to the type of ownership arrangement, (e.g., apartments, condominiums and/or subdivision) for which approval is desired. Compliance with this section in no sense excuses, releases or waives the application or owner from compliance with applicable requirements of this title, including Chapter 33 relating to condominiums, Title 5 relating to building codes, or Title 42, relating to subdivisions. Approval of a planned unit or group development under this provision shall only apply to modifications specifically approved in the terms of formal written approval. The approval shall be valid for a period of six months during which a valid building permit must be obtained. Renewal or extensions of plan approval by the Board of Adjustment or renewals or extension of expired building permits may be made at the discretion of either the Board of Adjustment or Building Official, as appropriate; however, no renewals or extensions on approvals or permits that have expired by their own language shall be given if subsequent changes in the zoning ordinance prohibit the use.

(3). Nonresidential concession in residential planned unit development(s). As part of a PUD or group dwelling development containing five (5) acres or more, the Board of Adjustment may authorize the use of a separate building within the project for retail services and concessions, solely for the use and convenience of occupants of the development. Such commercial uses excluding professional services is intended to include only those other retail services and concessions which could be located in a Business "B-3" District and qualify as for the use and convenience of the occupants of the PUD.

(4). General conditions. No such development shall be approved unless the Board of Adjustment finds the following general conditions and special conditions of Section 51-6-10 (5) are satisfied.

- (a). The entire group of structures as a unit shall be required to maintain one (1) front yard, one (1) rear yard and two (2) side yards, as specified for individual structures in the district in which the development is located; i.e., group dwellings shall be considered as one building for the purpose of front, rear and side yard requirements.
- (b). Where the buildings front on a private street or court, a setback from the curb line of the private street or court of not less than twenty (20) feet shall be maintained. Where the structures front on a court, the court shall have a minimum width of forty (40) feet.
- (c). Off-street parking shall be required on a ratio of two (2) stalls to each dwelling unit.
- (d). No separate dwelling structures shall be closer to each other than twenty (20) feet in a Preservation "P-1", Residential "R-1A", "R-1C", "R-2A", "R-3A", or "R-4" District or fifteen (15) feet in a Residential "R-5", "R-6" or "R-7" District.
- (e). No dwelling or establishment shall have its front or rear door opening on a minimum required side yard. If the side yard is to be used for access to the unit, it must be at least twenty (20) feet in width with a minimum of eight (8) feet of landscaping along the property lines.
- (f). The concessions and services provided for the convenience of the occupants of the group dwelling project shall be located in one of the main buildings, as provided in Section 51-17-1 or, if located in a separate building, the building shall be located and designed as to be a part of the residential character of the development having the same outside appearance as the other structures in the development. No advertising signs or display windows shall be authorized. No advertising or promotion of the said concessions or services shall be made by any method to any persons other than those living in the development.
- (g). The Board of Adjustment may require additional conditions or restrictions as may be deemed necessary to protect the interests of the community and the abutting property owners and to provide for healthy and proper living conditions. The Board of Adjustment shall have the right to refuse approval of any application when, in its opinion, approval would not safeguard the character of the district in

which the development is planned.

- (h). The Planning Commission shall review all applications and submit a recommendation to the Board of Adjustment.

(5). Special provisions. In addition to the general conditions of (4) above, no PUD proposed in Residential "R-1A", "R-2A" or "R-4" Districts shall be approved unless the Board of Adjustment finds it also complies with the following special conditions in the respective districts:

- (a). In a Residential "R-1A" District:

- (i). No building or structure shall be permitted closer than twenty (20) feet to the side property line from a boundary of the development.
- (ii). No building or structure shall exceed two (2) stories in height unless a proper showing is made to the Board of Adjustment that a higher structure would not unduly interfere with the view from the surrounding properties, nor would it place adjoining properties in a shadow depriving them of adequate light and air or in any way create an undesirable condition to adjoining owners, and the Board is satisfied that such higher structure is not inconsistent with the character of the district in which it is located.
- (iii). The density approved shall be in keeping with the area in which the proposed development is located, however, no approval shall be given to a development containing more than four (4) families to an acre.
- (iv). The development shall be on at least two and one-half (2 1/2) acres.

- (b). In a Residential "R-2A" District:

- (i). No building or structure shall be permitted closer than twelve (12) feet to the side property line from a boundary of the development.
- (ii). No building or structure shall exceed two (2) stories in height unless a proper showing is made to the satisfaction of the

Board of Adjustment that a higher structure would not unduly interfere with the view from the surrounding properties, nor would it place adjoining properties in a shadow depriving them of adequate light and air or in any way create an undesirable condition to adjoining owners, and the Board is satisfied that such higher structure is not inconsistent with the character of the district in which it is located.

(iii). The density approved shall be in keeping with the area in which the proposed development is located and must be such that no undue hardship is placed on the streets serving the area or on the neighborhood in which it is located. However, under no condition shall a density in excess of twenty (20) families per acre be authorized.

(iv). All developments shall be on a plot of ground comprising at least two and one-half (2 1/2) acres.

(c). In a residential "R-4" District:

(i). No individual building shall contain more than four (4) dwelling units.

(ii). No group development should be approved containing less than eight thousand (8,000) square feet of lot area for each four-family swelling in the development.

(iii). Off-street parking shall be required on a ratio of two (2) parking spaces for each unit in the development.

(iv). No approval shall be given to a development containing less than two and one-half (2 1/2) acres.

SEC. 51-6-11. MOBILE HOME PARKS. Where not otherwise authorized by this title, the Board of Adjustment may permit the use of land in any district for a mobile home park, provided that in all cases the following conditions are complied with:

(1). The plans shall be submitted to the Planning Commission for review and if the Commission finds that the proposed development is in keeping with the character of the district within which it is located and will not prevent the

ATTACHMENT F: PUD Application

RECEIVED

319-B

49816
8-18-86

AUG 13 1986 NOTICE OF ZONING APPEAL - GROUP OR PLANNED DEVELOPMENTS

TO THE BOARD OF ADJUSTMENT UNDER THE ZONING ORDINANCE OF SALT LAKE CITY AND TO THE BUILDING INSPECTOR OF SALT LAKE CITY, UTAH:

Date 6/18/86

Please note that Donald P. Lloyd, the owner, hereby appeals to the Board of Adjustment of Salt Lake City for a special exception to the ordinance to permit a housing project to be located at 1250 South 2100 East which is in a R-3A zoning district. (official address of proposed development)

Number of acres in development	<u>1.84</u>
Number of units	<u>10</u>
Number of units per acre	<u>5.43</u>
Number of off-street parking spaces	<u>43</u>
Maximum height of buildings	<u>23 Ft.</u>

It is contended by the petitioner that approval of this development should be granted for the following reasons:

To facilitate the orderly residential development of a challenging parcel of land
abutting a major street and adjacent to commercial development and thereby enhance
and preserve the residential nature of the neighborhood to the west of the parcel.

It is further contended that the granting of the exception is not contrary to the public interest, will be in keeping with the comprehensive plan of zoning in the City and is necessary for the proper development of the property in question for the following reasons:

- 1) The configuration of the parcel and its commercial adjacencies and its exposure to 2100 East make conventional large lot single family development impractical and a poor choice for this parcel.
- 2) The proposed development will create a transition zone from 2100 East and its commercial development to the homes on the west of the property while at the same time creating an extremely attractive development of prestigious detached homes that address the shelter needs of a segment of the area's homeowners.

For the Board to approve such an exception, it is also necessary to show that the development conforms with the character of the neighborhood in which it is located and that all requirements of Section 51-6-10 are complied with.

The Planning Commission must review all applications and give their recommendation before an application can be approved by the Board of Adjustment. The Board of Adjustment has the authority to approve or disapprove the project in whole or in part and in approving a project has the authority to impose any and all conditions which may be deemed necessary to protect the character of the neighborhood in which the project is located.

PLEASE REFER TO BACK OF SHEET FOR INSTRUCTIONS AND OTHER INFORMATION REQUIRED.

Signature of owner [Signature] Telephone Number 262-4637

Permanent Address Daniel C. Lofgren for Donald P. Lloyd
4885 South 900 East, SLC, Utah Zip Code 84117

Send Notice to Prowswood, Attention: Daniel C. Lofgren

ADDITIONAL INFORMATION REQUIRED

1. A complete set of plans showing in detail, including dimensions, the location of each building on the property and relationship to all adjoining buildings, the landscaping plan and parking plan. Complete elevations must also be presented. If the area is to be developed as a condominium-type project, method of guaranteeing maintenance of all open areas must be submitted.
2. Furnish NAMES and MAILING ADDRESSES of all abutting property owners and owners of properties across the street from development and any other property affected.

See attached list

3. Furnish LEGAL DESCRIPTION of lot:

See attached

4. Furnish any other information which may aid in giving proper consideration to the application:

Please see attached stream bank cross section which demonstrates the relationship between the existing stream and those homes in the development which come closest to the stream bank. You will note it is our intent to leave the stream bank as natural as possible with the exception of clean up and tree replacement. In those few spots where additional retention is needed it will be accomplished with boulder retention.

INSTRUCTIONS

FILING INFORMATION:

File completed application (plans included) with:

Building and Housing Services
Room 412, City & County Building
Salt Lake City, Utah 84111

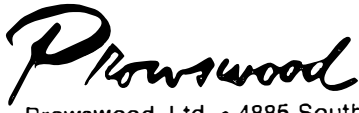
The FILING FEE required is ^{*see fee schedule*} ~~\$20.00 (twenty dollars)~~. No petition will be considered unless this fee is paid.

NOTE: It is required that each case up for hearing will be presented and argued before the Board of Adjustment either by the petitioner or by an authorized agent. If represented by an agent, the agent must have written authorization from the owner.

GENERAL INFORMATION

The Salt Lake City Board of Adjustment meets in session once or twice each month. The exact dates for these meetings are determined from the number of requests received. Please phone 535-7757 for information regarding these dates and the deadline for filing. State law requires that all petitions for variances must be advertised by the Board at least one week before a scheduled meeting.

All variances will be recorded.



Prowswood, Ltd. • 4885 South 900 East
Salt Lake City, Utah 84117 • Telephone (801) 262-4637

August 18, 1986

Building and Housing Services
Salt Lake City Planning Commission
and Salt Lake City Board of Adjustment
City and County Bldg.
Salt Lake City, Utah 84111

Dear Sirs;

Please be advised that Prowswood, Ltd. is hereby authorized to act on my behalf, as owner, with regard to the appropriate municipal approvals needed to facilitate the residential development of approximately 1.84 acres located at approximately 1250 South 2100 East.

Donald P. Lloyd

DPL/ns

Saundra L. Parker
2034 E. Laird Drive
Salt Lake City, Utah 84108

T. Wayne Thornton, Et Al
2036 E. Laird Drive
Salt Lake City, Utah 84108

Eugene F. Pack
2074 E. Laird Drive
Salt Lake City, Utah 84108

Richard & Sue Thornton
2040 E. Laird Drive
Salt Lake City, Utah 84108

Arthur Liddle
2046 E. Laird Drive
Salt Lake City, Utah 84108

Dee F. Anderson
777 E. 2100 South
Salt Lake City, Utah 84106

Franklin Grover
2111 South 2100 East
Salt Lake City, Utah 84109

Verl O'Brien
1225 South 2100 East
Salt Lake City, Utah 84108

Aris & Carolyn Anagnos]
7250 Franklin Avenue #1207
Los Angeles, California 90046

Emilie Gray
1575 E. Millcreek Way
Salt Lake City, Utah 84106

Joyce Stringham
5600 S. Holladay Blvd.
Salt Lake City, Utah 84121

Robert P. Siegmann
1183 South 2100 East
Salt Lake City, Utah 84108

Scott & Nancy Tillotson
9480 S. Union Square
Sandy, Utah 84070

HARVARD PARK PLANNED UNIT DEVELOPMENT

◦ Concept and Maintenance Plan

The homes at Harvard Park have been conceived to provide a less strenuous and less restricted lifestyle for 10 homeowners who desire to live in a conventional detached home in a pleasant and prestigious neighborhood, but who, because of physical requirements or lifestyle desires, no longer can maintain a yard.

The homes at Harvard Park will be owned fee simple. Each home will also have a small fenced private outdoor area owned by the individual homeowner.

The balance of the outdoor area including the grounds, private streets, walk ways and entryways and park-like areas will be owned in common by all 10 owners through the homeowners association.

The homeowners association shall have the responsibility to provide, or contract for, snow removal, garbage collection, general liability and property insurance, grounds maintenance, street maintenance and the general welfare of all common areas.

The homeowners association shall act based on a majority vote with a quorum consisting of no less than 7 homeowners. The association will elect a president at the beginning of each fiscal year who shall be empowered to contract, on a competitive bid basis, for the services described above.

LEGAL DESCRIPTION
T-105369

EXHIBIT "A"

Lots 1, 19 & 20 All # 0027

BEGINNING at a point North 140.99 feet and North 89°57'20" East 1.10 feet from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, according to the Salt Lake City Engineer's Plats, and running thence North 0°27' East 712.49 feet, more or less, to the center line of Emigration Creek as originally located, thence along said center line of creek as follows: South 62° West 15.90 feet; thence South 33° West 4.10 feet; thence South 9°52' West 44.90 feet; thence South 7°19' East 78.20 feet; thence South 1°15' West 14.00 feet; thence South 6°15' West 67 feet; thence South 24°57' West 180.04 feet; thence South 29°48' West 50.00 feet; thence South 49°23' West 122.00 feet; thence South 17°28' West 70.42 feet; thence South 89°57'20" West 10.85 feet; thence South 22°30' West 26.83 feet; thence South 20°28' West 65.51 feet; thence South 22°30' West 64.95 feet; thence leaving said creek North 89°57'20" East 299.45 feet, more or less, to the point of BEGINNING.

Penn Korolovics
Penn Korolovics

UTAH TITLE
DEP

Nov 5 12 10 PM '95

RECORDED
SALT LAKE COUNTY,
UTAH

ATTACHMENT G: BOA Minutes Sept. 2, 1986

September 2, 1986

Brad Shepherd was present. Mr. Hafey explained that the property is located on the southeast corner of Kensington Avenue and 1500 East Street and that on the east portion of the lot 8.5 feet from the property line, rather than the required 30 feet, a single car garage exists. The applicant is now proposing to remove the existing detached garage and construct a new structure (20' x 20') back 16 feet from the property line. He noted that the lot is 63 feet deep. Mr. Hafey noted that the Traffic Engineer recommends placing the new garage a minimum of 18 feet back from the sidewalk to allow room for parking in front of the garage without obstructing the pedestrian walk and set the fence to comply with required side distances as per enclosure. The Board asked Mr. Shepherd what is the hardship on this property.

Mr. Shepherd noted that his home is located on a corner lot and that because there is a 10' patio on the east side of his home it would make it impossible to put the garage back the required 30 feet. He noted that all of the abutting property owners are in favor of the proposed construction.

There were no protests. Later in the meeting the various aspects of the case were reviewed. The board noted that with the garage in its present location the car owned by the Shepherds is hanging over the sidewalk when partially parked in should be back far enough from the property line to allow a car parked in front of the garage to be on private property.

After considerable discussion, Mr. Wagner moved a variance be granted to permit the construction of a (20' x 20') detached garage which would not maintain the required 30 foot setback from the side street, contrary to the provisions of the Zoning Ordinance subject to the garage maintaining a 20 foot setback from the side street and the existing fence be located on the owner's property and be cut down to 4 feet in the front yard area. Ms. Pleshe seconded the motion, with all voting "Aye".

Case No. 319-B at 1250 South 2100 East Street in application of Prowswood for Donald P. Lloyd for a special exception to the ordinance to permit a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard in a Residential "R-3A" District.

Dan Lofgren, authorized representative and Don and Helen Lloyd were present. Kimball Young, 2049 Herbert Avenue was also present. Mr. Hafey explained that the proposed site is a vacant lot under two acres in size and is located on the west side of 2100 East Street between 1300 South Street and Laird Drive and backing into Emigration Creek to the west. The applicant is planning to construct 10 detached single-family dwellings in a planned unit development with a primary access off of 2100 East Street. He noted that according to the ordinance it is required that the dwellings be 20 feet apart with 12 foot side yards; however, in some instances the proposed dwellings are as close as 8 feet and in three instances the proposed decks are within 6 feet of the south property line. According to the ordinance a planned unit development that is larger than an acre and has 10 or more units requires a public hearing in the Residential "R-3A" District. He noted that this hearing by the Board would be considered the

September 2, 1986

required public hearing. Mr. Hafey noted that other planned unit developments have been proposed for this site by other applicants; however, they have never been constructed. Mr. Hafey also noted this proposal must have a recommendation from the Planning Commission.

Mr. Lofgren explained that the proposed project will provide a very exclusive condominium development with the 10 detached dwellings each with a private outdoor area (deck or enclosed patios). He noted that the ground under the dwelling, the dwelling with a small private outdoor area will be owned by the owner and the balance will be owned in common and maintained through a owners' association. He noted that there will be one primary entrance off of 2100 East Street. He noted that there are two floor plans proposed for the project, one having two bedrooms and two bathrooms and three bedrooms 2-1/2 baths. The units will range from \$165,000 to \$180,000. He noted that the existing stream bank will be left as natural as possible. If retention is necessary boulders will be used. The remainder of the site will be enclosed with a solid visual barrier except along 2100 South where an open wrought iron, brick fence will be constructed to give an open look. He presented to the Board a photograph of a similar Prowswood project in Dallas, Texas. Mr. Hafey explained that if the dwellings plus the land under the buildings are to be owned by the occupants rather than just a condominium arrangement, it will be necessary for the applicant to process this project through the planned unit development subdivision process. Mr. Lofgren presented to the Board renderings of the proposed dwellings pointing out that they will be constructed of brick and designed to allow them to blend into the dwellings that already exist in the neighborhood. The Board questioned the separate parking in the front yard area that is proposed. Mr. Lofgren explained that this area is guest parking and that each dwelling has an 18 foot parking area on the driveway leading to the attached garage which would allow for 4 car parking area; however, if necessary the guest parking area is proposed. He noted that the brick and architecture of each dwelling will vary but the the floor plan will be essentially the same. He explained that Mr. Lloyd, property owner, is a home owner in the area and that he purchased this property in an attempt to preserve the residential quality of the neighborhood; therefore, he is proposing this project in an attempt to retain the residential quality of the area. He noted that the residents in the area are in favor of the proposed project.

Kimball Young, representative of the Foothill Community Council, explained that the Council is in favor of the proposed project and pointed out that it was understood that a sidewalk will be installed on the west side of 2100 East Street from the existing service station to Laird Drive. It was pointed out that the ordinance would require that all street improvements would be required if the project is approved and built.

There were no protests. Later in the meeting the various aspects of the case were reviewed. The Board noted that eventhough the buildings are close at one point that most of the side yards open up and become wider as they distance increases; also, that on the south side where the patio or deck project the side yard is adjacent to the rear yards of the abutting properties.

September 2, 1986

After considerable discussion, Mr. Martinez moved that this case be held over for a recommendation from the Planning Commission. Ms. Pleshe seconded the motion, with all voting "Aye".

Case No. 320-B at 1116 Bonneville Drive in application of Wallard A. Nisson for a variance to legalize an eave overhang which projects more than two feet in a Residential "R-1" District.

Willard and Barbara Nisson were present. Craig Siggard, architect, was also present. Mr. Hafey explained that the property in question is located on the west side of Bonneville Drive. The applicant is in the process of remodeling the dwelling with a flat roof structure to a gable roof with an eave overhang. He noted that a permit was issued for the remodeling; however, the eave projects farther than 2 feet contrary to the plan submitted when the permit was acquired. Therefore, the applicant is asking to be allowed to have the eave project 3 feet into all yard areas as constructed.

Mr. Siggard noted that the rafter tails of the new roof extend over the existing mansard type roof. He explained that the remodeling of the structure is an attempt to make the dwelling look more like the other dwellings in the area and to correct drainage problems which are inherent with flat roofs. He presented to the Board a letter signed by the abutting property owners stating that they are in favor of the proposed construction.

There were no protests. Later in the meeting the various aspects of the case were reviewed.

After considerable discussion, Ms. Pleshe moved a variance be granted to legalize an eave overhang which projects more than the two feet in a Residential "R-1" District.

Case No. 321-B at 2363 Scenic Drive in application of Paul Holton for a permit to construct a single-family dwelling which would exceed the permitted 30 feet height limit, contrary to the provisions of the Zoning Ordinance in a Residential "R-1" District in the "F-1" overlay zone.

Paul and Keeyon Holton were present. Craig Siggard, architect, was also present as well as Sako Chater, P.O. Box 8898, and Brent Hayes, 2352 Lakeline Drive. Mr. Hafey explained that the property in question is vacant and is on the corner of Scenic Drive and Lakeline Drive. Homes have been constructed on the lots to the north and east. The parcel is located within the Foothill Overlay zone which limits the height of the building to 30 feet at its highest ridgeline. The elevation drawings submitted indicate where the 30 foot limit would be in relation to the dwelling. In the ordinance the Board is given the authority to grant variances when it can be shown the architect has taken into consideration the site as well as the surrounding dwellings and their view when designing the structure.

ATTACHMENT H: PC Minutes and Staff Report, Sept. 11, 1986

MINUTES OF MEETING OF SALT LAKE PLANNING COMMISSION
Held at 414 City and County Building
Thursday, September 11, 1986

Present were Commission members Thomas Ellison, Alice Kasai, LaVone Liddle-Gamonal, William Price, John M. Schumann, F. Keith Stepan, Peter VanAlstyne, Kathy P. Wacker, and I. J. Wagner. Excused was George Nicolatus.

Present from the planning staff were Vernon F. Jorgensen, Planning Director; A. Dean Barney, Assistant Planning Director; William T. Wright, Planner II; Allen C. Johnson, Deputy Planning Director; Harvey F. Boyd, Planner II; and Brent B. Wilde, Planner III. Larry Livingston of the City Council Office was present; and Craig E. Peterson, Director of Development Services was present for part of the meeting.

The meeting was called to order by Chairman Peter VanAlstyne at 5:10 p.m. in Room 414 of the City and County Building.

APPROVAL OF MINUTES

Mr. Schumann made a motion that the Minutes of the August 28, 1986, meeting be approved. Mrs. Liddle-Gamonal seconded the motion; all voted "Aye." Mr. VanAlstyne wanted it noted in these minutes that a quorum was present.

CONSENT CALENDAR

Historical Landmark Committee Cases of September 3, 1986

Case No. 628, Historical Nomination, at 451 East 500 South, the Aaron Keyser, Matthew Cullen house, represented by Kathryn Johnson, zone "R-5." Approved.

Review of lighting changes in Historic Districts, represented by Tim Harpst, City Traffic Engineering. Approval with special recommendation for lighting in Historic District.

Mr. VanAlstyne asked the Commission to consider both Landmark cases together if possible. Mr. Schumann then made a motion to approve the Landmark cases as presented. Mrs. Liddle-Gamonal seconded the motion; with all voting "Aye."

BOARD OF ADJUSTMENT

Case No. 319-B for a Planned Unit Development at 1250 South 2100 East by Prowswood for Donald P. Lloyd in an "R-3A" zone.

Mr. Jorgensen reported that this property had been rezoned two years ago to allow a Planned Unit Development; however, that project was never started. The project has now been acquired by Don Lloyd, and Prowswood would be the developers. All Planned Unit Developments require a recommendation from

the Planning Commission. A public hearing was held by the Board of Adjustment at the last meeting, and there was no one present to protest.

Mrs. Lloyd was present. Mr. Dan Lofgren, Mr. Lloyd's representative from Prowswood, was also present. The property is located on the west side of 2100 East just north of 1300 South. One main entrance is proposed. There are ten individual, detached homes on the property. He reported that the common areas will be maintained by a Homeowner's Association. Mr. Lofgren said the stream would be left as natural as possible, and the banks would be retained with boulders where necessary. A solid barrier fence will be erected along the business district. The fence along 2100 East would be brick with small sections of wrought iron.

Mr. Jorgensen said the basic concept according to the Board of Adjustment was fine. Some design details need to be worked out. Mr. Lofgren said the zero lot line will still maintain the detached home. Buyer interest has been mainly from the neighborhood. Each of the ten homes would be different but still incorporate the same architectural elements. One of the objectives is to create an architectural style to enhance the neighborhood. The neighbors have been responsive to the project.

Mr. Schumann made a motion to recommend to the Board of Adjustment approval of Case 319-B with specific attention as outlined in the staff recommendations that the project be given conceptual approval with the staff to work with the developer and that the final plan, including the landscaping plan, be subject to a committee of the Board's approval. Special attention is to be given to the landscaping and particularly to the stream and treatment of the stream and that the developers work back with the staff. Mrs. Liddle-Gamonal seconded the motion; with all voting "Aye."

PETITION

No. 400-451 by Gayle Hughes requesting Salt Lake City to rezone 2504-2508 Beacon Drive, 1453-1511 Indian Hill Circle and Ute Circle, Eagle Way (south side), 1466-1566 Indian Hills Drive and 2543-2570 Kensington Avenue from "R-2" to "R-1."

Mr. VanAlstyne feels an even larger area should be rezoned. It was suggested that the petition include all the area south of 13th South to Skyline Drive and east of Wasatch Boulevard. For any further extension, the appropriate Community Council should obtain community support.

A public hearing is scheduled September 25, 1986.

OTHER BUSINESS

Susan Makov Briefing of Upcoming "Seeding the City" Conference.

Miss Makov represents The Contemporary Arts Group which is a non-profit group established to stimulate interest in the arts. The Contemporary Arts

STAFF REPORT TO THE PLANNING COMMISSION
FOR BOARD OF ADJUSTMENT CASE NO. 319-B

Overview

This is a request by Prowswood for Donald P. Lloyd for a special exception to the ordinance to allow a Planned Unit Development consisting of ten single-family dwellings located at 1250 South 2100 East Street in a Residential "R-3A" District.

Background

The property for this proposal is vacant and is located on the west side of 2100 East Street and is bound on the west and north by Emigration Creek and the south by the properties fronting on 1300 South. Over the past several years, at least four or five proposals have been reviewed and approved on this site; but none have progressed beyond this point.

LandUse

The landuse in this area is predominantly single-family dwellings except for the neighborhood shopping area to the south, the city library and fire station to the north, and a condominium project fronting on Foothill Drive. This proposal will not change the demographics in this area.

Analysis

This property is a long triangular parcel with Emigration Creek forming the west boundary. The ordinance for planned unit developments calls for a minimum of twenty feet between buildings and also calls for the entire project to maintain a side yard, a rear yard, and a front yard. The proposal maintains the front and rear yard. The buildings themselves maintain the side yard to the south, but there is an above-grade deck which projects into this side yard. This sideyard is adjacent to the service station and the parking lot of the office building west of the corner. None of the buildings maintain the twenty feet separation - some are as close as eight feet with the side yard opening up as the side yard deepens.

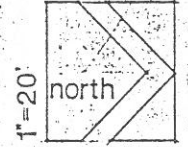
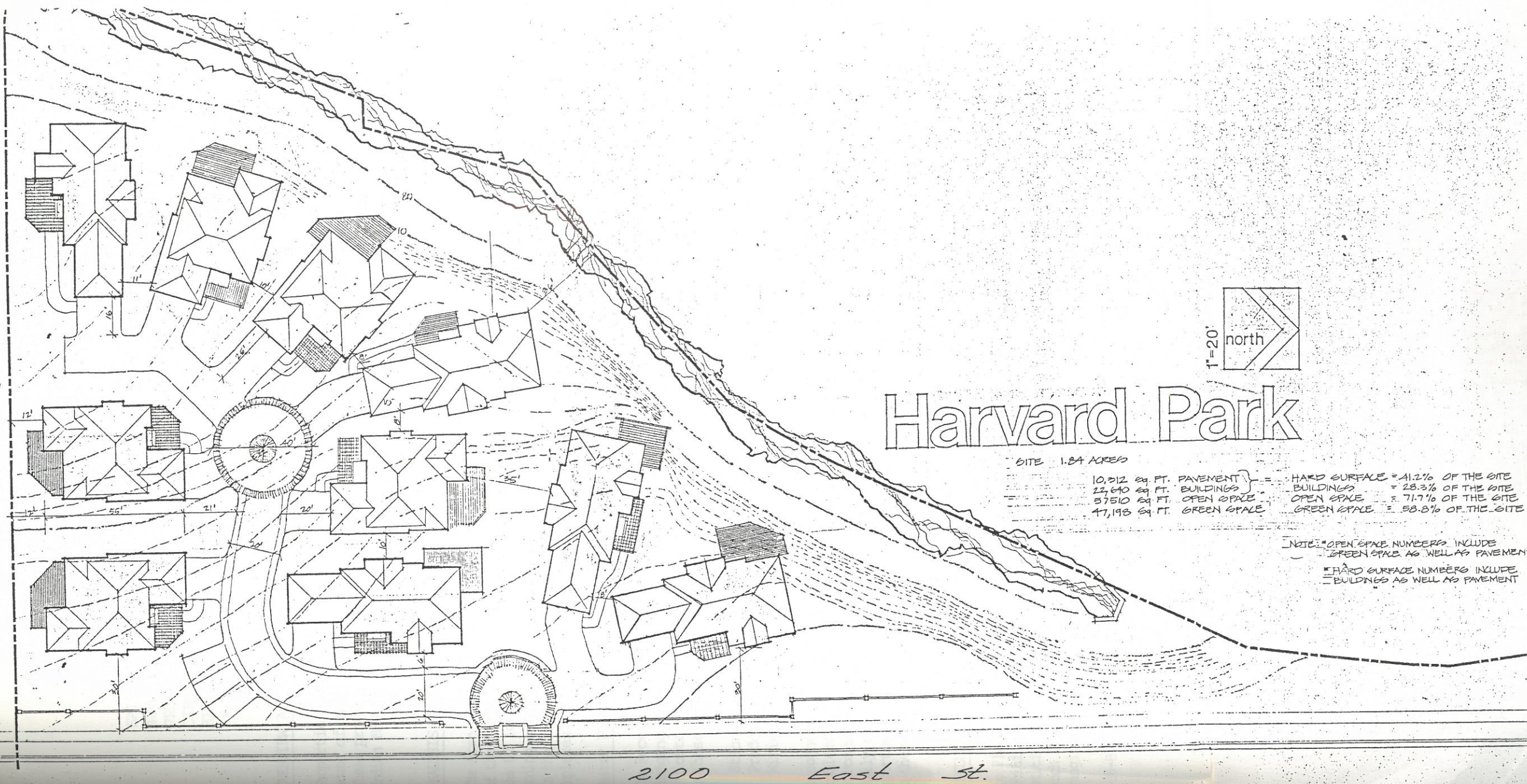
In a conversation with the developer, it was suggested that some of the units be developed as twin homes or row houses. This would allow for more space between structures. His response was that there is no market in this area except for single-family detached structures.

The entrance to the development has been designed so that only one curb cut is required allowing for some identity for the project. There will be two-car parking for each unit plus room to park two cars on the driveway in front of each garage.

The Board of Adjustment held a public hearing on this proposal, and there was no opposition expressed at the hearing. There are letters in the case from the neighbors recommending approval.

Recommendation

The staff recommends that the Planning Commission recommend to the Board of Adjustment that the project be given conceptual approval with the staff to work with the developer and that the final plan, including the landscaping plan, be subject to a committee of the Board's approval and a copy of the finally approved plan being filed with the case with special attention given to the landscaping and treatment of the stream area.



Harvard Park

SITE 1.84 ACRES

10,212 sq. ft. PAVEMENT	=	HARD SURFACE = 41.2% OF THE SITE
22,640 sq. ft. BUILDINGS	=	BUILDINGS = 28.3% OF THE SITE
57,510 sq. ft. OPEN SPACE	=	OPEN SPACE = 71.7% OF THE SITE
47,198 sq. ft. GREEN SPACE	=	GREEN SPACE = 58.8% OF THE SITE

NOTE: *OPEN SPACE NUMBERS INCLUDE GREEN SPACE AS WELL AS PAVEMENT
 *HARD SURFACE NUMBERS INCLUDE BUILDINGS AS WELL AS PAVEMENT

ATTACHMENT I: BOA Minutes Sept. 15, 1986

September 15, 1986

There were no protests. Later in the meeting the various aspects of the case were reviewed.

After considerable discussion, Mr. Wagner moved a variance be granted to permit the construction of an addition to an existing nonconformingly located single-family dwelling without the required rear yard and to construct an attached garage which would not maintain the required side or rear yard. Mr. Lewis seconded the motion, with all voting "Aye".

During the executive session portion of the meeting the following cases were heard.

REQUEST TO REOPEN

Case No. 296-B at 1982 South 2500 East Street in application of Deborah A. Larson and Iris C. Rich for a permit to install a hardsurfaced parking area and driveway which would not maintain the required 30 foot setback from the side street in a Residential "R-2" District.

Mr. Hafey explained that the applicants have submitted a request to reopen their case due to the fact that they have come up with a plan that they feel will be more desirable.

After considerable discussion, Mr. Wagner moved that this case be reopened and readvertised for the meeting to be held Monday, September 29, 1986. Mr. Lewis seconded the motion, with all voting "Aye".

HELD FOR A RECOMMENDATION FROM THE PLANNING COMMISSION

Case No. 319-B at 1250 South 2100 East in application of Prowswood for Donald P. Lloyd for a special exception to the ordinance to permit a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard in a Residential "R-3A" District.

Mr. Hafey explained that the Planning Commission has recommended conceptual approval of this plan subject to Committee of the Board approval of the final plan including the landscaping plan, the proposed grade change adjacent to the creek and the final plan showing the proposed fencing.

Mr. Lewis moved that a variance be granted to permit the construction of a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard subject to;

1. Committee of the Board approval of the final plan including the landscaping plan;
2. approval of the plan including the grade change adjacent to the creek;
3. the fences and walls also be approved.
4. the curb, gutter and sidewalk be installed from the service station property to Laird Drive, also, if additional land is needed for the widening of 2100 East Street the developer must dedicate the land so that the curb gutter and sidewalk are located on city property;
5. if the developer proposed to sell these units individually he must have approval as a planned unit development or subdivision or as a condominium;

September 15, 1986

6. and that a copy of the finally approved plan be filed in the case. Mr. Wagner seconded the motion, with all voting "Aye".

MODIFICATION

Case No. 9038 at approximately 744-746 South 300 East Street in application of Disabled American Veterans for a special exception to the ordinance to permit a parking lot in a residential district in conjunction with the proposed Disabled American Veterans building on the northwest corner of 800 South and 300 East Streets which requires Board of Adjustment approval in a Residential "R-3A" District.

Mr. Hafey explained that the applicant is requesting that they be allowed to construct a 20' x 24' garage for the purpose of storing their van. He noted that the applicant is requesting that they be allowed to construct the garage in the already constructed parking lot in a residential district. The garage will be constructed to the west and south property lines. The abutting property owners have no objection and letters have been submitted.

Mr. Wagner moved that a modification to Case No. 9038 be granted which would allow the construction of a garage to house a van. Mr. Lewis seconded the motion, with all voting "Aye".

Case No. 9987 at 695 North Darwin Street in application of Sky Properties and Sven Nilsson for a permit to erect a 72 unit apartment project which requires a public hearing before the Board of adjustment on projects in excess of ten units in a Residential "R-5A" District.

Mr. Hafey explained that the applicant, Sky Properties, has submitted a request for a second 6-month extension of time due to difficulty in obtaining the funding and surveying for the project. In addition, the applicant, Sven Nilsson, has also submitted a letter stating that Sky Properties had an agreement with him to purchase his property which is involved with this project. They have not done this; therefore, Mr. Nilsson retained Prowswood Inc. to look into the completion of this project. Prowswood has agreed that they would complete the project but that additional time will be needed. Therefore, both Sky Properties and Mr. Nilsson are requesting additional time. The Board pointed out that additional time can be granted only on the plan that was approved.

Mr. Lewis moved that the request for an extension of time be held over and rescheduled for the meeting to be held Monday, September 29, 1986. Mr. Wagner seconded the motion, with all voting "Aye".

Mr. Lewis moved the minutes of September 2, 1986, be approved. Mr. Wagner seconded the motion, with all voting "Aye".

ATTACHMENT J: BOA Minutes Nov. 10, 1986

apartment building which requires Board of Adjustment approval in a Residential "R-7" District.

Mr. Martinez made a motion to reopen Case No. 293-B. Ms. Pleshe seconded the motion, with all voting "Aye."

REVIEW

Case No. 319-B at 1250 South 2100 East Street in application of Prowswood for Donald P. Lloyd for a special exception to the ordinance to permit a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard in a Residential "R-3A" District.

The Board of Adjustment was to see the final plans. They had given conceptual approval of the proposal. The driveway has been changed.

Mr. Wagner made a motion to approve the final plans for Case No. 319-B. Mr. Lewis seconded the motion, with all voting "Aye."

HELD FOR MORE INFORMATION

Case No. 361-B at 875 Donner Way in application of Canyon Crest Owners' Association for a variance to legalize a satellite dish in the required front yard in a Residential "R-5" District.

Mr. Martinez made a motion to approve the application to legalize a satellite dish in the required front yard subject to the dish being located sufficiently below ground so the top is below grade and provided there is landscaping which does not change with the seasons. The final plan is to be submitted for Committee of the Board approval, a copy of the finally approved plans to be filed with the case. It is to be recognized that interference in reception from the AT&T Tower has caused a hardship as there is no other viable location for the dish. The dish is to be painted and camouflaged to be completed in 90 days from the date of the Findings and Order. Mr. Lewis seconded the motion, all voting "Aye."

HELD FOR MORE INFORMATION

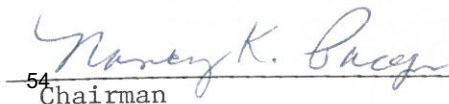
Case No. 367-B at 1611 South 1300 West Street in application of Freeman Rose for a permit to construct a detached garage which would exceed the 720 square feet of area allowed for auxiliary buildings and would exceed the 11 feet of height at the square in a Residential "R-1" District.

Mr. Watson made a motion to continue to hold over Case No. 367-B for additional information. Mr. Lewis seconded the motion, with all voting "Aye."

Mr. Wagner made a motion to approve the minutes of the October 27, 1986, meeting. Ms. Pleshe seconded the motion, with all voting "Aye."

There being no further business the meeting adjourned at 8:00 p.m.


Acting Secretary


54
Chairman

ATTACHMENT K: Staff and Director Plan Review Communication, Dec. 1986

SALT LAKE CITY PLANNING COMMISSION

From DOUG WHEELWRIGHT

12-1, 1986

To GARY H.

Subject Harvard Park Condo - Bob A Case

please review Landscaping plan & respond w/
comments ASAP

Thank you

SALT LAKE CITY CORPORATION

TRANSPORTATION ENGINEERING

333 SOUTH 200 EAST, SUITE 201

SALT LAKE CITY, UTAH 84111

(801) 538-2142

PALMER DEPAULIS
MAYOR

JOSEPH R. ANDERSON
PUBLIC WORKS DIRECTOR

December 2, 1986

Doug Wheelwright
Planning and Zoning
CFS Building

Check BA Case

RE: Harvard Park Condominiums 1200 South - 2100 East

Dear Doug:

Our review comments are as follows:

Sheet #1

1 - Revise property description to reflect proper right of way for 2100 East street

Sheet #2 and #3

2 - No comment

Sheet #4

3 - Maximum driveway width is 30 ft.

4 - Show curb and gutter alignment from station 4 + 50 to northward to align with existing intersection at Laird Drive. Curb to be 32 ft. west of Monument Line.

Sheet #5

5 - Turn around shown at entry is not acceptable.

a) 28 ft. radius is the minimum (standard) passenger vehicle outside wheel radius.

b) The proximity of the turn around to the sidewalk establishes a 40 ft. wide vehicle conflict with pedestrians.

c) To establish a more notable entry drive we recommend a split entry exit drive system.

Doug Wheelwright
Page 2

RE: Harvard Park Condominiums 1200 So. - 2100 East

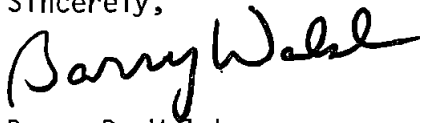
Sheet #6 and #7

6 - No comment

In the review plans you showed me last week there was a site plan that indicated a decorative brick and iron fence along 2100 East. Has this been eliminated? If not, please request resubmitted with new driveway design.

Comments are indicated in green on review plans.

Sincerely,



Barry D. Walsh

BW/kr

Plans Returned — Prowswood
12-4-86

December 10, 1986

Prowswood for D.P. Lloyd
4885 South 900 East
Salt Lake City, UT 84117

RE: Landscape Conditions B.A. Case 319-B
Harvard Park, 1250 South 2100 East

Dear Gentlemen:

Our review comments are as follows:

1. In reference to the stream and existing vegetation/hillside area, the following conditions will apply:
 - A. All existing trees and shrubs are to remain supplemented with additional materials where bare and eroded areas exist. Native grasses, ground covers and/or boulders shall also be applied to all bare and eroded areas creating as 'natural' a hillside as possible.
 - B. Prune and remove dead wood from all existing trees within this area and remove all trash and debris.
 - C. Privacy and/or security fences or walls shall not be constructed within this area. Any proposed fences or walls shall be adjacent this vegetation/hillside area and receive approval.
2. Install curb, gutter and sidewalk from the existing service station property to Laird Drive according to Salt Lake Cities Specifications.
3. Landscape, irrigate and provide street trees within the 2100 East Street parking strip. To maintain streetscape continuity, Norway Maples planted at 30' O.C. (2" cal. min.) shall be the street tree specie selection.
4. Provide a complete landscaping plan and irrigation plan illustrating all the details of such installations. Plans are to include the existing vegetation/hillside area, all developed areas, parking strip and entire strip between existing stream concrete conduit and Laird Drive.
5. The identification sign "Harvard Park" may not be installed on the entrance fence/wall as proposed but may be located flat against the building.

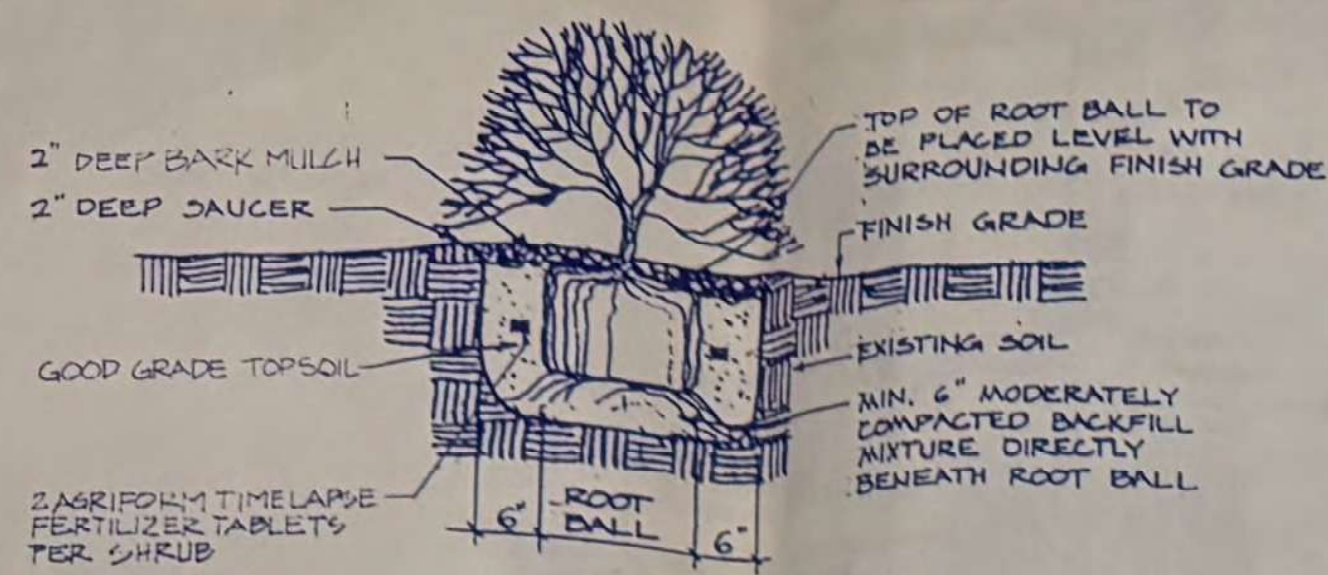
Your consideration of these matters will be very much appreciated.

Respectfully,

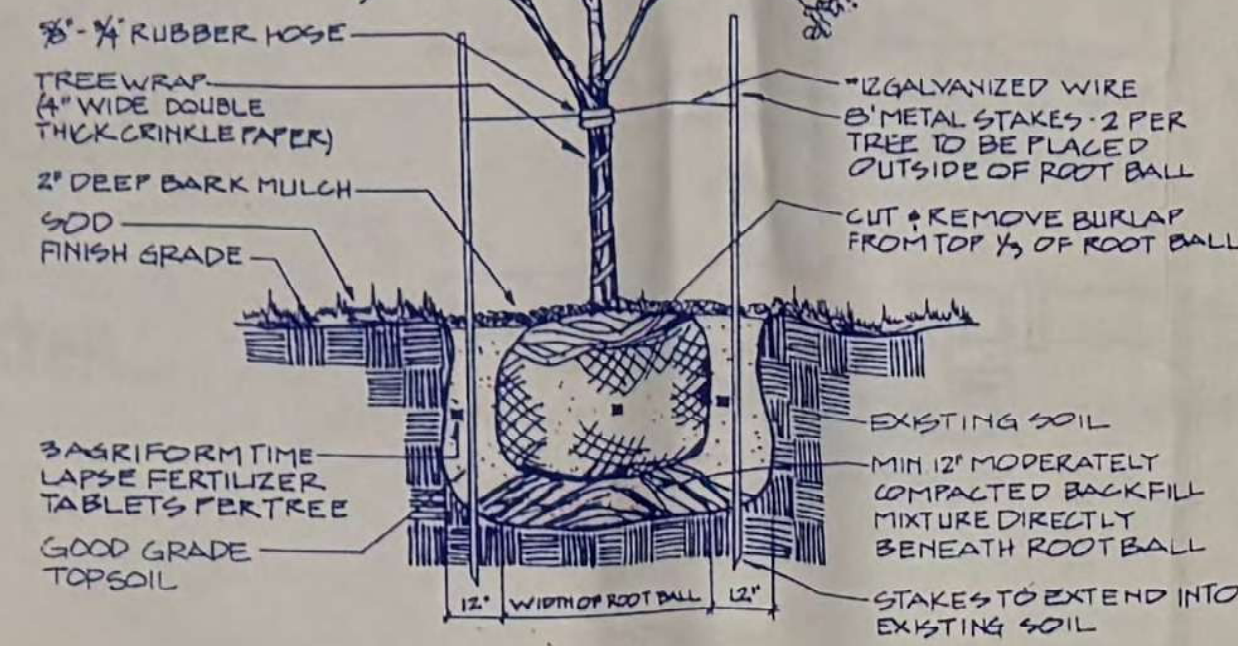
Vernon F. Jorgensen
Planning Director

VFJ:grh

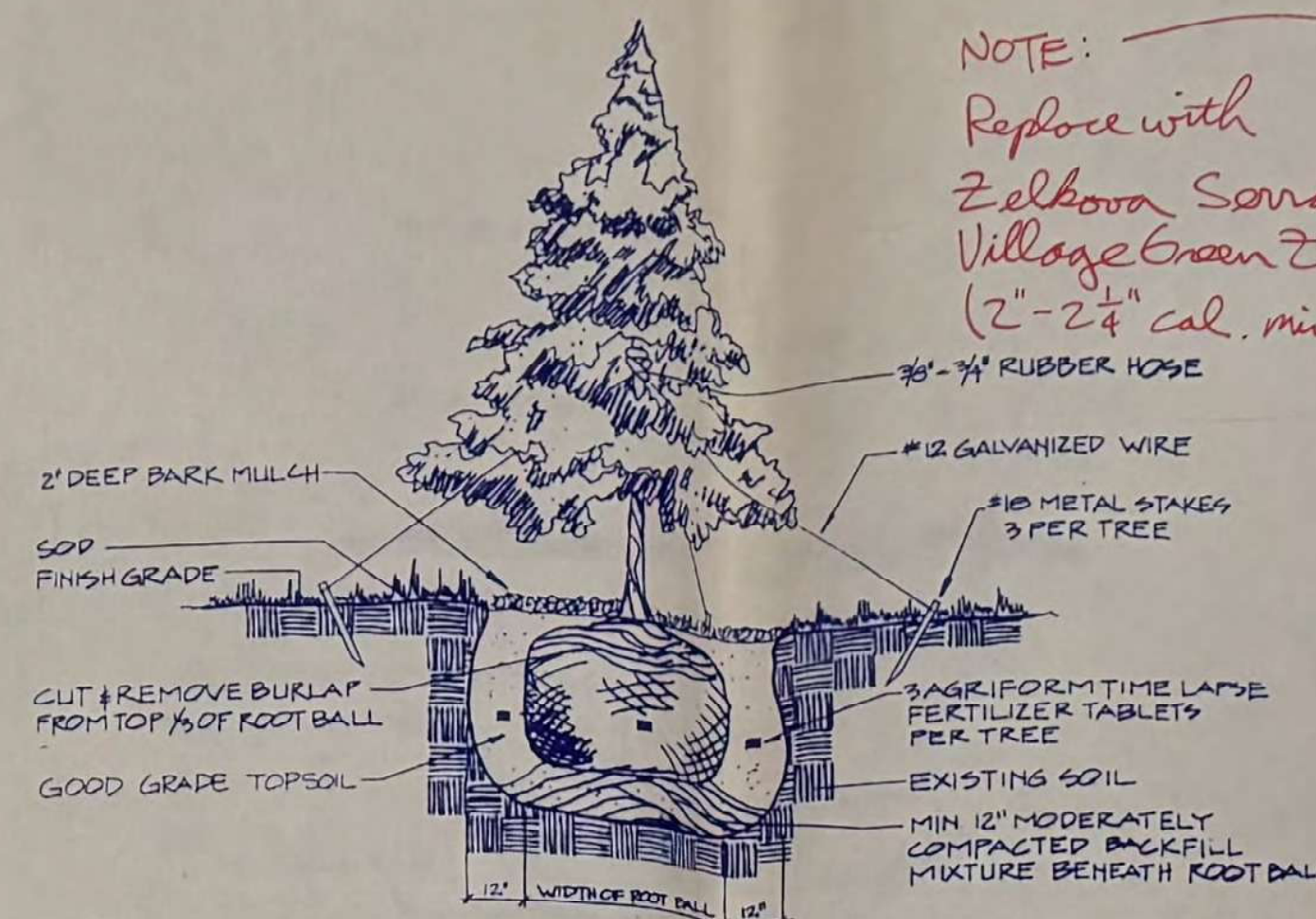
ATTACHMENT L: Approved Landscape Plan, Signed Dec. 19, 1986



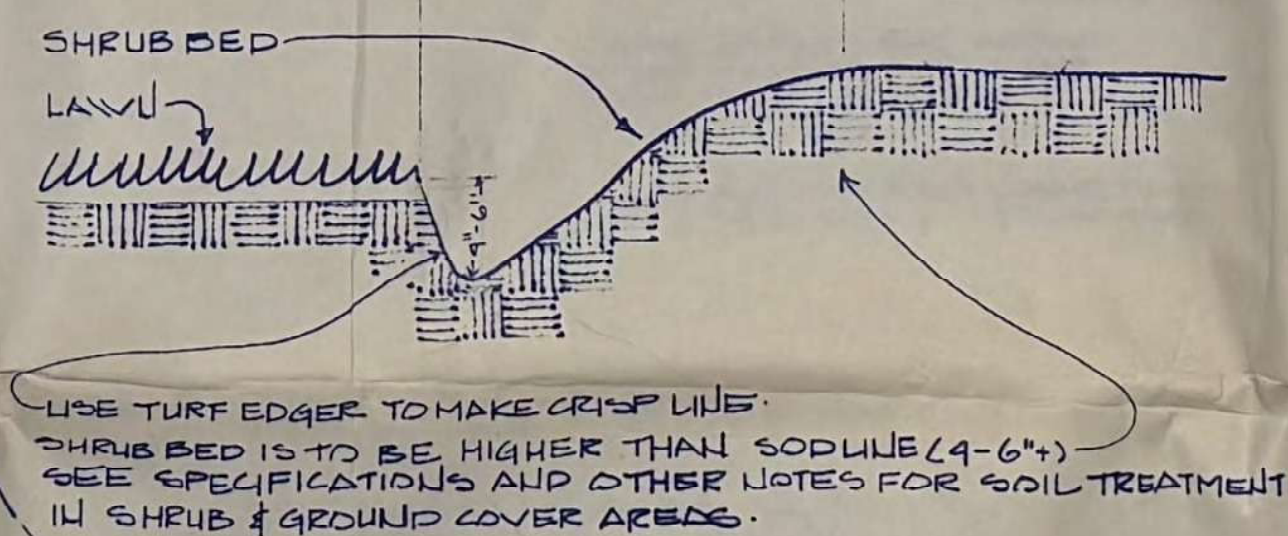
SHRUB PLANTING DETAIL
NOT TO SCALE



DECIDUOUS TREE PLANTING & STAKING DETAIL
NOT TO SCALE



EVERGREEN TREE PLANTING & GUYING DETAIL
NOT TO SCALE



EDGING DETAIL
NOT TO SCALE

PLANTING NOTES

1. All plant materials shall be healthy stock, free of disease and disfigurement, having full natural shapes. Plants shall be grown under climatic conditions similar to those of the project site.
2. All lawn areas are to be sod.
3. Groundcover plants are to be planted in an evenly spaced triangular pattern.
4. Plant materials shall be the same species and size as described in the plant schedule.
5. See Plant Schedule for tree species to be guyed or staked as shown in the planting details.
6. The following tree species are to be wrapped as shown in the deciduous tree planting detail: All Maples, Lindens, Crabapple, Fruitless Mulberry, Plum and Pear.
7. Provide Agriform 20-10-5, 21 gram fertilizer tablets for trees and shrubs. Provide 3 tablets per tree and 2 tablets per shrub.
8. Guy and stake trees immediately after planting as shown in the planting details.

PLANTING SCHEDULE

Code	Species	Size	Cond.
TREES			
AA	ACER PALMATUM 'DISSECTUM'	10 gal.	Container
AP	Lace Leaf		
AP	ACER-BLATANGEBES	2"	B & B
AP	Noway-Hop		
TS	GLADISTIA TRIACANTHOS INENS	1 3/4"	B & B
TS	Thornless Honey		
MA	NORUS ALBA 'FRUITLESS'	1 3/4"	B & B
MA	Fruitless Mulberry		
PA	PLATANUS ACERIFOLIA	2"	B & B
PA	London Plane		
PMA	PINUS NIGRA	7'-8'	B & B
PMA	Austrian Pine		
PR	PRUNUS CERASIFERA 'THUNDERCLOUD'	1 3/4"	B & B
PR	Thundercloud Plum		
PV	PYRUS CALLERYANA 'ARISTOCRA'	1 3/4"	B & B
PV	Aristocrat Pear		
TCR	TILIA X EUCHLORA 'REDMON'	2"	B & B
TCR	Redmond Linden		
SHRUBS			
BWP	BERBERIS GLADYTHENSIS WILLIAM PENN	5 gal.	Container
BWP	William Penn Barberry		
CA	COTONEASTER APICULATA	2 gal.	Container
CA	Cranberry Cotoneaster		
CDC	COTONEASTER DAMMERI 'Coral Beauty'	2 gal.	Container
CDC	Coral Beauty Cotoneaster		
CS	CORNUS STOLONIFERA	5 gal.	Container
CS	Red Osier Dogwood		
EAC	EUONYMUS ALATA COMPACTA	5 gal.	Container
EAC	Dwarf Winged Euonymus		
MAC	MAHONIA AQUIFOLIUM COMPACTA	2 gal.	Container
MAC	Compact Oregon Grape		
PLO	PRUNUS LAUROCEASUS OTTO LUYKENS	18"-24"	B & B
PLO	Otto Luykens Laurel		
SAW	SPIRAEA BUNALDA ANTHONY WATERER	5 gal.	Container
SAW	Dwarf Pink Bridalwreath		
SPL	SYRINGA PERSICA	5 gal.	Container
SPL	Persian Lilac		
TBR	TAXUS BACCATA REPANDS	5 gal.	Container
TBR	Dwarf Spreading English Yew		



2100 EAST STREET

COMMITTEE APPROVAL

Board of Adjustment Case No. 319-B
Date 12-19-86
By [Signature]

I have reviewed the plans and to the best of my knowledge they meet all of the requirements of Board of Adjustment Case No. 319-B
[Signature]

NOTE: Landscaping (sod), irrigation system and gutter and sidewalks and street trees must continue to be maintained.

319-B

PLANTING SCHEDULE

Design Division
4885 South 600 East
Salt Lake City, Utah 84117
Telephone (801) 252-4637

HARVARD PARK
LANDSCAPE PLAN

REVISED

LAIRD DRIVE

DATE 16 DEC 1986

BY:

SHEET NO.

ATTACHMENT M: Building Permit Record 1986-73355

Permits

Permit ID: 73355 **Issue Date:** 12/23/1986 **Number of Permits:** 1

Permit: 73355 Issued: 12/23/1986 Address Id: 98826 Suite/Office:

House No: 2069 Dir: E Street: HARVARD OAKS Suffix: CIR Override:

Job Type: BUILDING PERMIT Job Status: FINAL Contr. Phone: (262)-46-37

Inspector: BROWN, JOHN Contractor: PROWSWOOD LTD 11664

Owner Name: HARVARD PARK CORP. Fee: \$563.00 Valuation: 83,000.00

Owner Addr: Owner City: Owner Phone: - -

Fee Flag: 0 Orig Amt: 0 Credit Amt: \$.00 Paymt Type:

Record Type: bld Last Upd: By:

Contact: Phone: Fax:

Email List: <-- Add/Edit Email List

Sign City Prop Sign On Off Acct Number Inspect Every 120

Permit Comments

Permit 73355 **Issue Date:** 12/23/1986

P.U.D. #319-B

Building Permit

Permit Number 73355 **Issue Date:** 12/23/1986

Permit: 73355 Issue Date: 12/23/1986 Est Cost: 83,000.00

Construction Kind: BUILD Building Type: 1 FAMILY RESIDENT

Sq Ft: 1800 Nbr Stories: 1 Nbr Buildings: 1

Res Units: 1 Garage Carport: GAR Attach Detach: Garage Sq Ft: A 500

Certificate Occ: Cert Type: C Inspect Every: 120

Frame: Brick Var: Brick Var Brick: Asphalt:

Block: Concrete: Steel: Stucco:

ATTACHMENT N: BOA Minutes Aug. 17, 1987

August 17, 1987

Later in the meeting the Board discussed the various aspects of the case. It was noted that street improvements are scheduled to occur in the near future. Mr. Loveless's problem is that he does not know how much of a grade change will occur and will need to match this. He would like to wait until the improvements are completed before he paves his parking lot. Mr. Nelson thought that perhaps this information was available.

Miss Pleshe moved that the Board hold the request for a permit to install a parking lot without the required 15 foot landscaped setbacks and which would not be hard-surfaced for additional information regarding the street improvements. Mr. Martinez seconded the motion; all voted "Aye".

The Following Cases were discussed in the Executive Session of the meeting.

FOR MODIFICATION

Case No. 162-B at 2487 South 700 East Street in application of Margaret Baird and Holly Baird-Hansen for a conditional use to use an existing nonconforming chiropractic clinic for a children's day care center in a Residential "R-4" District.

Mr. Hafey explained that the petitioners are requesting a modification to the original variance. The issue here is the width of the curb cut on 700 East Street. When the Traffic Engineer reviewed this case originally, he recommended a 23 foot wide curb cut. The existing curb cut is 21 feet 7 inches and appears to have been installed recently. Mr. Hafey stated he has talked to Tim Harpst, the Traffic Engineer, and he has no problem with the width of the curb cut as is and would support the modification.

Miss Pleshe moved that the Board grant a modification to the variance to leave the existing 21 foot 7 inch curb cut subject to the landscaped setback being installed and maintained as well as all the other conditions of approval being met. Mr. Martinez seconded the motion; all voted "Aye".

COMMITTEE OF THE BOARD

Case No. 319-B at 1250 South 2100 East Street in application of Prowswood for Donald P. Lloyd for a special exception to the ordinance to permit a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard in a Residential "R-3A" District.

Mr. Hafey explained the history of the case. Mr. Hafey explained that the petitioners had not placed the buildings as presented on the original plan particularly along the south property line. This has caused the applicant to adjust the positioning of the two remaining buildings in the southeast corner of the property. They would like

August 17, 1987

those buildings built to be legalized and to be able to build the others as the plans have been revised. In the original plan, the masonry wall was jogged, not in a straight line. The wall is under construction and placed uponn the east property line and the jogs have been eliminated. Mr. Hafey also stated that the applicant would like to sell the triangular property to the north to the abutting property owners. Also, when the street improvements were installed, there is an area near the north end of the project where the grade adjacent to the sidewalk is very steep on the applicant's property. The applicant has presented a plan to mitigate the safety aspect of this grade change, but the proposal is to use landscaping instead of a fence. The staff feels the fence is the proper solution to the problem. The Board was concerned that none of the land be sold from the project. The Board felt that the Petitioner should provide an explanation of why they created this hardship for themselves.

Miss Pleshe moved that the Board grant the modification to the original plan provided none of the land is sold off so long as this is part of a cohesive development however the petitioner is given a strong reprimend for not coming before the Board and explaining the problem before the buildings were constructed. The Board also felt that if a fence is necessary to solve the safety problems on the area of the property where the grade change occurred, the applicant or the owners of the project would have to install a fence. The fence is subject to Committee of the Board approval. Mr. Martinez seconded the motion; all voted "Aye".

COMMITTEE OF THE BOARD

Case No. 527-B 206 West North Temple & 107 Nortgh 200 West (the northwest corner of North Temple and 200 West Streets) in application of Don W. Glover, Jr. for a permit to erect a convenience store and gasoline pump islands, a portion of which would not maintain the required 15 foot landscaped setback adjacent ot North Temple, without the landscaped setback on 200 West Street and without the required 10 foot landscaped rear yard in a Commercial "C-1" District.

The Board discussed the fact that they would like this building to be faced with brick on all four sides in keeping with the building on the west side.

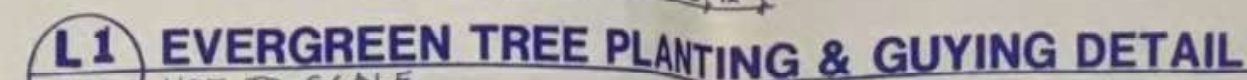
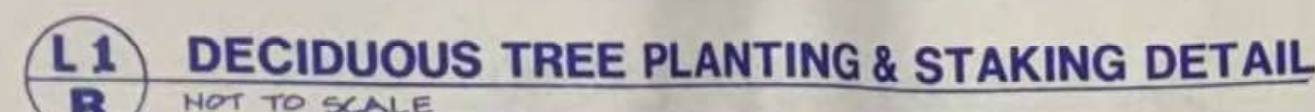
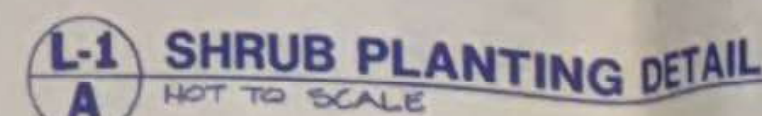
Miss Pleshe moved that the Board uphold its previous decision and require the petitioner to face the building with brick on all four sides. Mr. Martinez seconded the motion; all voted "Aye".

ADDITIONAL INFORMATION

Case No. 547-B at 1020 South 200 West Street in application of Quality Linen and Towel Supply Company for a permit to erect a commercial laundry facility without the required 15 foot setbacks and without the required off-street parking in an Industrial "M-1A" District.

The Board noted that this case was held for additional information. The Board discussed the possibility of granting a variance on 200 West for the building to be in line with the existing control Curb which would

ATTACHMENT O: Landscape Plan, Received Aug. 17, 1987



Code	Species	Size	Cond.
<u>TREES</u>			
AA	ACER PALMATUM 'DISSECTION' Lace Leaf	10 gal.	Container
AP	ACER PLATANOIDES Norway Maple	2"	S & B
GTS	GLEDITSIA TRIACANTHOS INDI Thornless Honey	1 3/4"	S & B
MA	MORUS ALBA 'FRUITLESS' Fruitless Mulberry	1 3/4"	S & B
PA	PLATANUS ACERIFOLIA London Plane	2"	S & B
PMA	PINUS NIGRA Austrian Pine	7' - 8'	S & B
PR	PRUNUS CERASIFERA 'THUNDERCLAP' Thunderclap Plum	1 3/4"	S & B
PV	PYRUS CALLERYANA 'ARISTATA' Aristocrat Pear	1 3/4"	S & B
TGR	TILIA X EUCHLORA 'REGENCY' Regency Linden	2"	S & B

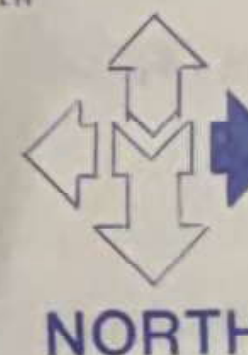
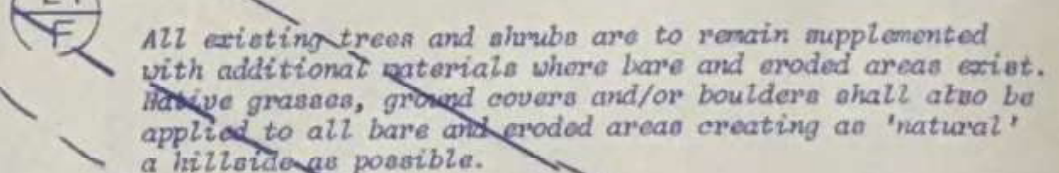
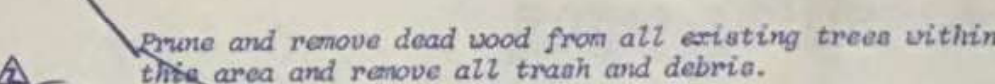
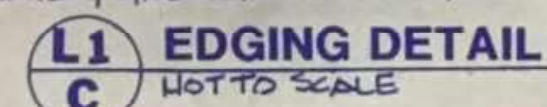
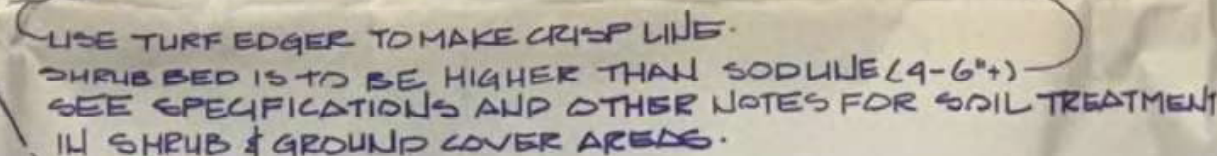
<u>SHRUBS</u>			
BWP	BERBERIS GLADYNIENSIS <u>WILLIAM PENN</u> William Penn Barberry	5 gal.	Container
CA	COTONEASTER AFICULATA Cranberry Cotoneaster	2 gal.	Container
CDC	COTONEASTER DAMMERI 'Coral Beauty' Coral Beauty Cotoneaster	2 gal.	Container
CS	CORUSUS STOLONIFERA Red Osier Dogwood	5 gal.	Container
EAC	EUONYMUS ALATA COMPACT Dwarf Winged Euonymus	5 gal.	Container
HAC	HAMONIA AQUILIFORMIS COMPACT Compact Oregon Grape	2 gal.	Container
PLG	PRINUS LAUROCARPUS 'HYKENS' Coral Lyukene Laurel	18" - 24"	B & B
SAW	SPIRAEA BUNALDA ANTHEM WATERER Dwarf Pink Bridalwreath	5 gal.	Container
SPL	STRIMA PERICA Persian Lilac	5 gal.	Container
TBR	TAXUS NACCATA REPANDENS Dwarf Spreading English Yew	5 gal.	Container
YFR	YUCCA FRANKSII Yucca	5 GAL.	Container

Sun and Shade Wildflower Mix
A low growing mix (less than 18 inches tall) of approximately 15 annual and perennial wildflowers for low-maintenance landscaping; adapted to areas with greater than 15 inches precipitation, best with supplemental watering.

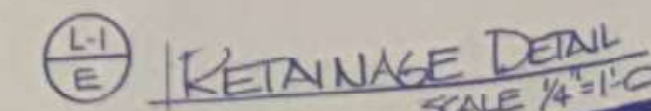
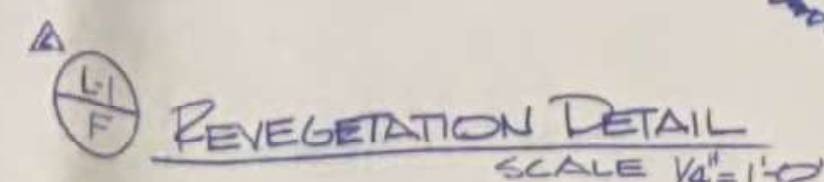
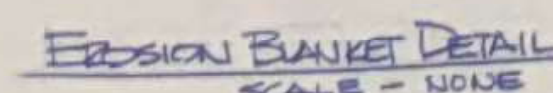
Festuca ovina, Sheep fescue
Cool-season, native bunchgrass used as a ground cover
grass. Excellent for erosion control, dryland turf, and
use in wildflower mixtures.

*Festuca rubra**, Red fescue
Intermediate, cool-season, sod-forming grass used for
erosion control, general purpose lawns and turf. Prefers
cool, moist areas, valued for its shade tolerance. see
Turfgrass section.

1. All plant materials shall be healthy stock, free of disease and disfigurement, having full natural shapes. Plants shall be grown under climatic conditions similar to those of the project site.
2. All lawn areas are to be sod.
3. Groundcover plants are to be planted in an evenly spaced triangular pattern.
4. Plant materials shall be the same species and size as described in the plant schedule.
5. See Plant Schedule for tree species to be guided or staked as shown in the planting details.
6. The following tree species are to be wrapped as shown in the deciduous tree planting details: All Males, Lindens, Crabapple, Fruitless Mulberry, Plum and Pear.
7. Provide Agriform 20-10-5, 21 gram fertilizer tablets for trees and shrubs. Provide 3 tablets per tree and 2 tablets per shrub.
8. Guy and stake trees immediately after planting as shown in the planting details.



AP (u) 300
Privacy and/or security fences or walls shall not be constructed within this area. Any proposed fences or walls shall be adjacent this vegetation/hillside area and receive approval.



319-B

DRIVE

DATE 16 Dec 1980
BY
SHEET NO

L-1

Powwood

Design Division
1485 South 900 East
Salt Lake City Utah 84117
Telephone (801) 262-4637

LANDSCAPE PLAN

ATTACHMENT P: PC Minutes and Staff Report, Aug. 27, 1987

neighborhood, and that each approved conditional use is retained under jurisdiction.

Mr. VanAlstyne made a motion that the Planning Commission recommend to the Council that the "B-3" zone ordinance be amended with the original 13 specifications listed on the last two pages of the staff report, as mentioned above. Motion seconded by Mr. Nicolatus with all voting "Aye".

Mr. Schumann stated that the minutes needed to be ratified since there was not a full body when the meeting first started.

Mr. VanAlstyne made a motion to ratify the minutes. Motion seconded by Mr. Stepan with all voting "Aye".

SUBDIVISIONS

Harvard Park PUD Subdivision for preliminary approval

Mr. Jorgensen stated that this is the approved plan that the commission went over as a PUD. At the time that Harvard did the PUD it wasn't determined whether they were going to sell the units as a condominium or as a PUD subdivision. Harvard Park has selected to go with the PUD Subdivision. This is a request that the Planning Commission grant preliminary subdivision approval and authorizing the me, the Planning Director, to sign the plat when everything is completed.

Mr. Wagner made a motion to approve preliminary subdivision and authorize the Planning Director to grant final plat approval administratively upon satisfaction of the departmental conditions and ordinance requirements. Motion seconded by Mr. Nicolatus with all voting "Aye".

Street dedication plat for Tabby Lane, Colorow Drive and Wakara Way in Research Park

Mr. Jorgensen stated that this dedication will be the last street dedication in Research Park. Salt Lake City has designed and built most of the streets in the Research Park area. This arrangement was set up when the Research Park first began and a special fund was established to pay for the street construction. This will be the last street improvement built by the City under this arrangement and will exhaust the special fund.

Mrs. Hermoine Jex was at the meeting on behalf of the Land Use and Natural Resources Committee of Salt Lake Association of Community Councils. She had with her some information on Research Park. She also read the following to the Planning Commission:

"The Land Use and Natural Resources Committee requests that the attached information on Research Park be included in the minutes and permanent record, and copies be sent to the governor.

**SALT LAKE CITY PLANNING COMMISSION STAFF REPORT
ON HARVARD PARK PLANNED UNIT DEVELOPMENT SUBDIVISION
FOR PRELIMINARY APPROVAL LOCATED AT 1250 SOUTH 2100 EAST STREET**

OVERVIEW OF ISSUE

This is a PUD Subdivision which requires preliminary and final subdivision plat approval by the Planning Commission.

BACKGROUND

This project consists of 10 single-family detached residences arranged on the 1.77 acre site around a private cul-de-sac street. The Board of Adjustment has approved the project layout and the design of the buildings in Board of Adjustment Case No. 319-B. The project is about half constructed. The subdivision includes 10 lots which are about 2 feet larger than the building footprint for each residence. The remainder of the site is common area to be managed by the home owners association. The site is located on the west side of 2100 East Street between Laird Drive and 1300 South Street. The zoning is Residential "R-3A".

ANALYSIS

The Board of Adjustment has approved the layout of the project. The subdivision is necessary only to allow long-term financing of the individual residential units. Street improvements along 2100 East have been installed and no additional street dedication is involved. Building permits have been issued for the project and most of the 10 residential units.

RECOMMENDATION

The staff recommends that the Planning Commission grant preliminary subdivision approval and further recommends that the Planning Commission authorize the Planning Director to grant final plat approval administratively upon satisfaction of the departmental conditions and ordinance requirements.

DLW:bw
August 21, 1987

A PLANNED UNIT DEVELOPMENT SUBDIVISION LOCATED IN BLOCK 27, 5-ACRE PLAT "C" SALT LAKE CITY SURVEY

Owner hereby dedicates to the public the following easements over all land designed as "common areas":

- (1) A utility easement for all public and private utilities now located in, on, under or over the property and those which may be proposed, approved and accepted by any utility, maintaining, obtaining, altering, repairing, replacing, removing or rerouting of such utilities.
- (2) An easement for ingress and egress, emergency vehicle access, storm drainage for the public and Salt Lake City Corporation over the common areas improved and designated as private driveways, including 1210 South.
- (3) The Owner, its successors and assigns, agrees to indemnify, serve harmless and defend Salt Lake City Corporation from all claims, demands, and damages to improvements of any kind thereon arising out of the City's and the public's use of said driveways and easements.

Subject to the foregoing easements and agreements, the Owner, its successors and assigns, sets aside and dedicates all areas designated as "common area" to the Homeowner's Association of said subdivisions to be held for the benefit of all homeowners. Use of the common area by the Homeowners Association and lot owners shall be subordinate to and compatible with the above specified easements and the terms of the Declaration of Covenants, Conditions, and Restrictions applicable to Harvard Park as recorded concurrently herewith as Entry No. _____.

HARVARD PARK CORPORATION, a Utah Corporation

By William Lloyd
WILLIAM LLOYD, President

STATE OF UTAH)
County of Salt Lake) ss.

On the 30th day of July, 1987, personally appeared before me, WILLIAM LLOYD, known to me to be the President of HARVARD PARK CORPORATION, a Utah Corporation, who duly acknowledged to me that he signed the foregoing instrument as President of HARVARD PARK CORPORATION pursuant to authority vested in him.

Harry M. Culley
NOTARY PUBLIC, residing in Salt Lake County, UTAH

My Commission Expires: 1/24/92

ON THIS PLAT.

July 28, 1987

DATE

LICENSE No. 4099

BOUNDARY (CADASTRAL) DESCRIPTION

Beginning at a point 140.99 feet and North 89°57'20" East 1.10 feet from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°27'00" East 544.59 feet; thence North 80°00'00" West 15.26 feet to the center line of Emigration Creek as originally located; thence along said center line of creek as follows: South 6°15'00" West 48.34 feet; thence South 24°57'00" West 180.04 feet; thence South 29°48'00" West 50.00 feet; thence South 49°23'00" West 122.00 feet; thence South 17°28'00" West 70.42 feet; thence South 89°57'20" West 10.85 feet; thence South 22°30'00" West 26.83 feet; thence South 10°28'00" West 65.51 feet; thence South 22°30'00" West 64.95 feet; thence leaving said creek North 89°57'20" East 299.43 feet to the point of beginning. This is subject to any existing right-of-ways and easements. Containing 1.81 acres.

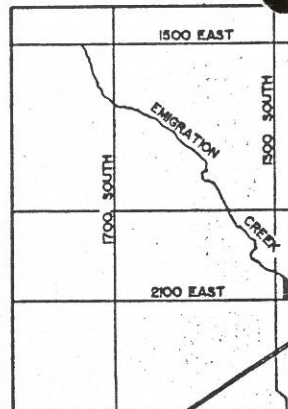
The following description is the mathematical equivalent of the preceding description with bearings converted to the Utah State Plane Rectangular Coordinate System.

STATE PLANE DESCRIPTION

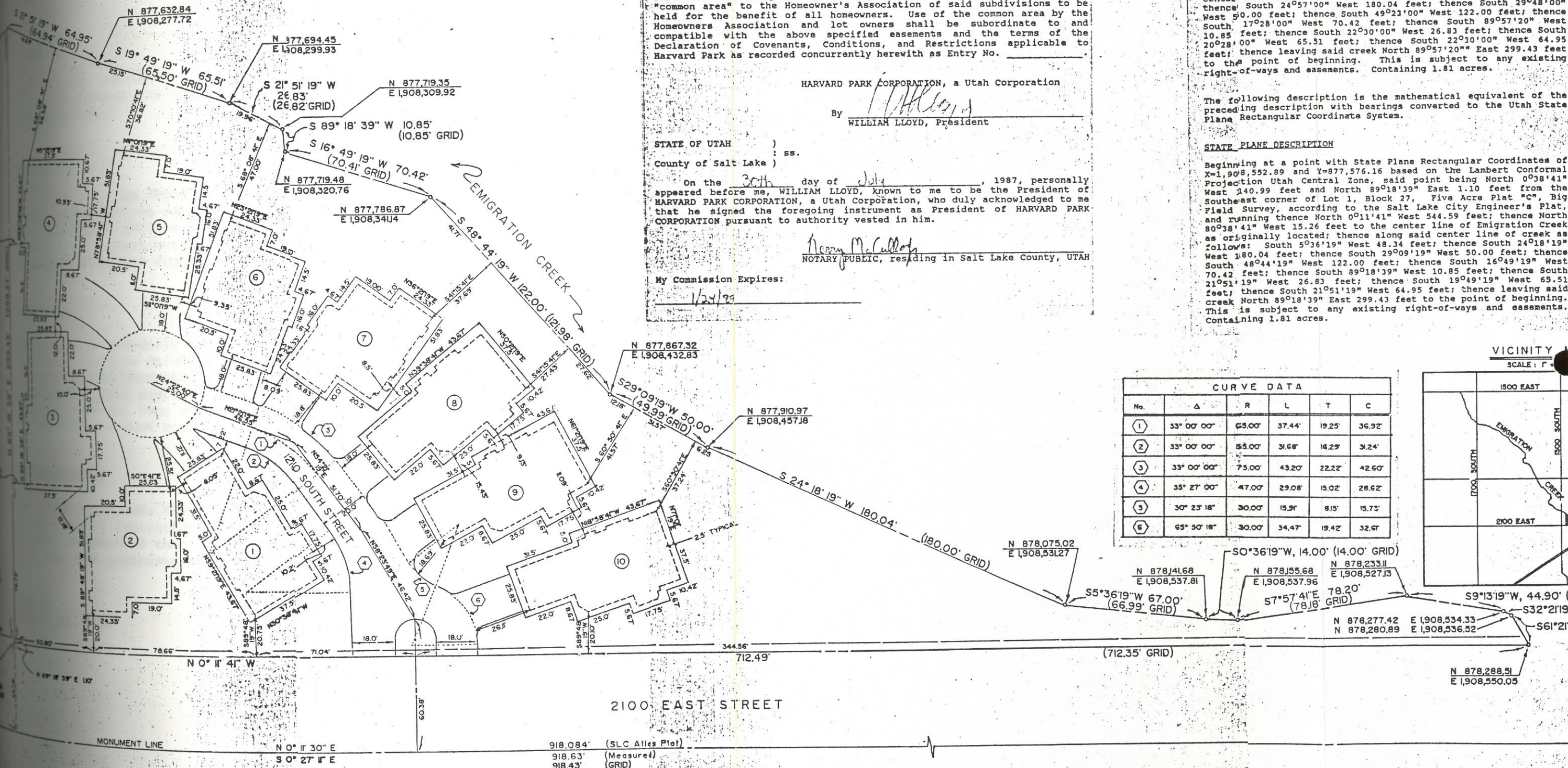
Beginning at a point with State Plane Rectangular Coordinates of X=1,908,552.89 and Y=877,576.16 based on the Lambert Conformal Projection Utah Central Zone, said point being North 0°38'41" West 140.99 feet and North 89°18'39" East 1.10 feet from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°11'41" West 544.59 feet; thence North 80°38'41" West 15.26 feet to the center line of Emigration Creek as originally located; thence along said center line of creek as follows: South 5°36'19" West 48.34 feet; thence South 24°57'00" West 180.04 feet; thence South 29°48'19" West 50.00 feet; thence South 48°44'19" West 122.00 feet; thence South 16°49'19" West 70.42 feet; thence South 89°18'39" West 10.85 feet; thence South 21°51'19" West 26.83 feet; thence South 19°49'19" West 65.51 feet; thence South 21°51'19" West 64.95 feet; thence leaving said creek North 89°18'39" East 299.43 feet to the point of beginning. This is subject to any existing right-of-ways and easements. Containing 1.81 acres.

VICINITY

SCALE: 1" = 100'



CURVE DATA					
No.	Δ	R	L	T	C
①	33° 00' 00"	65.00'	37.44'	19.25'	36.92'
②	33° 00' 00"	55.00'	31.68'	16.25'	31.24'
③	33° 00' 00"	75.00'	43.20'	22.22'	42.60'
④	33° 27' 00"	47.00'	29.08'	15.02'	28.62'
⑤	30° 23' 18"	30.00'	15.91'	8.15'	15.73'
⑥	65° 50' 18"	30.00'	34.47'	19.42'	32.67'



S. L. C. MONUMENT
N 878,322.41
E 1,908,590.77

CITY PLANNING DIRECTOR

CITY DEPARTMENT OF PUBLIC WORKS

HEREBY CERTIFY THAT I HAVE HAD THIS PLAT EXAMINED BY THIS OFFICE AND IT IS CORRECT

CITY DEPT. OF PUBLIC UTILITIES

CITY ATTORNEY

CITY MAYOR

PRESENTED TO SALT LAKE CITY THIS
DAY OF _____ A.D. 1987,
AND IS HEREBY APPROVED

SALT LAKE COUNTY RECORDER

RECORDED
STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED
FILED AT THE REQUEST OF _____

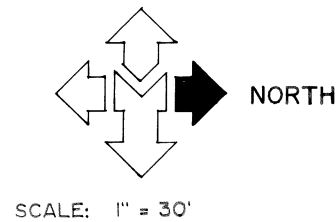
ATTACHMENT Q: Recorded Harvard Park Subdivision Plat, Oct. 1, 1987

NARRATIVE

Having been commissioned by the owner, Harvard Park Corporation, through their authorized representative, Prowswood, Inc., we performed a survey to re-establish the property corners of the parcel of land to be known as Harvard Park, a Planned Unit Development Subdivision, as shown on the accompanying plat. The monument at the intersection of 1300 South Street and 2100 East Street was used as control for re-establishing the corners. The basis of bearing, which is the monument line on 2100 East Street between 1300 South Street and Laird Drive, equals North 0°11'30" East per the Salt Lake City Engineers Office. All corners, except those in Emigration Creek, were marked with a 1/2 inch bar, two foot in depth, and plastic cap bearing the name of our company and license number.

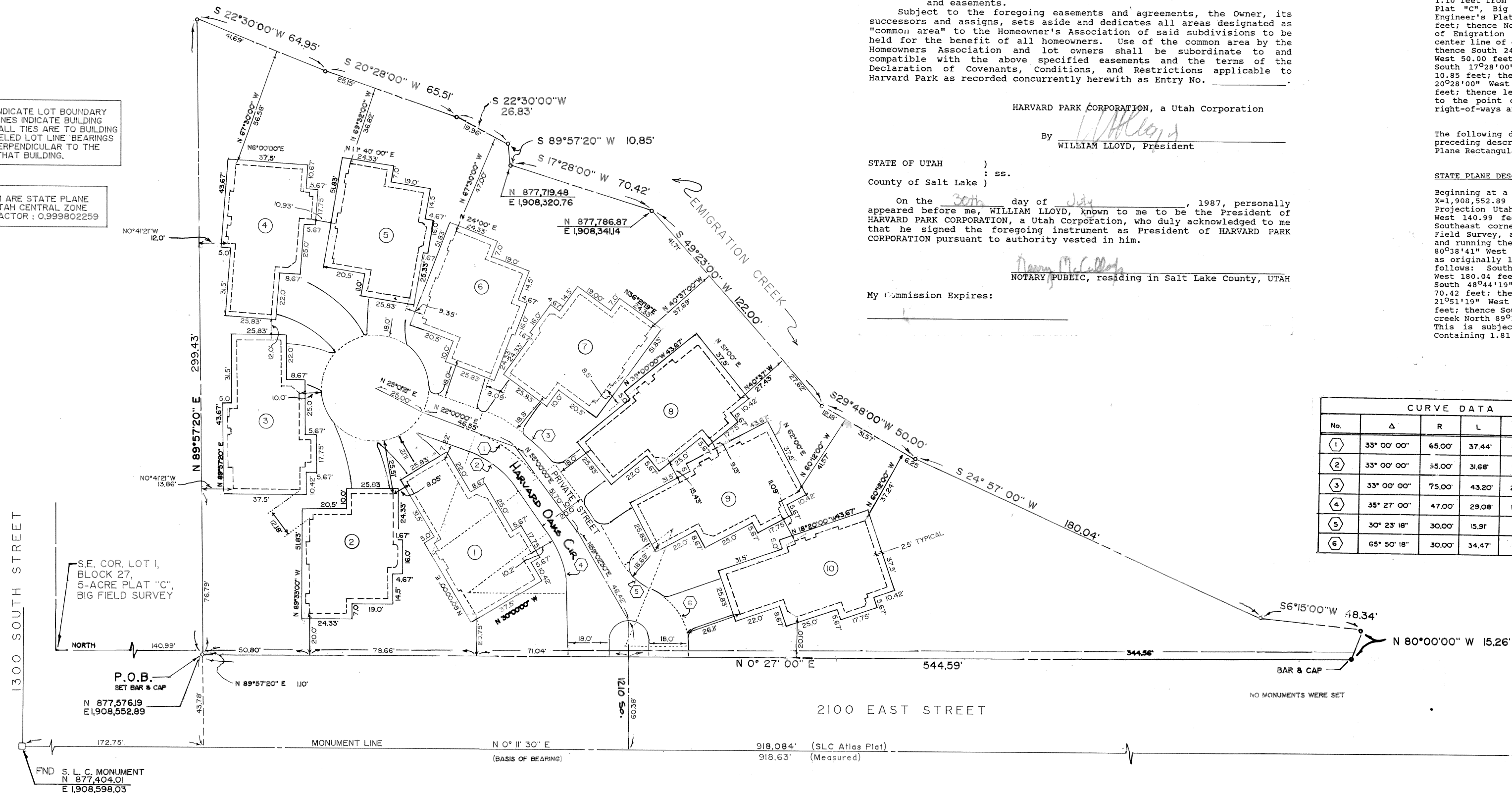
HARVARD PARK

A PLANNED UNIT DEVELOPMENT SUBDIVISION
LOCATED IN BLOCK 27, 5-ACRE PLAT "C"
SALT LAKE CITY SURVEY

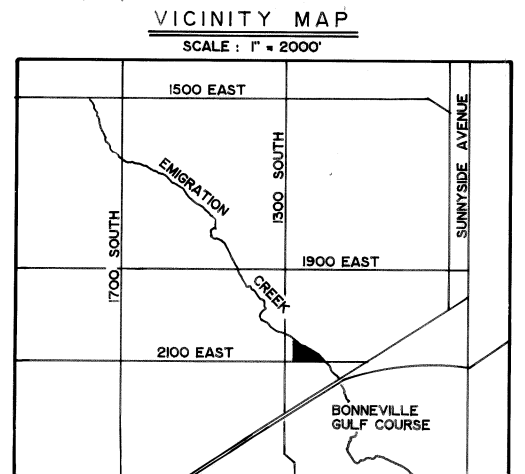


NOTE: SOLID LINES INDICATE LOT BOUNDARY LINES AND DASHED LINES INDICATE BUILDING FOUNDATION LINES. ALL TIES ARE TO BUILDING FOUNDATION. UNLABELED LOT LINE BEARINGS ARE PARALLEL OR PERPENDICULAR TO THE GIVEN BEARING FOR THAT BUILDING.

COORDINATES SHOWN ARE STATE PLANE COORDINATES FOR UTAH CENTRAL ZONE USING CONVERSION FACTOR : 0.999802259



CURVE DATA					
No.	Δ	R	L	T	C
1	33° 00' 00"	65.00'	37.44'	19.25'	36.92'
2	33° 00' 00"	55.00'	31.68'	16.29'	31.24'
3	33° 00' 00"	75.00'	43.20'	22.22'	42.60'
4	35° 27' 00"	47.00'	29.08'	15.02'	28.62'
5	30° 25' 18"	30.00'	15.31'	8.15'	15.73'
6	65° 50' 18"	30.00'	34.47'	19.42'	32.61'

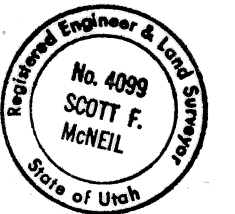


SURVEYOR'S CERTIFICATE

I, SCOTT F. MCNEIL, A REGISTERED LAND SURVEYOR, HOLD CERTIFICATE No. 4099, AS PRESCRIBED BY THE STATE OF UTAH, AND DO HEREBY CERTIFY THAT BY AUTHORITY OF THE OWNERS, I HAVE MADE AN ACCURATE SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HERewith, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND COMMON AREAS TO BE HEREFTER KNOWN AS HARVARD PARK P. U. D. SUBDIVISION, AND THAT THE SAME HAS BEEN SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

July 28/87
DATE

SCOTT F. MCNEIL, P.E. & L.S.
LICENSE No. 4099



BOUNDARY (CADASTRAL) DESCRIPTION

Beginning at a point North 140.99 feet and North 89°57'20" East 1.10 feet from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°27'00" East 544.59 feet; thence North 80°00'00" West 15.26 feet to the center line of Emigration Creek as originally located; thence along said center line of creek as follows: South 6°15'00" West 48.34 feet; thence South 24°57'00" West 180.04 feet; thence South 29°49'00" West 50.00 feet; thence South 49°23'00" West 122.00 feet; thence South 17°28'00" West 70.42 feet; thence South 89°57'20" West 10.85 feet; thence South 22°30'00" West 26.83 feet; thence South 20°28'00" West 65.51 feet; thence South 22°30'00" West 64.95 feet; thence leaving said creek North 89°57'20" East 299.43 feet to the point of beginning. This is subject to any existing right-of-ways and easements. containing 1.81 acres.

The following description is the mathematical equivalent of the preceding description with bearings converted to the Utah State Plane Rectangular Coordinate System.

STATE PLANE DESCRIPTION

Beginning at a point with State Plane Rectangular Coordinates of X=1,908,552.89 and Y=877,576.16 based on the Lambert Conformal Projection Utah Central Zone, said point being North 0°38'41" West 140.99 feet and North 89°18'19" East 1.10 feet from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°11'41" West 544.59 feet; thence North 80°38'41" West 15.26 feet to the center line of Emigration Creek as originally located; thence along said center line of creek as follows: South 5°56'19" West 48.34 feet; thence South 24°49'19" West 180.04 feet; thence South 29°09'19" West 50.00 feet; thence South 48°44'19" West 122.00 feet; thence South 16°49'19" West 70.42 feet; thence South 89°18'39" West 10.85 feet; thence South 21°51'19" West 26.83 feet; thence South 19°49'19" West 65.51 feet; thence South 21°51'19" West 64.95 feet; thence leaving said creek North 89°18'39" East 299.43 feet to the point of beginning. This is subject to any existing right-of-ways and easements. containing 1.81 acres.

OWNER'S DEDICATION

In recording this plat, Harvard Park, a P.U.D. SUBDIVISION, the undersigned has designated and dedicated all land within said subdivision and outside of P.U.D. lot boundaries as common area. This common area is to be used for driveways, sidewalks, landscaped open space, easements for utility main and service line, recreation, and other activities and related requirements for the operation of Harvard Park.

Owner hereby dedicates to the public the following easements over all land designated as "Common areas":

- (1) A utility easement for all public and private utilities now located in, on, under or over the property and those which may be proposed, approved and accepted by any utility, maintaining, obtaining, altering, repairing, replacing, removing or rerouting of such utilities.
- (2) An easement for ingress and egress, emergency vehicle access, storm drainage for the public and Salt Lake City Corporation over the common areas improved and designated as private driveways, including 1210 South.
- (3) The Owner, its successors and assigns, agrees to indemnify, serve harmless and defend Salt Lake City Corporation from all claims, demands, and damages to improvements of any kind thereon arising out of the City's and the public's use of said driveways and easements.

Subject to the foregoing easements and agreements, the Owner, its successors and assigns, sets aside and dedicates all areas designated as "common area" to the Homeowner's Association of said subdivisions to be held for the benefit of all homeowners. Use of the common area by the Homeowners Association and lot owners shall be subordinate to and compatible with the above specified easements and the terms of the Declaration of Covenants, Conditions, and Restrictions applicable to Harvard Park as recorded concurrently herewith as Entry No. _____.

HARVARD PARK CORPORATION, a Utah Corporation

By William Lloyd, President
WILLIAM LLOYD, President

STATE OF UTAH)
County of Salt Lake) ss.

On the 28th day of July, 1987, personally appeared before me, WILLIAM LLOYD, known to me to be the President of HARVARD PARK CORPORATION, a Utah Corporation, who duly acknowledged to me that he signed the foregoing instrument as President of HARVARD PARK CORPORATION pursuant to authority vested in him.

NOTARY PUBLIC, residing in Salt Lake County, UTAH

My Commission Expires: _____

McNEIL
ENGINEERING
CONSULTING ENGINEERS
4685 S. Highland Drive
SLC, UT 84117

CITY PLANNING DIRECTOR

APPROVED THIS 18th DAY OF Sept 1987 BY THE SALT LAKE CITY PLANNING COMMISSION.

Cherrie Ferguson
PLANNING DIRECTOR

CITY DEPARTMENT OF PUBLIC WORKS

I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT EXAMINED BY THIS OFFICE AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE AND IS HEREBY APPROVED.

Timothy P. Ruppert 9/1/87
CITY TRANSPORTATION ENGINEER DATE
Joseph R. Anderson 9/18/87
PUBLIC WORKS DIRECTOR DATE
Stephen D. Ruppert 9/17/87
CITY ENGINEER DATE

CITY DEPT. OF PUBLIC UTILITIES

APPROVED THIS 2 DAY OF Sept, 1987.

DeWayne W. Hinton Jr.
S.L.C. PUBLIC UTILITIES DIRECTOR

CITY ATTORNEY

APPROVED AS TO FORM THIS 28th DAY OF September, A.D., 1987.

DeWayne W. Hinton Jr.
SALT LAKE CITY ATTORNEY

CITY MAYOR

PRESENTED TO SALT LAKE CITY THIS 28th DAY OF September, A.D., 1987, AND IS HEREBY APPROVED.

DeWayne W. Hinton Jr.
S.L.C. RECORDER
DeWayne W. Hinton Jr.
S.L.C. MAYOR

SALT LAKE COUNTY RECORDER

RECORDED 4531387
STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF Harvard Park Corp.
DATE 10-1-87 TIME 1:19 P.M. BOOK 87-10 PAGE 124
FEES \$25.00

DeWayne W. Hinton Jr.
SALT LAKE COUNTY RECORDER

SHEET

1
OF
1

87-10P-124

87-10-124

ATTACHMENT R: Recorded Harvard Park CC&Rs, Oct. 1, 1987

HARVARD PARK
A. PLANNED UNIT DEVELOPMENT SUBDIVISION
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS

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APPROVED

SEP 29 1987

CITY RECORDER

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
HARVARD PARK, A PLANNED UNIT DEVELOPMENT SUBDIVISION

THIS DECLARATION is made and executed this 29th day of September, 1987, by HARVARD PARK CORPORATION, a Utah corporation (hereinafter referred to as "Declarant").

I. RECITALS:

A. Declarant is the record owner of that certain tract of Property more particularly described in Article III of this Declaration. Declarant desires to create on said Property a residential development with landscaped areas, open spaces, recreational areas and facilities and other Common Areas.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article III of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a non-profit corporation, HARVARD PARK HOMEOWNERS ASSOCIATION.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property described in Article III of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

II. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. Association shall mean and refer to HARVARD PARK HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, which will own, operate and maintain the Common Areas within the Property.

BOOK 5967 PAGE 614

2. Board shall mean and refer to the board of Trustees of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

3. Common Areas shall mean and refer to all property owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. The initial common Areas shall consist of all property described in Article III of this Declaration, save and excepting all Lots contained therein,

4. Declarant shall mean and refer to Harvard Park Corporation, a Utah corporation, its successors and assigns.

5. Declaration shall mean this Declaration of Covenants, Conditions and Restrictions.

6. Harvard Park Planned Unit Development Subdivision or the Development, at any point in time, shall mean, refer to, and consist of the Property and all improvements thereon.

7. Limited Common Areas shall mean those Common Areas designated herein and reserved for use with a specific Lot. Driveways, walkways and fenced patios designed and originally constructed for use with a specific Living Unit on a Lot and such additional walkways and/or modifications of original driveways, walkways and fenced patios as the Board shall approve, shall be designated as Limited Common Areas.

8. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

9. Lot shall mean and refer to one of the separately numbered and individually described plots of land within the Property: (i) which is intended to be owned individually rather than by an association of Owners or in common by Owners of different Lots; and (ii) which is intended to be used as the site of Living Units. It is intended that the exterior surface of each Living Unit corresponds to the perimeter of the Lot upon which said Living Unit is constructed, although second story decks shall be permitted to extend into the air space above Common Areas. Therefore, yards exterior to the Living Unit shall be deemed part of the Common Areas.

10. Managing Agent shall mean and refer to any person or entity appointed or employed as the manager or managing agent by the Association.

11. Member shall mean and refer to every person who holds membership in the Association.

12. Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust; and Mortgagee shall mean any first mortgagee and any trustee or beneficiary of a first trust deed or deed of trust.

13. Owner or Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee, or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

14. Plat shall mean and refer to a that subdivision plat of "HARVARD PARK, a Planned Unit Development Subdivision", executed and acknowledged by Declarant on September ____, 1987, prepared and certified by Scott F. McNeil, P.E. & S.E. (a duly registered Utah Land Surveyor, holding Registration No. 4099), consisting of one sheet and filed for record in the office of the County Recorder of Salt Lake County, Utah on September ____, 1987, in Book ____, Page ____, as Entry No. ____, creating separately numbered Lots.

15. Property shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article III of this Declaration.

III. PROPERTY DESCRIPTION

1. Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property located in Salt Lake County, State of Utah:

See Exhibit "A" attached hereto and incorporated herein by this reference

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

RESERVING UNTO Declarant, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee of Declarant (in a manner which is reasonable and not

inconsistent with the provisions of this Declaration: (i) to construct a Living Unit on each and every Lot and to improve the Common Areas with such facilities (including, but not limited to, roads, walkways, and various landscaped areas) designed for the use and enjoyment of all Members as Declarant may reasonably determine to be appropriate; and (ii) to create and construct such Common Areas as Declarant or as such assignee may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described tract or any improvement thereon is traversed, or partially occupied by a permanent improvement or utility line, a perpetual easement for each improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereto effected shall unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way of record.

IV. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Membership. Every Owner upon acquiring title to a lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held.

Class B. Declarant shall be the sole Class B member. The Class B member shall be entitled to three (3) votes for each lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

a. When the total number of votes held by all Class A members equals the total number of votes held by the Class B members;

b. The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Article VI, Section 6.

V. DUTIES AND POWERS OF THE ASSOCIATION

1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration; the Association shall have the obligation and duty to do and perform each and every one of

the following for the benefit of the Owners and the maintenance and improvement of the property:

a. The Association shall accept all Owners as members of the Association.

b. The Association shall accept title to all Common Areas conveyed to it by Declarant.

c. The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass, private roads, post lamps and other common area improvements. The Association shall maintain or cause to be maintained the landscaped area including the park strip (area between the back of curb and the property line) to Laird Drive as outlined in the Salt Lake City Board of Adjustment Case No. 319-B and the final landscaping plan approved by the Board. Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Living Unit, any Limited Common Area appurtenant thereto or any other landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. The Association may also agree from time to time to provide snow removal for all or portions of Limited Common Areas as it shall elect.

As provided in section 9 of Article VIII, each Owner shall have the obligation to provide exterior maintenance of his Living Unit and Limited Common Areas appurtenant thereto, including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and landscaping, if any, installed by an Owner or his predecessor in title. Each Owner shall paint, repair, and otherwise maintain the exterior and interior of all patio walls and all landscaping within the patio yard area, and maintain all mechanical devices, including but not limited to, intercoms, and appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

In the event that the need for maintenance or repair of Common Areas as specified above is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner the Board may cause such repairs to be made by the Association and the cost of such exterior maintenance (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Article VI, Section 6) to which

such Lot is subject. In the event of the need for maintenance or repair of the exterior of a Living Unit or Limited Common Areas appurtenant thereto, and in the event such maintenance and/or repair is not made after thirty (30) days written notice to the Owner of such Living Unit, the Board may cause such maintenance and repairs to be made by the Association and the cost of such exterior maintenance (and administrative expenses equal to ten percent (10%) of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Article VI, Section 6) to which such Lot is subject.

d. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

e. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

f. The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a non-profit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

a. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or other-

wise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article IX of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of Living Units and Limited Common Areas to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of Living Units and Limited Common Areas upon Lots to the extent necessitated by the failure of Owners of such Lots) on such terms and conditions as the Board shall deem appropriate.

ii. Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash re-

moval, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

v. Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

c. The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

3. Association Rules. The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. Rules and Regulations adopted by the Board may be enforced in accordance with the provisions of Section 14 of Article VIII.

4. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

VI. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the special and Reimbursement Assessments, annual and special assessments and his pro rata share of all taxes levied on the

assets owned by the Association, together with late payment fees, interest and costs of collection including reasonable attorney's fees, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents or the Development including, but not limited to maintaining aesthetic and market values of the Property and Living Units located thereon. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; maintenance and repair of the exteriors of Living Units; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance and repairs and replacement of those elements of the Common Areas that must be replaced on a periodic basis.

3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be the sum of \$1,200.00, payable in equal monthly installments.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased effective January 1 of each year by the Board of Directors without a Vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Such monthly assessment shall continue in effect for the following twelve (12) months, which period shall be deemed to be the assessment period.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular assessment may be increased

by the Board of Directors in an amount greater than provided for in subsection (a) hereof for the next succeeding twelve (12) calendar months, and at the end of each such period, for each succeeding period of twelve (12) months, provided that any such change shall have the approval by vote or written assent of a majority of the Members other than the Declarant, or if the two class voting structure is still in effect as provided herein and in the Bylaws, a majority of the votes of each Class of Members.

c. After consideration of current maintenance costs and future needs of the development, the maintenance assessment may be decreased by a vote of not less than two-thirds (2/3) of the Owners present, either in person or by proxy and entitled to vote at any duly constituted meeting for such purpose.

4. Special Assessments. From and after the date set under Section 8 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum at any meeting required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast eighty percent (80%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called (subject to the notice requirements set forth in Section 3 and 4 above) at which a quorum shall be sixty percent (60%) of all the votes of each class of membership. If a quorum is not present at the second meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4 above) at which a quorum shall be forty percent (40%) of all the votes of each class of membership. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Special Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to section 4 above, the Board may levy at any time Special Assessments (a) on every Lot especially benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the

Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4 of Article IV, Section 2(a) of Article V or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessments"). The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Special Assessment against the Lots benefited.

7. Uniform Rate of Assessment. All monthly and special assessments authorized by Section 3 or 4 above shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a Living Unit and occupied for the first time for residential purposes, the monthly assessment applicable to such Lot shall be one third (1/3) of the monthly assessment which would otherwise apply to such Lot. In the event that, while the Class B membership exists, assessed fees collected by the Association fail to adequately meet Association expenses, then the Declarant must pay sufficient capital up to the full assessed share applicable to the specific Lot; provided, however, that Declarant shall not be obligated to contribute to any reserve fund(s) which may be provided by the Association. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.

8. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots as of the first day of the second month following the date that a sale by Declarant of the Lot concerned is closed. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

9. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

10. Effect of Nonpayment -- Remedies. Any assessment (whether monthly, special or Reimbursement Assessment) not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1-1/2%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

11. Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any First Mortgage to an institutional lender; and the holder of any such First Mortgage or purchaser who comes into possession of a Lot by virtue of the foreclosure of such First Mortgage or the exercise of a power of sale under such First Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such First Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such First Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due.

VII. PROPERTY RIGHTS AND CONVEYANCES

1. Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

2. Form of Conveyancing. Any deed, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ as identified in the Plat recorded in Book _____, Page _____, as Entry No. _____, contained within the Harvard Park, a Planned Unit Development Subdivision identified in the "Declaration of Covenants, Conditions, and Restrictions of Harvard Park Planned, a Planned Unit Subdivision" recorded in the office of the Salt Lake County Recorder in Book _____, at Page _____. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

3. Transfer of Title to Common Areas. Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed.

4. Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

a. The right of the Association to govern by rules and regulations the use of the Common Areas by the Owners so as to provide for the enjoyment of the Common areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every owner, including reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas.

b. The right of the City of Salt Lake, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

c. The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may agreed to by the Association; provided that such dedication or transfer must first be

assented to in writing by (i) all holders of first Mortgages secured by Lots and (ii) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer)

5. Reservation of Access and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and sewer, drainage and water facilities (whether servicing the Property or other properties or both) over, under, along, across and through, together with the right to grant to the County of Salt Lake or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights; provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Nothing herein shall preclude Declarant from entering into a Private Street Agreement with Salt Lake City Corporation on terms and conditions required by it for the express purpose of obtaining a street name and numbers for Lots and to provide Salt Lake City Corporation with such rights of access as shall be necessary for the proper exercise of its police powers.

6. Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

7. Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance and to post such signs and advertisements as may be reasonably incident to or necessary for the (a) construction of Living Units on Lots; (b) improvement of the Common Areas and construction, installation and maintenance thereof, roads, walkways, buildings, structures,

landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners; (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways and other facilities planned for dedication to appropriate governmental authorities; and (d) the marketing and sale of Living Units on a Lot or Lots. The reservations contained in this paragraph shall expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8. Easements for Exterior Landscaping. Declarant reserves for itself and Association easements and rights of ingress and egress over, under, along, across and through each portion of a Lot from the Lot boundary line to the exterior surface of each Living Unit to Lot boundary lines for the purpose of installing, maintaining, replacing and otherwise caring for all landscaping upon such areas and the Common Areas. Such reservation is made for the express purpose of permitting all landscaped areas, including those from the boundaries of Lots to the exterior surfaces of Living Units, to be exclusively maintained and cared for by the Association as a Common Area expense. Each Owner consents to the exclusive maintenance of such areas by the Association by his or her purchase of a Unit.

VIII. USE RESTRICTIONS

1. Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. Except as provided herein, each Living Unit shall be used only as a single-family residence. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Living Unit, without the prior written consent of the Board. In considering any request for use of a Living Unit for other purposes (in addition to use as a single-family residence), the Board may take into consideration in granting or denying such approval, the additional use intended for such Living Unit whether or not employees other than Owner will be working at the Living Unit, whether or not customers or clients will be frequenting the Living Unit and such other items as the Board shall deem appropriate. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, in a way which would result in an increase in the cost of any insurance covering the Common Areas, or adjoining Living Units, or in a way which would result in an increase in potential liabilities to the Association or other Owners.

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3. Parking and Recreational Vehicles. Except for temporary and guest parking in accordance with rules and regulations established by the Board (which rules and regulations shall not permit over-night parking on streets), each Owner shall be required to park automobiles and other vehicles in garages designed for such purposes, and Owners shall not be permitted to maintain or park additional automobiles or vehicles on any Lot or at the Development. No boats, trailers, large trucks, or commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Development, except temporary parking which shall be permitted in accordance with the rules and regulations adopted by the Board. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, street or other Common Areas, except that these restrictions shall not apply to emergency or short term (not exceeding seventy-two hours) repairs and maintenance to vehicles, all of which shall be performed inside garages.

4. Pets. No animals other than household pets shall be kept or allowed upon the Property. Whenever a pet is allowed to leave a Living Unit, it shall be kept on a leash or in a cage. No animals may be bred upon the Property for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance to other Owners. No exterior structure or fence for the care, housing or confinement of any such pets shall be allowed. Any Owner or other resident within the Development who violates this Section shall be subject to such penalty or fines as the Board by resolution or regulation may provide, including but not limited to a requirement that such pet be permanently removed from the Development.

5. Antennas, Exterior Appliances, Etc. Without prior written approval of the Board, no antenna for radio or television reception, air conditioning unit or other appliance or apparatus, laundry, bedding, garment or other like item, shall be placed within the Common Areas, or outside of any Living Unit. No such item placed within any Living Unit shall be located so as to be readily visible from the Common Areas.

6. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

a. Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.

b. Recreational use by Owners and occupants of Living Units and their guests.

c. Beautification of the Development.

d. Privacy for the Owners and occupants of Living Units.

e. Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be cancelled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better), unless the Association elects to obtain homeowners special form coverage insurance for all Owners of Lots. Each homeowner's coverage shall specifically include an endorsement covering activities upon and risks associated with the Limited Common Areas without any requirement for contribution by the Association or its insurance carriers.

8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

9. Maintenance and Repair. No building or structure upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building or structure at all times shall be kept in good condition and adequately painted or otherwise finished. In explanation of the foregoing and not in limitation thereof, each Owner shall provide exterior maintenance to his Living Unit and all Limited Common Areas appurtenant thereto, including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and landscaping, if any, installed by Owner and his predecessor in title. Failure to perform such maintenance and repair may result in a Reimbursement Assessment in accordance with the provisions of Section 1c of Article V and Section 6 of Article VI. No Owner shall modify any existing structure upon any Lot or Limited Common Area appurtenant thereto, without satisfaction of the conditions set forth in Article IX.

10. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lot, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Lot Owners of the Development. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or on the exterior of Living Units.

11. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any building, site, Living Unit or Lot, and the improvements thereon, to ascertain whether or not the rules and regulations of the Board or of the Association have been or are being complied with. Notwithstanding the foregoing, and excepting circumstances perceived to be an emergency, no entry shall be made of any Living Unit without the prior affirmative vote of the Board authorizing the same. Nothing herein shall preclude the Association or its agents from entering a Lot for the purposes set forth in Paragraph 8 of Article VII.

12. Signs. With the exception of such signs as shall be permitted in accordance with the provisions of Section 7 of Article VII, no signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot except:

a. Such signs as may be required by legal proceedings.

b. Residential identification signs of a combined total face area of seventy-two (72) square inches or less for each Living Unit.

c. A "For Sale" sign, to the extent permitted by the Board.

Any sign or similar device erected in accordance with the provisions hereof or Section 7 of Article VII must comply with all applicable zoning ordinances.

13. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained so as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at his expense provide garbage cans and plastic liners therefor.

14. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

a. Declarant, so long as it has any interest in any of the Property;

b. Any Owner; or

c. The Association, by its Board.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

15. Exception for Declarant. Notwithstanding the restrictions contained in this Article VIII, for the ten (10) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant.

IX. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting with a different color, or refurbishing of the exterior of any Living Unit, nor of any patio enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee and, if necessary, building permits obtained from applicable governmental agencies.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. In this regard, the Committee will necessarily render decisions in part or in whole on aesthetic judgments and such decisions shall nevertheless be binding upon all concerned.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. Submission shall be deemed to have been made only in the event applicant obtains from a Committee Member a signed receipt specifying the date and material submitted. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and of the Lots in the vicinity of the activity. In the event of non-compliance with the provisions of this Section, the Board may determine in accordance with the provisions of Section 1c of Article V and Section 6 of Article VI, to cause such item to be completed and the cost of the same shall become a Reimbursement Assessment upon such Lot.

6. Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.

7. Exception for Declarant. The foregoing provisions of this Article IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the ten (10) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living Units erected by it and all improvements of the Common Areas accomplished by it in the Development (i) shall be architecturally compatible with respect to one another; and (ii) that on or before seven (7) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah there shall be substantially completed and usable all Common Areas of the Development, all approximately in the locations shown on the Plan.

9. Governmental Approval. Owners, the Board of Trustees and the Committee acknowledge that Harvard Park Planned Unit Development Subdivision obtained approval for the Development from the Salt Lake City Board of Adjustment, Case No. 319-B and any modifications to the approved Plan are subject to the review and approval of the Board of Adjustment.

X. INSURANCE

1. Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the common property owned by the Association (including

all building service equipment, if any, and the like) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any Mortgagee of any Lot, Demolition and Contingent Liability from Operation of Building Laws Endorsement, an Increased Cost of Construction Endorsement, and such other endorsements as any first Mortgagee of a Lot shall reasonably require. Such insurance policy or policies shall name Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

a. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

b. such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

2. Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas and areas under control of the Association by easement or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Salt Lake nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insurers as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least 180 days prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

3. Additional Insurance: Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against

such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

a. a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;

b. that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners;

c. that it cannot be cancelled, suspended or invalidated due to the conduct of the Association without a prior written demand of not less than sixty (60) days that the defect be cured; and

d. that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

4. Fidelity Coverage. If the Board elects, the Association shall maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

a. name the Association as an obligee;

b. be written in an amount based upon the best business judgement of the Association and shall not be less than the estimated maximum of funds, including reserve funds in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months assessment on all Lots plus reserve funds; and

c. contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression.

5. Review of Insurance. The Board shall periodically, and whenever requested by forty percent (40%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

6. Lots and Living Units Not Insured by Association.

a. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot and acts and events thereon. Accordingly, Owners of Lots in the Development shall obtain fire, extended coverage and liability insurance to the full replacement value of all Living Units constructed on such Owner's Lot.

b. If the Living Units are to be insured under a blanket or master type casualty insurance policy maintained by the Association, which shall be permitted, then such policy shall insure the Living Units with general liability, fire and extended coverage for the full insurable value, with replacement cost coverage, and agreed value endorsement. Such policy or policies shall also be obtained from a company or companies holding a financial rating at least equal to that mentioned for hazard and liability insurance carrier mentioned in Sections 1 and 2 of this Article X, and shall also contain such other coverage and endorsements as are customary for Living Units of the type in this Development in the State of Utah and meet all other requirements as may be required from time to time by the Mortgagees or their designees.

XI. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Board shall disburse that portion of the proceeds of the condemnation award allocable to the interest of the Owner and any first Mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal and after deducting any assessments upon such Lot due the Association.

XII. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the Owners of at least eighty percent (80%) of the Lots (not including Lots owned by Declarant) and such Owners first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

a. by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, or the upkeep of lawns or planting on the Property.

b. to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement, or reconstruction of improvements on the Common Areas.

This Section 1 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (i) all first mortgagees of Lots and (ii) the Owners of at least eighty percent (80%) of the Lots (not including Lots owned by Declarant) the Association shall not be entitled:

a. by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as hereinbefore reserved;

b. to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

This Section 2 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

3. Notice of Matters Affecting Security. The Board shall give written notice to any first Mortgagee of a Lot requesting such notice whenever:

a. there is any default by the Owner of the Lot subject to the first Mortgage in performance of any obligation under this Declaration or the Articles or By-laws of the Association which is not cured within sixty (60) days after default occurs; or

b. damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

c. there is any condemnation or taking by eminent domain of the Lot subject to Mortgage or of the Common Areas; or

d. any of the following matters come up for consideration or effertuation by the Association:

i. abandonment or termination of the Development established by this Declaration; or

ii. material amendment of the Declaration or the Articles or Bylaws of the Association.

4. Notice of Meetings. The Board shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagees shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first Mortgagee shall have the same right to inspect the books and records of the Association; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause special books, records, or financial statements to be prepared or to have its financial statements audited. Any first Mortgagee shall have the right to receive, upon written request, copies of such financial statements as may exist from time to time.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement. Upon such conveyance the Declarant shall have no obligation to make any reimbursement to Mortgagees.

XIII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered or if mailed, registered or certified mail, postage prepaid, return

receipt requested, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Architectural Control Committee (exclusive of submissions provided in Section IX which submissions may be delivered to a Member of the Committee) may be given by delivering or mailing the same to the Managing Agent or any member of the Architectural Control Committee, or the Board, as the case may be.

2. Amendment. Except as provided below or in Article XII, this Declaration may be amended by:

a. the affirmative vote of a majority of the Owners; and

b. the written consent of Declarant, if such amendment is adopted at any time when Declarant holds Class B membership in the Association; and

c. the filing of an instrument for record in the office of the County recorder of Salt Lake County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of Declarant.

3. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of the Owners, whether present or represented by proxy at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 3:

a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by the Owner.

b. The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

c. Except as provided in the following sentence, any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

d. Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

4. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

5. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The Laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

6. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall govern the validity construction and enforcement of this Declaration.

7. Duration. The covenants and restrictions of this Declaration shall remain in effect for a term of twenty (20) years from the date this Declaration is filed in the office of the County recorder of Salt Lake County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least eighty percent (80%) of the Lots and their first Mortgagees, if any, voted in favor of such termination.

8. Declarant's Right to Amend. Until Declarant sells all Lots contained within the Property or until the expiration of two (2) years, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable: (a) to more accurately express the intent of any provisions of this Declaration in light of then existing circumstances or information; or (b) to better insure, in light of then existing circumstances

or information, workability of the arrangement which is contemplated by this Declaration.

9. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED by Declarant on the day and year first above written.

HARVARD PARK CORPORATION
A Utah Corporation

ATTEST:

By [Signature]
Its [Signature]

Approved as to form this 29th day of September, 1987.

SALT LAKE CITY CORPORATION

ATTEST:

[Signature]
Kathryn Marshall,
City Recorder

By

Palmer A. DePaulis
APPROVED Palmer DePaulis
Mayor

STATE OF UTAH

County of Salt Lake

SEP 29 1987

CITY RECORDER

Date

By

On this 29th day of September, 1987, personally appeared before me [Signature], who being by me duly sworn, did say that he is the President of HARVARD PARK CORPORATION, a Utah corporation, and that the foregoing Declaration was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and he duly acknowledged to me that said corporation executed the same.

Commission Expires:

[Signature]
NOTARY PUBLIC
Residing at: Salt Lake County

STATE OF UTAH

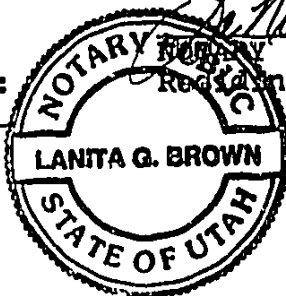
County of Salt Lake

On this 29th day of September, 1987, personally appeared before me PALMER DePAULIS, who being by me duly sworn, did say that he is the Mayor of SALT LAKE CITY CORPORATION, a Utah Municipal Corporation, and that the foregoing Declaration was

signed on behalf of said corporation by authority of a resolution of its Board of Directors, and he duly acknowledged to me that said corporation executed the same.

My Commission Expires:

APR 30 1991



Residing at:

Salt Lake County

HARVARD D. DKP

EXHIBIT "A"

PROPERTY DESCRIPTION

Beginning at a point 140.99 feet and North 89°57'20" East 1.10 feet from the Southeast corner of Lot 1, Block 27, FIVE ACRE PLAT "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°27'00" East 544.59 feet; thence North 80°00'00" West 15.26 feet to the center line of Emigration Creek as originally located; thence along said center line of creek as follows: South 6°15'00" West 48.34 feet; thence South 24°57'00" West 180.04 feet; thence South 29°48'00" West 50.00 feet; thence South 49°23'00" West 122.00 feet; thence South 17°28'00" West 70.42 feet; thence South 89°57'20" West 10.85 feet; thence South 22°30'00" West 26.83 feet; thence South 20°28'00" West 65.51 feet; thence South 22°30'00" West 64.95 feet; thence leaving said creek North 89°57'20" East 299.43 feet to the point of beginning. This is subject to any existing right-of-ways and easements. Containing 1.81 acres.

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BYLAWS
OF
HARVARD PARK HOMEOWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

The name of the corporation is HARVARD PARK HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association". The principal office of the Corporation in the State of Utah shall be located in at 2045 East 1300 South, Salt Lake City, Utah, but meetings of Members and directors may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 2.1 Association shall mean and refer to HARVARD PARK HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, which will own, operate and maintain the Common Areas within the Property.

Section 2.2 Board shall mean and refer to the board of Trustees of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

Section 2.3 Common Areas shall mean and refer to all property owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto.

Section 2.4 Declarant shall mean and refer to Harvard Park Corporation, a Utah corporation, its successors and assigns.

Section 2.5 Declaration shall mean the Declaration of Covenants, Conditions and Restriction applicable to the Property recorded in the office of the Recorder of Salt Lake County, State of Utah.

Section 2.6 Harvard Park Planned Unit Development or the Development, at any point in time, shall mean, refer to, and consist of the Property and all improvements thereon.

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Section 2.7 Limited Common Areas shall mean those Common Areas designated in the Declaration and reserved for use with a specific Lot. Driveways, walkways and fenced patios designed and originally constructed for use with a specific Living Unit on a Lot and such additional walkways and/or modifications of original driveways, walkways and fenced patios as the Board shall approve, shall be designated as Limited Common Areas.

Section 2.8 Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

Section 2.9 Lot shall mean and refer to one of the separately numbered and individually described plots of land within the Property: (i) which is intended to be owned individually rather than by an association of Owners or in common by Owners of different Lots; and (ii) which is intended to be used as the site of Living Units.

Section 2.10 Member shall mean and refer to every person who holds membership in the Association.

Section 2.11 Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust; and Mortgagee shall mean any first mortgagee and any trustee or beneficiary of a first trust deed or deed of trust.

Section 2.12 Owner or Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a free or an undivided fee interest in any Lot. Notwithstanding any applicable thereby relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgage, or a beneficiary trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure of any arrangement or proceeding in li. thereof.

Section 2.13 Property shall mean and refer to the entire tract of real property covered by the Subdivision Plat, a description of which is set forth in Article III of the Declaration.

ARTICLE III MEETING OF MEMBERS

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of

incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock, p.m. If the day for the annual meeting of the Members is a legal holiday, and the Board has previously determined that meeting on such legal holiday is inconvenient or impractical, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called by or at the request of the president or by the Board of Trustees, or upon written request of the Members who are entitled to vote forty percent (40%) of all of the votes of the Class A membership.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each Member entitled to vote thereafter addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws (i.e. assessments). If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 3.5 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV

BOARD OF TRUSTEES: SELECTION AND TERM OF OFFICE

Section 4.1 Number. The affairs of the Association shall be managed by a Board of Trustees of not less than three

(3) individuals and not more than five (5) individuals who need not be members of the Association.

Section 4.2 Term of Office. At the first annual meeting, the members shall elect one of the directors (or two if more than three are to serve) for a term of one year, one of the directors (or two if more are to serve) for a term of two years and one (1) of the directors for a term of three years; and at each annual meeting thereafter the members shall elect the number of directors whose terms are to expire for a term of three years.

Section 4.3 Removal. Any Trustee may be removed from the Board, with or without cause, by a simple majority vote of the members of the Association. In the event of death, resignation or removal of a Trustee, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of this predecessor.

Section 4.4 Compensation. No Trustee shall receive compensation for any service he may render to the Association. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.5 Action Taken Without a Meeting. The Trustee shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustee.

ARTICLE V NOMINATION AND ELECTION OF TRUSTEES

Section 5.1 Nomination. Nomination for election to the Board of Trustees shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and two or more Members of the Association or if such members do not exist or decline appointment, the Declarant. The Nominating Committee shall be appointed by the Board of Trustees prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of

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vacancies that are to be filled. Such nominations may be made among members or non-members.

Section 5.2 Election. Election to the Board of Trustees shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF TRUSTEES

Section 6.1 Regular Meetings. Regular meetings of the Board of Trustees shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Trustees.

Section 6.2 Special Meetings. Special meetings of the Board of Trustees shall be held when called by the president of the Association, or by any two Trustees, after not less than three (3) days notice to each Trustee.

Section 6.3 Quorum. A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 7.1 Powers. The Board of Trustees shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas, if any, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(c) declare the office of a member of the Board of Trustee to be vacant in the event such member shall be

absent from three (3) consecutive regular meetings of the Board of Trustees; and

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 7.2 Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by forty percent (40%) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A charge of Fifteen Dollars (\$15.00) may be made by the Board for the issuance of each certificate. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Areas to be maintained.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Trustees, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the members.

Section 8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices

except in the case of special offices created pursuant to Section 8.4 of this Article.

Section 8.8 Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments authorized and/or required by the Articles of Incorporation of the Association, these Bylaws or the Declaration and shall co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall sign all checks and promissory notes of the Association; keep proper books of account; if the Board deems appropriate, cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

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ARTICLE IX
COMMITTEES

The Association may appoint an Architectural Control Committee, as provided in the Declaration, and shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE XI
ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are and will be secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, such delinquency shall accrue interest at the rate of twelve percent (12%) per annum from the due date, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII
AMENDMENTS

Section 12.1 These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

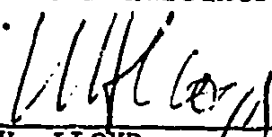
Section 12.2 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 12.3 Notwithstanding the provisions of Sections 12.1 and 12.2, Declarant reserves the right to amend these Bylaws at any time within seven (7) days years from the date the Declaration is recorded in the office of the Salt Lake County Recorder, if amendment is necessary to obtain secondary market lender approvals to facilitate financing of Living Units.

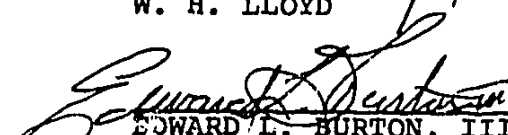
ARTICLE XIV
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

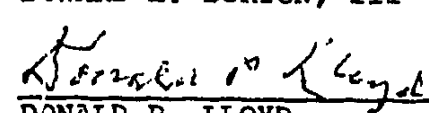
IN WITNESS WHEREOF, we, being all of the Trustees of the Harvard Park Homeowners Association, have hereunto set our hands this ____ day of September, 1987.



W. H. LLOYD



EDWARD L. BURTON, III



DONALD P. LLOYD

B004 5967 PAGE 654

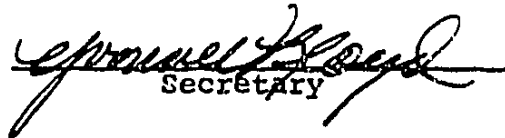
CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the HARVARD PARK HOMEOWNERS ASSOCIATION, a Utah non-profit corporation, and,

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the ____ day of September, 1987.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed the seal of said Association this ____ day of September, 1987.


Secretary

4250

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01 OCTOBER 87 01:23 PM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
HARVARD PARK CORPORATION
REC BY: JANET WONG , DEPUTY

BOOK 5967 PAGE 655

ATTACHMENT S: BOA Findings and Order, Recorded Oct. 20, 1986

4334603

no
fee

SALT LAKE CITY
BOARD OF ADJUSTMENT
SEP
JEDD BOGENSCHWITZ
JEDD BOGENSCHWITZ

OCT 20 3 50 PM '86

KATHLEEN DIXON
RECORDER
SALT LAKE COUNTY
UTAH

ABSTRACT OF FINDINGS AND ORDER

I, Mildred G. Snider, being first duly sworn, depose and say that I am the Secretary of the Salt Lake City Board of Adjustment (414 City & County Building), and that on the 2nd day of September, 1986, Case No. 319-B by Prowswood for Donald P. Lloyd was heard by the Board with action being taken on the 15th day of September, 1986. The applicant requested a special exception to the ordinance on the property at 1250 South 2100 East Street to permit a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard in a Residential "R-3A" District, the legal description of said property being as follows:

BEGINNING at a point North 140.99 feet and North 89°57'20" East 1.10 feet from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°27' East 712.49 feet, more or less, to the center line of Emigration Creek as originally located, thence along said center line of creek as follows: South 62° West 15.90 feet; thence South 33° West 4.10 feet; thence South 9°52' West 44.90 feet; thence South 7°19' East 78.20 feet; thence South 1°15' West 14.00 feet; thence South 6°15' West 67 feet; thence South 24°57' West 180.04 feet; thence South 29°48' West 50.00 feet; thence South 49°23' West 122.00 feet; thence South 17°28' West 70.42 feet; thence South 39°57'20" West 10.85 feet; thence South 22°30' West 26.83 feet; thence South 20°28' West 65.51 feet; thence South 22°30' West 64.95 feet; thence leaving said creek North 89°57'20" East 299.45 feet, more or less, to the point of BEGINNING.

It was moved, seconded and unanimously passed that a special exception to the ordinance be granted to permit the construction of a planned unit development consisting of ten single-family dwelling units without the required spacing between buildings and without the required side yard, subject to the following conditions:

1. Committee of the Board approval of the final plan including the landscaping plan;

BOOK 5823 PAGE 2374

Abstract of Findings and Order on Case No. 319-B

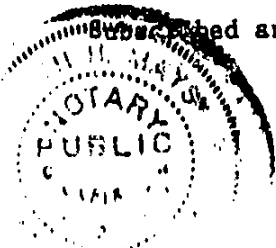
Page 2--

2. approval of the plan including the grade change adjacent to the creek;
3. the fences and walls also be approved;
4. the curb, gutter and sidewalk be installed from the service station property to Laird Drive; also if additional land is needed for the widening of 1200 East Street, the developer must dedicate the land so that the curb, gutter and sidewalk are located on City property;
5. if the developer proposes to sell these units individually, he must have approval as a planned unit development or subdivision or as a condominium;
6. and that a copy of the finally approved plan be filed in the case.

If a permit has not been taken out in six months, the variance will expire.

Mildred K. Linder

Subscribed and sworn to before me this 20th day of October, 1986.



David H. Mays
Notary Public
Residing at Salt Lake City, Utah

My commission expires SEP. 28 1998.

BOOK 5829 PAGE 2375

ATTACHMENT T: R-3A Zoning Code, 1986

CHAPTER 15A

RESIDENTIAL "R-3A" DISTRICT

SECTIONS:

- 51-15A-1. Purpose.
- 51-15A-2. Use Regulations.
- 51-15A-3. Area and Usable Open Space Regulations
- 51-15A-4. Side Yard Regulations.
- 51-15A-5. Front Yard Regulations.
- 51-15A-6. Rear Yard Regulations.
- 51-15A-7. Height Regulations.
- 51-15A-8. Special Provisions.
- 51-15A-9. Multiple Family Dwellings on Sites One Acre or Larger, and Multiple Family Dwellings Containing Ten Units or More
- 51-15A-10. Conditional Use in Historical Buildings.

SEC. 51-15A-1. PURPOSE. The purpose of the Residential "R-3A" District is to enhance and protect those areas designated in the Salt Lake City Master Plan and community plans for low or moderate density residential use. To this end, the district will permit single-family dwellings, duplex, triplex and fourplex dwelling units and low density apartments up to three stories in height, together with necessary parking and open space and is intended to provide opportunity for family living. The district provides for related uses and activities appropriate to a centrally located residential environment. The district permits those related public, quasipublic, and private uses necessary for a satisfactory family environment and prohibits uses which would be in conflict therein.

SEC. 51-15A-2. USE REGULATIONS. In a Residential "R-3A" District no building or premises shall be used and no building or structure shall be erected which is arranged, intended, or designed to be used for other than one or more of the following principal, accessory, or conditional uses;

(1). Principal uses. The following principal uses are permitted in the Residential "R-3A" District:

- (a). Single-family and two-family dwellings.
- (b). Three- and four-family dwellings.
- (c). Multiple family dwellings on less than one (1) acre lots and multiple family dwellings containing less than ten (10) units.

- (d). Churches except temporary revival tents or buildings.
- (e). Libraries, museums, and public fire stations.
- (f). Public parks, public recreational grounds and buildings, but not including privately owned commercial amusement parks, commercial recreation grounds and penal or mental institutions.
- (g). Public schools and private educational institutions having a curriculum similar to that ordinarily given in public schools, but not including privately owned trade, charm, or dancing or music schools.
- (h). Cemeteries adjoining or in extension to existing cemeteries.

(2). Accessory uses. The following subordinate use of a building, other structure, or use of land is permitted in the Residential "R-3A" District.

- (a). Temporary buildings for uses incident to construction work, which building must be removed upon completion or abandonment of the construction work.
- (b). Private garages or paved parking areas for storage purposes only, where no repair facilities are provided, when located on the same parcel to which they are accessory.
- (c). Private swimming pools, tennis courts, and other recreational uses, exclusively for the use of the residents of the lot and their guests.
- (d). Keeping of household pets.
- (e). Signs as specified in Chapter 7, of this title.

(3). Conditional uses. The following uses may be permitted as conditional uses in a Residential "R-3A" District subject to review and recommendation by the Planning and Zoning Commission and approval by the Board of Adjustment.

- (a). Group or planned unit developments as specified in Section 51-6-10.
- (b). Private recreational facilities as specified in Section 51-6-9.

- (c). Multiple family dwellings on sites one (1) acre or larger and multiple family dwellings containing ten (10) units or more as specified in Section 51-15A-9.
- (d). Public utilities as specified in Section 51-6-8.
- (e). Parking lots for the parking of passenger automobiles of employees, customers, or guests of persons of the firm controlling and operating the lot as specified in Section 51-6-7.
- (f). Group homes as specified in Section 51-6-12.

SEC. 51-15A-3. AREA AND USABLE OPEN SPACE REGULATIONS. The following minimum requirements shall be observed except where a greater requirement is made as a condition of a conditional use or as specified in Section 51-15A-8. The minimum requirements for area shall not be interpreted as a formula to determine the maximum number or permitted number of dwelling units for a given parcel or lot since the usable open space and parking requirements must also be met and the yard area regulations in Section 51-15A-3 through 51-15A-6 may also limit the number of units.

The minimum square foot area of any lot, building site, or usable open space as specified in Section 51-15A-3, shall conform to the following requirements:

<u>Number of Type of Unit</u>	<u>Lot Area per Dwelling Unit</u>	<u>Minimum Building Site</u>	<u>Usable Open Space per Dwelling Unit</u>
1	5,000	5,000	600
2	3,000	6,000	600
3 and 4	2,500	7,500	600
5 or more	2,000	10,000	400

For the purpose of meeting this requirement of open space, required front yard area shall not be included in computing the amount of usable open space.

SEC. 51-15A-4. SIDE YARD REGULATIONS. The following minimum side yard requirements shall be observed except where a different requirement is made a condition of a conditional use, and except as provided in Section 51-15A-8.

(1). The minimum side yard for any main building shall be thirty (30) percent of the building height, but in no case less than eight (8) feet and the total width of the two (2) side yards shall be sixty (60) percent of the building height, but in no case less than twenty (20) feet.

(2). The minimum side yard for any accessory building over ten (10) feet in height shall be thirty (30) percent of the building height, but in no case less than four (4) feet.

SEC. 51-15A-5. FRONT YARD REGULATIONS. The following minimum front yard requirements shall be observed except where a different requirement is made a condition of a conditional use, and except as provided in Section 51-15A-8.

(1). The minimum front yard setback for any main building shall be the average of the existing buildings within the same block frontage, except that a front yard need not be more than thirty (30) feet in depth. Where the average alignment is less than fifteen (15) feet in depth, a fifteen (15) foot front yard shall be required. Where there are no existing buildings within the same block frontage, the minimum depth shall be twenty (20) feet.

(2). The front yard setback for the entrance or exit into garages or parking structures attached to and a part of the main building shall be the average setback as specified above with a twenty (20) foot minimum. Whenever a driveway to garage, parking lot, or parking structure requires a below grade change of more than two (2) feet to facilitate ingress and egress, that point of the driveway two (2) feet below the grade of the sidewalk where it is crossed by the driveway shall be set back twenty (20) feet minimum from the front property line.

(3). The minimum front yard setback for any accessory building shall be sixty (60) feet from the front property line and thirty (30) feet from the side street property line of a corner lot.

SEC. 51-15A-6. REAR YARD REGULATIONS. The following minimum rear yard requirements shall be observed except where a different requirement is made a condition of a conditional use, and except as provided in Section 51-15A-8.

(1). The minimum depth of the rear yard of any main building shall be twenty-five (25) feet.

(2). The minimum depth of the rear yard of an accessory building over ten (10) feet in height shall be thirty (30) percent of the building height, but in no case less than four (4) feet.

SEC. 51-15A-7. HEIGHT REGULATIONS. The following height regulations shall apply except where a different requirement is made a condition of a conditional use, and except as provided in Section 51-15A-8.

(1). No main building shall exceed a height of thirty-five (35) feet.

(2). No accessory structure shall exceed a height of fifteen (15) feet.

SEC. 51-15A-8. SPECIAL PROVISIONS. The following additional regulations shall be observed except where a different requirement is made a condition of a conditional use

(1). Off-street parking is required for all uses as provided in Chapter 9.

(2). On all lots used for other than a one-to-four family dwelling at grade off-street parking shall be allowed in the side yard provided the following conditions are complied with:

- (a). The parking area shall not be covered by a carport or other accessory building.
- (b). A landscaped side yard area at least as wide as the minimum required side yard for the main structure is maintained for the complete length of the parking area, between the parking lot and the side property line, this area to be defined by the construction of a concrete curb.
- (c). A solid wall or fence not less than three (3) feet nor more than six (6) feet in height is constructed on property line so as to prevent the glare of headlights shining onto adjoining properties from the parking lot.
- (d). The parking area must have a separate exit or be of sufficient width to allow a car to turn so that no car is required to back from the parking lot.
- (e). A hardsurface pedestrian walkway a minimum four (4) feet wide shall be provided between the main building and the parking lot. This walkway shall extend from the front sidewalk to the end of the parking area and shall be designed so that pedestrians entering the site will not need to walk in the driveways.
- (f). All exposed parking areas shall be screened from exterior view with appropriate landscaping.
- (g). All conditions set forth in Section 51-6-7, items (1) through (7).

(3). In order to further the purpose of the residential "R-3A" zone, the following incentives and conditions shall be observed to encourage the development of parking areas for buildings containing five (5) or more units within or under the main building.

(A). The following exceptions and incentives will be allowed to encourage parking within or under the main building.

- (a). The square foot area of one floor used for parking can be to the area of the site when computing the maximum number of dwelling units allowed as specified in Section 51-15A-3, "Area and usable open space regulations".
- (b). The height of the main building may be increased to forty-five feet.

(B). The following conditions shall be required:

- (a). All parking areas shall be within or under the main building or underground with the top of the garage completely landscaped.
- (b). Usable open space as required in Section 51-15A-3, "Area and usable open space regulations" shall be increased by fifty (50) square feet per dwelling unit.
- (c). All exposed parking areas shall be screened from exterior view with appropriate landscaping.

(4). In order to further the purpose of the residential "R-3A" zone, the following incentives and conditions shall be observed to encourage the development of accessory parking structures for buildings containing five (5) or more units.

(A). The following exceptions and incentives will be allowed to encourage parking within an accessory parking structure.

- (a). The square foot area of one floor of the accessory building, except for the top floor, for use for parking, can be added to the area of the site when computing the maximum number of dwelling units allowed as specified in Section 51-15A-3, "Area and usable open space regulations".
- (b). The height of the accessory building may be increased to twenty (20) feet.
- (c). When the top surface of the parking structure is accessible and landscaped, it can be counted as part, or all, if adequate in size, of the usable open space as required in Section 51-15A-3, "Area and usable open space regulations".
- (d). The accessory parking structure can be attached to the main building reducing the rear yard

requirement to thirty (30) percent of the building height but in no case less than ten (10) feet.

(B). The following conditions shall be required:

- (a). All parking areas shall be within an accessory parking structure.
- (b). Usable open space as required in Section 51-15A-3, "Area and usable open space regulations", shall be increased by fifty (50) square feet per dwelling unit.
- (c). All exposed parking areas shall be screened from exterior view with appropriate landscaping.

(5). Whenever the side yard is designed to be used for principal access to and or principal outlook from any dwelling in an apartment said side yard shall be at least fifteen (15) feet in width and at least eleven (11) feet of said side yard shall be landscaped. If four (4) or more apartments in the building have principal access and/or principal outlook for side yard, said side yard shall be at least twenty (20) feet in width and at least fourteen (14) feet shall be landscaped. In addition, if a driveway occupies this side yard, a minimum four (4) foot wide hardsurfaced walkway shall extend from the property line to the access points of the apartment and parking areas.

(6). An apartment house may contain four (4) floors, but not to exceed forty-five (45) feet in height if the following conditions are met:

- (A). At least fifty (50) percent of the required off-street parking is provided within or under the main building.
- (B). Usable open space required in Section 51-15A-3, "Area and usable open space regulations", is increased by fifty (50) square feet per dwelling unit.

(7). An accessory parking structure for an apartment house will be allowed to extend to a height of twenty (20) feet if the following conditions are met:

- (A). At least fifty (50) percent of required off-street parking is provided within the accessory parking structure.
- (B). The top surface of the parking structure is accessible, landscaped and is usable as open space.

(8). All parts of the site not occupied by structures, paved pedestrian or vehicular access, paved parking surface and recreation areas shall be fully and permanently landscaped following the requirement as specified in Section 51-5-19. Particular attention shall be given to protection of adjoining properties and street from noise, glare and appearance of parking and service areas.

(9). In addition to the off-street parking space required for residents use, visitor parking shall be required on a ratio of one-half additional space per unit, in a building containing up to and including four (4) dwelling units. Visitor parking shall be required on a ratio of one-fourth space per unit in all buildings or structures containing five (5) or more units. The parking space shall maintain all the required yard and design standards for parking lots in this district, but cannot be in a secured area not readily available to visitors of the building. Such space shall be identified as visitor parking.

SEC. 15-51A-9. MULTIPLE FAMILY DWELLINGS ON SITES ONE ACRE OR LARGER AND MULTIPLE FAMILY DWELLINGS CONTAINING TEN UNITS OR MORE. Where not otherwise authorized by this title, the Board of Adjustment may permit the use of land in a Residential "R-3A" District for multiple family dwellings on sites one (1) acre or larger and multiple family dwellings containing ten (10) units or more. Approval of such development shall be granted only pursuant to a public hearing by the Board of Adjustment upon the proposed development. Notice of the time and place of such hearing shall be published as specified in Section 51-3-6. Developments shall be approved when it is shown that the property is of sufficient size and the design of the development is such that it will not adversely affect neighboring properties and when the Board of Adjustment finds that the development is in accord with the purpose and intent of the provisions of this chapter.

SEC. 51-15A-10. CONDITIONAL USES IN HISTORICAL BUILDINGS. In a residential "R-3A" District the Board of Adjustment may permit as a conditional use any conditional use permitted in a Residential "R-2A" District, subject to the same restrictions contained therein.

ATTACHMENT U: City Code Sections 51-5-16 & 51-5-19, 1986

SEC. 51-5-15. SEPARATELY OWNED LOTS. REDUCED SIDE YARDS. AREA.

(1). On any lot held under separate ownership from adjacent lots, and of record at the time of the passage of the Zoning Ordinance (September 1, 1927), the area requirements may be waived to the extent that the buildable width of such lot is not more than twenty-six (26) feet, except that at least a four (4) foot side yard is required on both sides of all lots. However, there must be provision made for access to a garage or properly located parking area on the lot. This reduction in side yards shall apply to the erection of a one or two-family dwelling not over one (1) story in height.

(2). On any lot held under separate ownership from adjacent lots, and of record at the time of the passage of the Zoning Ordinance (September 1, 1927), the area requirements may be waived to the extent that a single-family dwelling will be permitted.

SEC. 51-5-16. USE AND LANDSCAPING OF PARKING STRIPS. The parking strip or the area of the right of way located between the curb line and the private property line shall be completely landscaped with vegetation living materials such as lawn, approved ground covers, and approved trees and maintained by the abutting property owner. Said area shall be kept free of all hard surfacing, including stone or aggregate, except for approved driveway and sidewalk areas. The location and spacing of vegetation shall allow for adequate access and visibility of driveways, intersections, and signs so as not to constitute a safety hazard. In those circumstances where it is not appropriate or desirable to meet the above criteria, the Planning Commission, with the approval of the Mayor, may grant exceptions, based on compliance with parking strip standards as adopted by the Planning Commission. Three copies of the current parking strip standards adopted by the Planning Commission, shall be on file with the official records of the Planning Commission.

SEC. 51-5-17. INSTALLATION OF IMPROVEMENTS. In all use districts where no curb and gutter or sidewalk exists in front of these properties, these street improvements must be installed at the time of any new construction unless, due to special circumstances existing on the street, the City Engineer certifies that the installation of curb and gutter is impractical or not desirable.

SEC. 51-5-18. USABLE OPEN SPACE REQUIRED. Usable open space shall be provided as prescribed by the provisions contained in each zone. Usable open space shall be defined as the aggregate area of side, rear and front yards, patios, and balconies and decks having a minimum horizontal dimension of not less than five (5) feet, on a building site or building, which is available and accessible to the occupants of the building for

purposes of active or passive outdoor recreation. One hundred square feet of permanent recreational areas within the building, for each dwelling unit contained within the building, can be counted for the purposes of complying with the open space provisions contained in each zone. Usable open space does not include driveways, areas for off-street parking and off-street services; roof of buildings except as specified in these revised ordinances; ground level areas with a width of five (5) feet or less; and a ground level area with a width of eight (8) feet or less, if over seventy-five percent of the area is hardsurfaced.

SEC. 51-5-19. LANDSCAPING REQUIRED. When an area is required to be landscaped under the terms of this ordinance the requirement shall be met by the installation and maintenance of improvements as set forth below:

(1). The installation of lawn, shrubs, or a combination of shrubs, trees, vines, lawn, or other growing ground cover or water surfaces and paved or graveled surfaces provided that such area shall not cover more than ten percent of the area required to be landscaped;

(2). The installation of a permanent sprinkling system to insure adequate maintenance;

(3). Planted materials shall be selected from among those species and varieties known to thrive in the Salt Lake climate; and

(4). Whenever public property is to be landscaped, only lawn or trees, flowers, or shrubs, as approved by the Salt Lake City Urban Forester shall be installed.

SEC. 51-5-20. TRAFFIC IMPACT AND ACCESS STUDY REQUIRED. In any district, no permit for any structure or structures other than one (1) single-family or two-family dwelling per applicant shall be issued for any residential structure for which access to said structure is by any street which is less than fifty (50) feet in width, having less than a thirty (30) foot paved driving area, or which is a dead-end street unless it is shown that such structure or structures will not adversely affect the parking, travel or access of vehicles on the access street, and that increased traffic will not cause a safety hazard to users and abutting occupants of said street. The Planning Director and the Traffic Engineer shall make a determination as to whether or not said structures will adversely affect traffic and safety after reviewing the detailed plans for the structure or structures including a traffic impact and access report which shall be required as a part of the plans for the development. Any decision made by said persons may be appealed to the Board of Adjustment by either the developer or any affected property owner in the block on which the proposed development faces.

ATTACHMENT V: City Code Section 51-3-6, 1986

SEC. 51-3-3. MEETINGS. Meetings of the Board shall be held at the call of the chairman and at such other time as the Board may determine. The chairman of said Board of Adjustment, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses at such meetings, and all meetings shall be open to the public. The said Board shall keep minutes of its proceedings showing the roll call of votes upon all questions and shall keep records of its examinations and other official actions, all of which shall be filed in the office of said Board and shall be public records. The Board of Commissioners shall appoint a person to act as clerk of the Board of Adjustment.

Organization of Board. 10-9-8, U.C.A., 1953.

SEC. 51-3-4. APPEAL TO BOARD. Appeals to the Board of Adjustment may be taken by any person aggrieved or any office, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof and paying to the City Treasurer a fee as specified in Section 51-34-1(1) with each notice of appeal where the relief sought is a variance from the terms of the ordinance. The officer from whom the appeal is taken shall thenceforth transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

Appeal to Board. 10-9-9, U.C.A., 1953.

SEC. 51-3-5. STAY OF PROCEEDINGS PENDING APPEAL. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate of stay would in his opinion cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

Sec. 10-9-10, U.C.A., 1953.

SEC. 51-3-6. HEARINGS ON APPEAL. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof by publication of notice at least five (5) days prior to the date of hearing, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Sec. 10-9-11, U.C.A., 1953.

**ATTACHMENT W: Memo to Mayor
Requesting Signature,
Sept. 29, 1987**

087555

RECEIVED
SEP 29 1987
CITY RECORDS

VERNON F. JORGENSEN
PLANNING DIRECTOR

MILDRED G. SNIDER
SECRETARY

EX-OFFICIO MEMBERS:
MAYOR OF SALT LAKE CITY
CITY ENGINEER
CITY TRAFFIC ENGINEER
CITY BUILDING OFFICIAL

SALT LAKE CITY CORPORATION

DEPARTMENT OF DEVELOPMENT SERVICES
Planning and Zoning Commission
324 SOUTH STATE STREET, ROOM 200
SALT LAKE CITY, UTAH 84111
535-7757

MEMBERS:
THOMAS A. ELLISON
ALICE KASAI
LAVONE LIDDLE-GAMONAL
RALPH P. NEILSON
GEORGE NICOLATUS
WILLIAM PRICE
JOHN M. SCHUMANN
F. KEITH STEPAN
PETER VANALSTYNE
KATHY WACKER
I. J. WAGNER

9/30 mylar
+1 to D.W.
p+3.

September 29, 1987

Mayor Palmer DePaulis
324 South State Street
B U I L D I N G

APPROVED

SEP 29 1987

CITY RECORDER

Dear Mayor DePaulis:

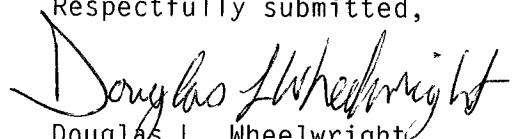
Re: Harvard Park P.U.D. Subdivision

Attached, please find the final subdivision plat and two copies of the declaration of covenants, conditions and restrictions for the above noted subdivision for your signature of approval.

This subdivision has been reviewed and approved by the various city departments as well as by the Planning Commission and the Board of Adjustment and is now ready for your approval.

If you have any questions, please call me at 535-6178.

Respectfully submitted,


Douglas L. Wheelwright
Planner III/Current Planning

DLW:vas

Enclosure



ATTACHMENT X: City Recorder Stamp Examples on CC&Rs, 1989 and 1994

Q 89-94

DUPLICATE RECEIPT

4746199

14 MARCH 89

12:55 PM

KATIE L. DIXON

RECORDER, SALT LAKE COUNTY, UTAH

WAYNE G. PETTY

REC BY: REBECCA GRAY, DEPUTY

WHEN RECORDED RETURN TO:

CITY RECORDER
324 South State, 5th Floor
Salt Lake City, Utah 84111

FOURTH AMENDMENT TO THE SECOND AMENDED
DECLARATION OF CONDOMINIUM
OF THE
KIMBALL CONDOMINIUMS, a Condominium Project
AND
THIRD AMENDMENT TO AMENDED AND RESTATED
USE AND OCCUPANCY AGREEMENT

APPROVED

MAR 07 1989

CITY RECORDER

THIS FOURTH AMENDMENT TO THE SECOND AMENDED DECLARATION
OF CONDOMINIUM OF THE KIMBALL CONDOMINIUMS, AND THIRD
AMENDMENT TO AMENDED AND RESTATED USE AND OCCUPANCY
AGREEMENT (collectively, this "Fourth Amendment"), is made and entered into
as of February 27, 1989, by the Kimball Condominium Owners
Association, a Utah non-profit corporation (the "Association"), on behalf of itself
and as attorney-in-fact for the Owners of Units in the Kimball Condominium
Project in Salt Lake City, Salt Lake County, Utah.

WITNESSETH:

WHEREAS, pursuant to that certain Second Amended Declaration of
Condominium of the Kimball Condominiums dated December 10, 1981, recorded
on January 12, 1982, as Entry No. 3638967, in Book 5330, beginning at Page 1324,
official records of the Salt Lake County, Utah, Recorder (the "Second Amended
Declaration"), Franklin Financial, a Utah corporation ("Franklin"), subjected that
certain real property and improvements located at 150 North Main Street, in Salt
Lake City, Salt Lake County, Utah, described on Exhibit "A" attached hereto (the

"Property") to the provisions of the Utah Condominium Ownership Act, Utah Code Ann. Sections 57-8-1 et seq. (the "Act"), and to the covenants, conditions and restrictions set forth in the Second Amended Declaration; and

WHEREAS, the Second Amended Declaration was amended by the following instruments recorded with the Salt Lake County, Utah, Recorder:

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
Amendment to the Second Amended Declaration	2-24-82	Recorded 3-5-82 Entry No. 3654014 Book 5347 Beginning at Page 1092
Second Amendment to the Second Amended Declaration	12-1-83	Recorded 12-5-83 Entry No. 3877150 Book 5512 Beginning at Page 1056
Third Amendment to the Second Amended Declaration	7-3-84	Recorded 8-31-84 Entry No. 3987819 Book 5586 Beginning at Page 2427

All of the foregoing amendments, including the Second Amended Declaration, are hereinafter sometimes referred to collectively as the "Second Amended Declaration, as Amended"; and

WHEREAS, pursuant to that certain Amended and Restated Use and Occupancy Agreement dated May 3, 1983, recorded on May 3, 1983, as Entry No. 3788556, in Book 5456, beginning at Page 560, official records of the Salt Lake County, Utah, Recorder (the "Amended Use and Occupancy Agreement"), Franklin subjected the Property to certain additional restrictive covenants; and

WHEREAS, the Amended Use and Occupancy Agreement was amended by the following instruments recorded with the Salt Lake County, Utah, Recorder:

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
First Amendment to Amended and Restated Use and Occupancy Agreement	11-30-83	Recorded 12-5-83 Entry No. 3877149 Book 5512 Beginning at Page 1048
Second Amendment to Amended and Restated Use and Occupancy Agreement	7-3-84	Recorded 8-31-84 Entry No. 3987818 Book 5586 Beginning at Page 2421

All of the foregoing amendments, including the Amended Use and Occupancy Agreement, are hereinafter sometimes referred to collectively as the "Amended Use and Occupancy Agreement, as Amended"; and

WHEREAS, subsequent to recordation of the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, all of Franklin's right, title and interest in and to the Property and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and assigned by mesne instruments of record to Kimball Associates, Inc., a Utah corporation ("Debtor"); and

WHEREAS, on July 9, 1986, Debtor filed a Petition For Relief under Title 11 of the United States Code, in the United States Bankruptcy Court for the District of Utah, Central Division, Captioned In Re Kimball Associates Inc., Bankruptcy No. 86C-02890 (the "Bankruptcy Case"); and

WHEREAS, pursuant to that certain Third Amended Plan Of Reorganization filed in the Bankruptcy Case on November 18, 1988, by the Association and First Federal of Pittsburgh (the "Plan"), which was confirmed by order of the United States Bankruptcy Court for the District of Utah, Central Division, entered on

December 22, 1988 (the "Order"), all of the right, title and interest of Debtor in and to the Property, and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and assigned to the Association, subject to the rights of certain "Timeshare Purchasers" and other liabilities, as defined and described in the Plan; and

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchasers, has been authorized to amend the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended; and

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchasers, is authorized, to record and, simultaneously with the recording of this Fourth Amendment is recording that certain Amended and Restated Survey Map of the Kimball Condominiums, with the Salt Lake County, Utah, Recorder (the "Amended Survey Map"), which shall supersede and replace in its entirety all previously recorded Record of Survey Maps with respect to the Property; and

WHEREAS, the Association and the Timeshare Purchasers, and their respective successors and assigns, desire and intend to hold, own, convey and lease the Property and the individual condominium Units on the Property, subject to the covenants, conditions and restrictions set forth in the Second Amended Declaration, as Amended, the Amended Use and Occupancy Agreement, as Amended, the Amended Survey Map, and this Fourth Amendment.

NOW, THEREFORE, in consideration of the premises and pursuant to the Plan and the Order, the Association, on behalf of itself and as attorney-in-fact for the Timeshare Purchasers, hereby declares, covenants and agrees that the

Property and each part thereof shall be held, encumbered, occupied, built on and otherwise used and improved, maintained, leased, sold, conveyed and otherwise transferred subject to covenants, conditions, restrictions, reservations, easements, liens and charges which are set forth in the Second Amended Declaration, as Amended, the Amended Use and Occupancy Agreement, as Amended, the Amended Survey Map, and this Fourth Amendment, all of which shall (i) attach to and run with the land, (ii) be binding on the Property and all owners, lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, or the right to use or occupy the Property or any part thereof, (iii) inure to the benefit of said owners, lessees and other parties, and (iv) be for the purpose of continuing and establishing a general plan for the operation and maintenance of the Property as an attractive condominium development.

ARTICLE I

Definitions; Controlling Provisions; South Building

Section 1.1. Unchanged Definitions. Unless otherwise specified herein, all terms used herein and defined in the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, shall have the meanings ascribed to them in said instruments.

Section 1.2. Back Building Units. "Back Building Units" shall mean and refer to the following Units as shown on the Amended Survey Map: 125, 129, 130, 133, 225, 226, 230, 233, 325, 326, 330, 333, 425, 426, 430 and 433.

Section 1.3. Common Areas and Facilities. "Common Areas and Facilities" shall mean and refer to:

- (i) The land underlying the Property;
- (ii) That portion of the Property not specifically included in the Units;
- (iii) All foundations, columns, girders, beams, supports, main walls, roofs, lobbies, stairs, stairways, fire escapes, service areas, entrances and exists, and driveways, and in general all other apparatus, installations and other parts of the Property (excluding the Units) necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;
- (iv) Those areas specifically designated on the Amended Survey Map as "Common Areas"; and
- (v) All Common Areas and Facilities as defined in the Act, whether or not specifically listed herein.

Section 1.4. Convertible Land. "Convertible Land" shall mean and refer to that portion of the Property described as Exhibit "B" attached hereto.

Section 1.5. Uncompleted Units. "Uncompleted Units" shall mean and refer to the following Units on the Amended Survey Map the Back Building Units, and Unit Nos. 138, 139, 143, 144 and 244.

Section 1.6. Unit. "Unit" shall mean and refer to the spaces designated on the Amended Survey Map as a Unit.

Section 1.7. Unit Number. "Unit Number" shall mean and refer to the number, letter, or combination thereof designating the Unit as shown on the Amended Survey Map and Exhibit "C" attached hereto.

Section 1.8. Fourth Amendment and Amended Survey Map Control. In the event of any conflict or inconsistency between the terms of this Fourth Amendment and the terms of the Second Amended Declaration, as Amended, or the Amended Use and Occupancy Agreement, as Amended, the terms of this Fourth Amendment shall control. The Amended Survey Map supersedes and replaces in its entirety all previously recorded Record of Survey Maps with respect to the Property.

Section 1.9. South Building. All references and provisions contained in the Second Amended Declaration, as Amended, pertaining to the "south building" are stricken and of no further force or effect, and this Fourth Amendment shall completely govern the ownership of and restrictions upon the property comprising said south building, which has been redesignated herein as Convertible Land.

ARTICLE II

Undivided Ownership Interest In Common Areas And Facilities; Uncompleted Units

Section 2.1. Undivided Ownership Interest in Common Areas and Facilities. The percentage or fraction of undivided ownership interest in the Common Areas and Facilities appurtenant to each Unit and its Owner, for all purposes, including voting, is set forth on Exhibit "D" attached hereto.

Section 2.2. Uncompleted Units. Notwithstanding any provision in the Second Amended Declaration, as Amended, or the Amended Use and Occupancy Agreement, as Amended, each of the Uncompleted Units, until such Units are completed, shall only be allocated, and the Owner thereof shall only be obligated to pay, their respective pro rata shares (based on the undivided ownership interest in Common Areas and Facilities appurtenant to each such Uncompleted Unit) of

the following Common Expenses: real property taxes and assessments, insurance, and security. Once each such Uncompleted Unit is completed, it shall be allocated, and the Owner thereof shall thereafter be obligated to pay, its respective pro rata share (based on the undivided ownership interest in Common Areas and Facilities appurtenant to such previously Uncompleted Unit) of all Common Expenses.

ARTICLE III

Back Building Units

Section 3.1. Reconfiguration. At any time prior to the completion of the Back Building Units, the Association reserves the right to alter the configuration and design of the Back Building Units, and to alter the boundaries between the Back Building Units, as long as said alteration does not affect the boundaries of any other Units. Any such alteration shall be effected by an amendment to this Fourth Amendment and the Amended Record of Survey Map, which may be executed by the Association and any affected lienholders with respect to the Project, notwithstanding the amendment provisions contained in Section 24 of the Second Amended Declaration. Any such amendment shall not affect the extent and priority of liens on the Project of said lienholders without said lienholders' prior written consent.

Section 3.2. Change In Undivided Ownership Interest In Common Areas and Facilities. Any alteration made to the Back Building Units under Section 3.1 hereof may increase or decrease the number of the Back Building Units and alter said Units' respective undivided ownership interests in Common Areas and Facilities. If the undivided ownership interests in Common Areas and Facilities for the Back Building Units are changed, the amendments to this Fourth Amendment and the Amended Survey Map described in Section 3.1 hereof shall

reapportion the undivided ownership interests in the Common Areas and Facilities which are allocated to the altered Units, consistent with the manner in which the undivided ownership interests in the Common Areas and Facilities were originally determined.

ARTICLE IV

Convertible Land

Section 4.1. Development of the Convertible Land. The Association reserves the right, without any requirement that it obtain the prior consent of the other Owners of Units, to develop all or a portion of the Convertible Land to condominiums, without any limitation, except the following:

(i) The number of units to be constructed on the Convertible Land shall not exceed the number of said units intended to be constructed in the "south building" as described in the Second Amended Declaration;

(ii) The gross floor area of all units to be constructed on the Convertible Land shall not exceed the gross floor area of all of the units intended to be constructed in the "south building" as described in the Second Amended Declaration;

(iii) Any structure erected on the Convertible Land will be compatible with structures on other portions of the Property in terms of quality of construction, the principal materials to be used, and architectural style;

(iv) No other improvements may be made to the Convertible Land other than those types of improvements intended to be constructed in the "south building" as described in the Second Amended Declaration;

(v) The units constructed on the Convertible Land may not be, at the Association's discretion, substantially identical to Units on other portions of

the Property, provided that said units otherwise comply with the terms of this Section 4.1 and that the type of said units may include one or more of the following: units designed for nightly or other periodic rentals; units designed for commercial purposes necessary or desirable for the overall operation of the Project; units designed for future timeshare sales; and units designed for typical condominium sales.

(vi) The option to develop the Convertible Land may not be exercised unless additional parking has been secured for Owners of Units or is incorporated into the buildings to be constructed thereon, in a manner that is acceptable to Salt Lake City Corporation and consistent with the then-current zoning ordinances of Salt Lake City.

Section 4.2. Interim Use of the Convertible Land for Parking Lot Purposes.

Until the Association's exercise of the option described in Section 4.1 hereof, the Association, Owners and their respective guests and invitees shall be entitled to use the parking lot currently located on the Convertible Land for parking purposes, subject to reasonable rules and regulations established by the Association, provided that the Association and Owners of Units shall be responsible for paying the Common Expenses allocable to the use of the Convertible Land as a parking lot.

ARTICLE V

Miscellaneous

Section 5.1. Extension of Time for Sales Program. Notwithstanding the terms of Section 25 of the Second Amended Declaration, the expiration of the period during which the Association may maintain its sales program for Units shall be March 31, 1998.

Section 5.2. Service of Process. The person authorized to receive service of process, under all cases provided by the Act, together with his place of business, is as follows:

Wayne G. Petty, Esq.
MOYLE & DRAPER
15 East 100 South
Suite 600
Salt Lake City, Utah 84111

Section 5.3. In All Other Respects, Instruments Are Deemed Unamended.
Except as set forth herein, the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, are unamended and are in full force and effect in accordance with the terms thereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Fourth Amendment to be executed by its duly authorized agent, on behalf of itself and its attorney-in-fact for all Timeshare Purchasers, pursuant to the Plan and Order, this 27 day of February, 1989.

KIMBALL CONDOMINIUM OWNERS ASSOCIATION,
a Utah non-profit corporation

By Renee B. Maxwell
Its Authorized Agent

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

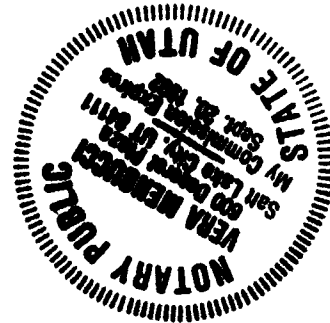
On the 27th day of February, 1989, personally appeared before me Renee B. Maxwell, who being by me duly sworn did say

that she is the authorized agent of Kimball Condominium Owners Association, a Utah non-profit corporation, the corporation and that executed the above and foregoing instrument and that said instrument was signed in behalf of said corporation by authority of its bylaws, on behalf of itself and as attorney-in-fact for the Timeshare Purchasers and said Genea S. Maxwell acknowledged to me that said corporation executed the same.

Don Vengucci
Notary Public
Residing at Salt Lake County, UT

My Commission Expires:

9-28-92



LIST OF EXHIBITS

Legal Description of the Property	Exhibit "A"
Legal Description of the Convertible Land	Exhibit "B"
List of Units Numbers	Exhibit "C"
List of Undivided Ownership Interests In Common Areas and Facilities Appurtenant To Each Unit.....	Exhibit "D"

//CDJ/Kimball4Am

Beginning at the SW corner of Lot 4, Block 93, Plat A, Salt Lake City Survey, thence S 0°02'13" E, 37.25 feet; thence N 89°57'47" E, 298.0 feet; thence N 0°02'13" W, 136.25 feet; thence S 89°57'47" W, 298.0 feet; thence S 0°02'13" E, 99.0 feet to the Point of Beginning, containing 0.932 Acres together with and subject to a 10 foot right-of-way 5 feet on each side and parallel to the north property line.

Beginning at an existing fence corner S 0°02'13" E, 34.72 feet, and N 89°57'47" E, 8.31 feet, from the Southwest corner of Lot 4, Block 93, Plat A, Salt Lake City Survey (Basis of Bearing being S 0°02'13" E between the existing city monuments at 200 North Main Street and North Temple and Main Streets); thence N 1°25' W, 63.8 feet, more or less, to a point on a retaining wall made of railroad ties; thence S 89°52' E, along said retaining wall, 213.8 feet, more or less to a corner of said retaining wall; thence, continuing along said retaining wall, S 0°08' W, 65.7 feet, more or less, to a point in an existing fence line; thence N 89°21' W, along said fence line, 212.1 feet, more or less, to the point of beginning. Containing 0.32 acres, more or less.

Unit Designation

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<u>Unit Designation</u>	<u>Undivided Interest in Common Areas and Facilities</u>
125	.021
129	.021
130	.025
133	.021
134	.025
137	.015
138	.029
139	.021
143	.021
144	.021
225	.029
226	.025
230	.025
233	.029
234	.025
237	.015
238	.029
239	.021
243	.021
244	.021
325	.029
326	.025
330	.025
333	.029
334	.025
337	.015
338	.029
339	.021
343	.021
344	.021
347	.015
348	.015
425	.029
426	.025
430	.025
433	.029
434	.025
437	.015
438	.029
439	.021
443	.021
444	.021
447	.015
448	<u>.015</u>
TOTAL	1.000

APPROVED

APPROVAL BY CITY

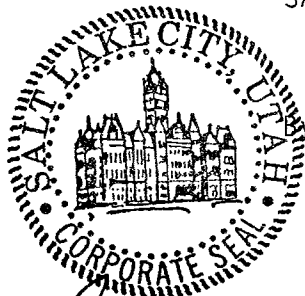
MAR 07 1989

CITY RECORDER

SALT LAKE CITY, a body corporate and politic, and the City in which
The Kimball Condominium, a Utah condominium project, is located, by and
through its duly elected Mayor, does hereby give final approval to the said
Project, to the foregoing Declaration, to the Record of Survey Map recorded
concurrently herewith, and to the attributes of the said Project which are
mentioned in Section 57-8-35(3) of the Utah Condominium Ownership Act, as
amended and expanded by the laws of Utah, 1975, Chapter 173, Section 18.

DATED: MAR 07 1989

SALT LAKE CITY



ATTEST:

Kathy Marshall

Palmer A. DePaulis
Mayor

Recorder

APPROVED AS TO FORM
SALT LAKE COUNTY Surveyors Office
Date 3/7/89
By [Signature]

C 89-94

WHEN RECORDED RETURN TO:

Wayne G. Petty, Esq.
MOYLE & DRAPER, P.C.
600 Deseret Plaza
15 East 100 South
Salt Lake City, UT 84111

RECORDED
JUN 02 1994
CITY RECORDER

FIFTH AMENDMENT TO THE SECOND AMENDED
DECLARATION OF CONDOMINIUM
OF THE
KIMBALL CONDOMINIUMS, a Condominium Project
AND
FOURTH AMENDMENT TO AMENDED AND RESTATED USE AND
OCCUPANCY AGREEMENT

THIS FIFTH AMENDMENT TO THE SECOND AMENDED DECLARATION
OF CONDOMINIUM OF THE KIMBALL CONDOMINIUMS AND FOURTH AMENDMENT
TO AMENDED AND RESTATED USE AND OCCUPANCY AGREEMENT,
(collectively "Fifth Amendment"), is made and entered into this
27th day of May, 1994, by the Kimball Condominium Owners
Association, a Utah non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, pursuant to that certain Second Amended
Declaration of Condominium of the Kimball Condominiums dated
December 10, 1981, recorded on January 12, 1982, as Entry No.
3638967, in Book 5330, beginning at Page 1324, official records
of the Salt Lake County, Utah, Recorder (the "Second Amended
Declaration"), Franklin Financial, a Utah corporation
("Franklin"), subjected that certain real property and
improvements located at 150 North Main Street, in Salt Lake City,
Salt Lake County, Utah, described as follows:

Beginning at the SW corner of Lot 4, Block 93, Plat A,
Salt Lake City Survey, thence S 0°02'13" E, 37.25 feet;

thence N 89°57'47" E, 298.0 feet; thence N 0°02'13" W, 136.25 feet; thence S 89°57'47" W, 298.0 feet; thence S 0°02'13" E, 99.0 feet to the Point of Beginning, containing 0.932 Acres together with and subject to a 10 foot right-of-way 5 feet on each side and parallel to the north property line.

(the "Property") to the provisions of the Utah Condominium Ownership Act, Utah Code Ann. Sections 57-8-1 et seq. (the "Act"), and to the covenants, conditions and restrictions set forth in the Second Amended Declaration; and

WHEREAS, the Second Amended Declaration was amended by the following instruments recorded with the Salt Lake County, Utah, Recorder:

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
Amendment to the Second Amended Declaration	2/24/82	Recorded 3/5/82 Entry No. 3654014 Book 5347 Beginning at Page 1092
Second Amendment to the Second Amended Declaration	12/1/83	Recorded 12/5/83 Entry No. 3877150 Book 5512 Beginning at Page 1056
Third Amendment to the Second Amended Declaration	7/3/84	Recorded 8/31/84 Entry No. 3987819 Book 5586 Beginning at Page 2427
Fourth Amendment to the Second Amended Declaration ("Fourth Amendment")	2/27/89	Recorded 3/14/89 Entry No. 4746199 Book 6110 Beginning at Page 355

All of the foregoing amendments, including the Second Amended Declaration, are hereinafter sometimes referred to collectively as the "Second Amended Declaration, as Amended"; and

WHEREAS, pursuant to that certain Amended and Restated Use and Occupancy Agreement dated May 3, 1983, recorded on May 3,

1983, as Entry No. 3788556, in Book 5456, beginning at Page 560, official records of the Salt Lake County, Utah, Recorder (the "Amended Use and Occupancy Agreement"), Franklin subjected the Property to certain additional restrictive covenants; and

WHEREAS, the Amended Use and Occupancy Agreement was amended by the following instruments recorded with the Salt Lake County, Utah, Recorder:

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
First Amendment to Amended and Restated Use and Occupancy Agreement	11/30/83	Recorded 12/5/83 Entry No. 3877149 Book 5512 Beginning at Page 1048
Second Amendment to Amended and Restated Use and Occupancy Agreement	7/3/84	Recorded 8/31/84 Entry No. 3987818 Book 5586 Beginning at Page 2421
Third Amendment to Amended and Restated Use and Occupancy Agreement	2/72/89	Recorded 3/14/89 Entry No. 4746199 Book 6110 Page 355

All of the foregoing amendments, including the Amended Use and Occupancy Agreement, are hereinafter sometimes referred to collectively as the "Amended Use and Occupancy Agreement, as Amended"; and

WHEREAS, subsequent to recordation of the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, all of Franklin's right, title and interest in and to the property and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and

assigned by mesne instruments of record to Kimball Associates, Inc., a Utah corporation ("Debtor"); and

WHEREAS, on July 9, 1986, Debtor filed a Petition For Relief under Title 11 of the United States Code, in the United States Bankruptcy Court for the District of Utah, Central Division, Captioned In Re Kimball Associates Inc., Bankruptcy No. 86C-02890 (the "Bankruptcy Case"); and

WHEREAS, pursuant to that certain Third Amended Plan of Reorganization filed in the Bankruptcy Case on November 18, 1988 (the "Plan"), by the Association and First Federal of Pittsburgh, which Plan was confirmed by order of the United States Bankruptcy Court for the District of Utah, Central Division, entered on December 22, 1988 (the "Order"), all of the right, title and interest of Debtor in and to the Property, and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and assigned to the Association, subject to the rights of certain "Timeshare Purchasers" and other liabilities, as defined and described in the Plan; and

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchasers, was authorized to and did amend the Second Amended Declaration, as previously amended, and the Amended Use and Occupancy Agreement, as previously amended; and

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for

the Timeshare Purchasers, was authorized, to record and did record and, simultaneously with the recording of the Fourth Amendment, that certain Amended and Restated Survey Map of the Kimball Condominiums, with the Salt Lake County, Utah, Recorder (the "Amended Survey Map"), recorded March 14, 1989 as Entry No. 4746198 at Book 89-3, page 16, which superseded and amended in its entirety all previously recorded Record of Survey Maps with respect to the Property, recorded for the purpose of establishing an as-built survey of the project as it then existed, to eliminate the south building and condominium estates created under the original Survey Map (recorded October 20, 1978, as Entry No. 3185155, in Book 78-10 at page 297), to eliminate certain units that did not exist, and to amend the configuration of the existing units, all consistent with the terms of the Plan and the Order; and

WHEREAS, the Association and its successors and assigns, desire and intend to hold, own, convey and lease the Property and the individual condominium Units on the Property, subject to the covenants, conditions and restrictions set forth in the Second Amended Declaration, as Amended, the Amended Use and Occupancy Agreement, as Amended, the Second Amended Supplemental Record of Survey Map, and this Fifth Amendment.

NOW, THEREFORE, in consideration of the premises and pursuant to the Plan and the Order, as authorized by the Plan and Order, and pursuant to Sections 3.1 and 3.2 of the Fourth Amendment which amended the original Kimball Condominiums Record

of Survey Map, by executing this Fifth Amendment and the Second Amended Supplemental Record of Survey Map of the Kimball Condominiums ("Second Amended Map"), and pursuant to Section 57-8-13.4 of the Condominium Ownership Act, the Association as successor Declarant hereby designates the completion, configuration, and undivided interests of certain "Back Building Units" as referred to in the Fourth Amendment and as shown on the Second Amended and Restated Record of Survey Map as "Units for Possible Reconfiguration."

ARTICLE I

Pursuant to this Fifth Amendment to the Second Amended Declaration of Condominium and Fourth Amendment to Amend and Restated Use and Occupancy Agreement the following identified Sections are hereby re-coded, amended, added or deleted.

1.1 The following items in this Section 1.1 affect the Second Amended Declaration, as amended, including through the Fourth Amendment.

A. Section 1.1 in the Fourth Amendment, "Unchanged Definitions" is hereby deleted.

B. Section 1.2 in the Fourth Amendment, "Back Building Units" is hereby re-coded as Section 2(t) under the Second Amended Declaration and amended to read:

(t) The term "Back Building Units" shall mean and refer to the following units as shown on the Second Amended Supplemental Record of Survey Map for The Kimball Condominiums: 325, 326, 330, 333, 425, 426, 430 and 433. Said units are labeled on the survey map as "Units for Possible Reconfiguration."

C. Section 1.3, "Common Area and Facilities," is hereby re-coded as Section 2(c) under the Second Amended Declaration and amended to read:

(c) The term "Common Areas and Facilities" shall mean and refer to:

(i) The land included in the description of the Property, including the Convertible Land;

(ii) That portion of the Property not specifically included in the Units;

(iii) All foundations, columns, girders, beams, supports, main walls, roofs, lobbies, stairs, stairways, fire escapes, service areas, entrances and exists, and driveways, and in general all other apparatus, installations and other parts of the Property (excluding the Units) necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;

(iv) Those areas specifically designated on the Second Amended Supplemental Record of Survey Map for the Kimball Condominiums as "Common Areas"; and

(v) All Common Areas and Facilities as defined in the Act, whether or not specifically listed herein.

D. Section 1.4 in the Fourth Amendment, "Convertible Land" is hereby recodified and amended as Section 2(u) under the Second Amended Declaration to read:

(u) The term "Convertible Land" shall mean and refer to that portion of the property described in Exhibit "C" attached to the Fifth Amendment.

E. Section 1.5 in the Fourth Amendment, "Uncompleted Units," is hereby re-coded and amended as Section 2(v) under the Second Amended Declaration to read:

(v) "Uncompleted Units" shall mean the same as Back Building Units. Whenever a document refers to

Back Building Units it also is referring to any units labeled "Units for Possible Reconfigurations" on the latest supplemented Record of Survey Map affecting Kimball Condominiums.

F. Section 1.6 in the Fourth Amendment, "Unit" is hereby re-coded as Section 2(o) under the Second Amended Declaration and amended to read:

(o) The word "Unit" shall mean and refer to the separately owned space as shown on the latest supplemental Record of Survey Map with a unit number.

G. Section 1.7 in the Fourth Amendment, "Unit Number" is re-coded Section 2(p) under the Second Amended Declaration and amended to read:

(p) The words "Unit Number" shall mean and refer to the number, letter, or combination thereof designating the Unit as shown on the Second Amended Supplemental Record of Survey Map for the Kimball Condominiums. Said Unit Numbers are also shown on amended Exhibit C attached hereto.

H. The following is added as Section 2(z) to the Second Amended Declaration:

(z) The term "Order" means order of the United States Bankruptcy Court for the District of Utah, Central Division, entered in the Bankruptcy Case on December 22, 1988, confirming the Plan.

I. Section 2.1 in the Fourth Amended Declaration is hereby re-coded as Section 9(e) and amended to read as follows:

(e) Undivided Ownership Interest in Common Areas and Facilities. The percentage or fraction of undivided ownership interest in the Common Areas and Facilities appurtenant to each Unit and its Owner, for all purposes, including voting, is set forth on Exhibit "B" attached to the Fifth Amendment, or as set forth on any subsequent amendment duly and properly executed.

J. Section 2.2 in the Fourth Amendment is added as Section 6.1 of the Second Amended Declaration and reads as follows:

Section 6.1. Uncompleted Units. Notwithstanding any provision in the Second Amended Declaration, as Amended, or the Amended Use and Occupancy Agreement, as Amended, each of the Uncompleted Units, until such Units are completed, shall only be allocated, and the Owner thereof shall only be obligated to pay, their respective pro rata shares (based on the undivided ownership interest in Common Areas and Facilities appurtenant to each such Uncompleted Unit) of the following Common Expenses: real property taxes and assessments, insurance, and security. Once each such Uncompleted Unit is completed, it shall be allocated, and the Owner thereof shall thereafter be obligated to pay, its respective pro rata share (based on the undivided ownership interest in Common Areas and Facilities appurtenant to such previously Uncompleted Unit) of all Common Expenses.

K. Section 3.1 in the Fourth Amendment is added as Section 6.2 of the Second Amended Declaration and is amended to read as follows:

Section 6.2. Reconfiguration. As authorized by the Plan and Order, the Association continues to reserve the right, at any time prior to the completion of the Back Building Units, to alter the configuration and design of the Back Building Units, and to alter the boundaries between the Back Building Units, as long as said alteration does not affect the boundaries of any other Units. Any such alteration shall be effected by an amendment to the Second Amended Declaration or any subsequent Amendment and the Second Amended Map or any subsequent map, which may be executed by the Association and any affected lienholders with respect to the Project, notwithstanding the amendment provisions contained in Section 24 of the Second Amended Declaration. Any such amendment shall not affect the extent and priority of liens on the Project of said lienholders without said lienholders' prior written consent.

L. Section 3.1 in the Fourth Amendment is added as Section 6.3 of the Second Amended Declaration and is amended to read as follows:

Section 6.3. Change in Undivided Ownership Interest In Common Areas and Facilities. Any alteration made to the Back Building Units under Section 6.2 of the Second Amended Declaration [as amended by the Fifth Amendment] may increase or

decrease the number of the Back Building Units and alter said Units' respective undivided ownership interests in Common Areas and Facilities. If the undivided ownership interests in Common Areas and Facilities for the Back Building Units are changed, the amendments to the Second Amended Declaration described in Section 6.2 hereof shall reapportion the undivided ownership interests in the Common Areas and Facilities which are allocated to the altered Units, consistent with the manner in which the undivided ownership interests in the Common Areas and Facilities were originally determined.

1.2 The following items in this Section 1.2 affect the Amended and Restated Use and Occupancy Agreement, as amended, including through the Third Amendment.

A. Section 1.25 of the Use Agreement is amended to read:

1.25 "Unit" shall mean and refer to the separately owned space as shown on the latest supplemental Record of Survey Map with a unit number.

ARTICLE II

Designation of Completion of Units

Designation of Completion of Units. Pursuant to the provisions of Section 6.2 of the Second Amended Declaration (Section 3.1 of the Fourth Amendment), the Association hereby declares that the following Units have been completed: 125, 129, 138, 139, 143, 144, 225, 226, 230, 233 and 244. Such Units were included as Uncompleted and Back Building Units in the Fourth Amendment. Such Units, by this Fifth Amendment, have been removed from the list of Uncompleted Units and Back Building Units.

ARTICLE IV

Miscellaneous

Section 4.1. Service of Process. The person authorized to receive service of process, under all cases provided by the Act, together with his place of business, is as follows:

Wayne G. Petty, Esq.
MOYLE & DRAPER, P.C.
600 Deseret Plaza
No. 15 East 100 South
Salt Lake City, UT 84111

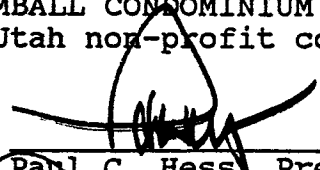
Section 4.2. In All Other Respects, Instruments Are Deemed Unamended; Conflict Among Documents. Except as set forth herein, the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, are unamended and are in full force and effect in accordance with the terms thereof.

Unless otherwise specified herein, all terms used herein and defined in the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, shall have the meanings ascribed to them in said instruments.

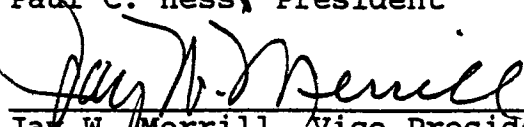
IN WITNESS WHEREOF, the undersigned has hereunto caused this Fifth Amendment to be executed by its duly authorized agent, pursuant to the Plan and Order, this 27th day of May, 1994.

KIMBALL CONDOMINIUM OWNERS ASSOCIATION
a Utah non-profit corporation

By

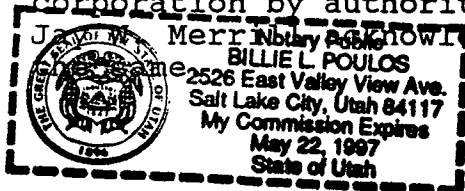

Paul C. Hess, President

By


Jay W. Merrill, Vice President

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 27th day of May, 1994, personally appeared before me Paul C. Hess and Jay W. Merrill, who being by me duly sworn did say that they are the President and Vice President of Kimball Condominiums Owners Association, a Utah non-profit corporation, and that they executed the above and foregoing instrument and that said instrument was signed in behalf of said corporation by authority of its bylaws, and said Paul C. Hess and Jay W. Merrill acknowledged to me that said corporation executed



Billie L. Poulos
NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:
5-22-97

LIST OF EXHIBITS

List of Unit Numbers and Undivided Ownership Interests In Common Areas and Facilities Appurtenant to Each Unit	Exhibit "B"
Legal Description of the Convertible Land	Exhibit "C"

EXHIBIT B:

LIST OF UNIT NUMBERS AND
UNDIVIDED OWNERSHIP INTERESTS IN COMMON AREAS AND
FACILITIES APPURTENANT TO EACH UNIT

<u>Unit Designation</u>	<u>Unit Size Square Ft.</u>	<u>Undivided Interest in Common Areas and Facilities</u>
125	471	.022
129	473	.022
130	709	.025
133	242	.015
134	713	.025
137	272	.015
138	835	.029
139	555	.021
143	562	.021
144	553	.021
225	742	.030
226	706	.026
230	693	.026
233	747	.030
234	751	.025
237	284	.015
238	867	.029
239	566	.021
243	580	.021
244	572	.021
325	773	.029
326	749	.025
330	751	.025
333	767	.029
334	771	.025
337	290	.015
338	886	.029
339	584	.021
343	597	.021
344	598	.021
347	300	.015
348	305	.015
425	773	.029
426	749	.025
430	751	.025
433	767	.029
434	766	.025
437	291	.015
438	889	.029
439	586	.021
443	600	.021
444	603	.021
447	299	.015
448	305	<u>.015</u>
	TOTAL	1.000

EXHIBIT C:
CONVERTIBLE LAND

Beginning at an existing fence corner S 0°02'13" E, 34.72 feet, and N 89°57'47" E, 8.31 feet, from the Southwest corner of Lot 4, Block 93, Plat A, Salt lake City Survey (Basis of Bearing being S 0°02'13" E between the existing city monuments at 200 North Main Street and North Temple and Main Streets); thence N 1°25' W, 63.8 feet, more or less, to a point on a retaining wall made of railroad ties; thence S 89°52' E, along said retaining wall, 213.8 feet, more or less to a corner of said retaining wall; thence, continuing along said retaining wall, S 0°08' W, 65.7 feet, more or less, to a point in an existing fence line; thence N 89°21' W, along said fence line, 212.1 feet, more or less, to the point of beginning. Containing 0.32 acres, more or less.

APPROVAL BY CITY

SALT LAKE CITY, a body corporate and politic, and the City in which *Kimball Condominiums* a Utah condominium project, is located, by and through its duly elected Mayor, does hereby give final approval to the said Project, to the foregoing Declaration, to the Record of Survey Map recorded concurrently herewith, and to the attributes of the said Project which are mentioned in Section 57-8-35(3) of the Utah Condominium Ownership Act, as amended and expanded by the laws of Utah, 1975, Chapter 173, Section 18.

DATED: 6/2/94

RECORDED

JUN 02 1994

CITY RECORDER

ATTEST:

[Signature]

Recorder
Chief Deputy

SALT LAKE CITY

By *[Signature]*
Acting Mayor

APPROVED TO FORM
Salt Lake City

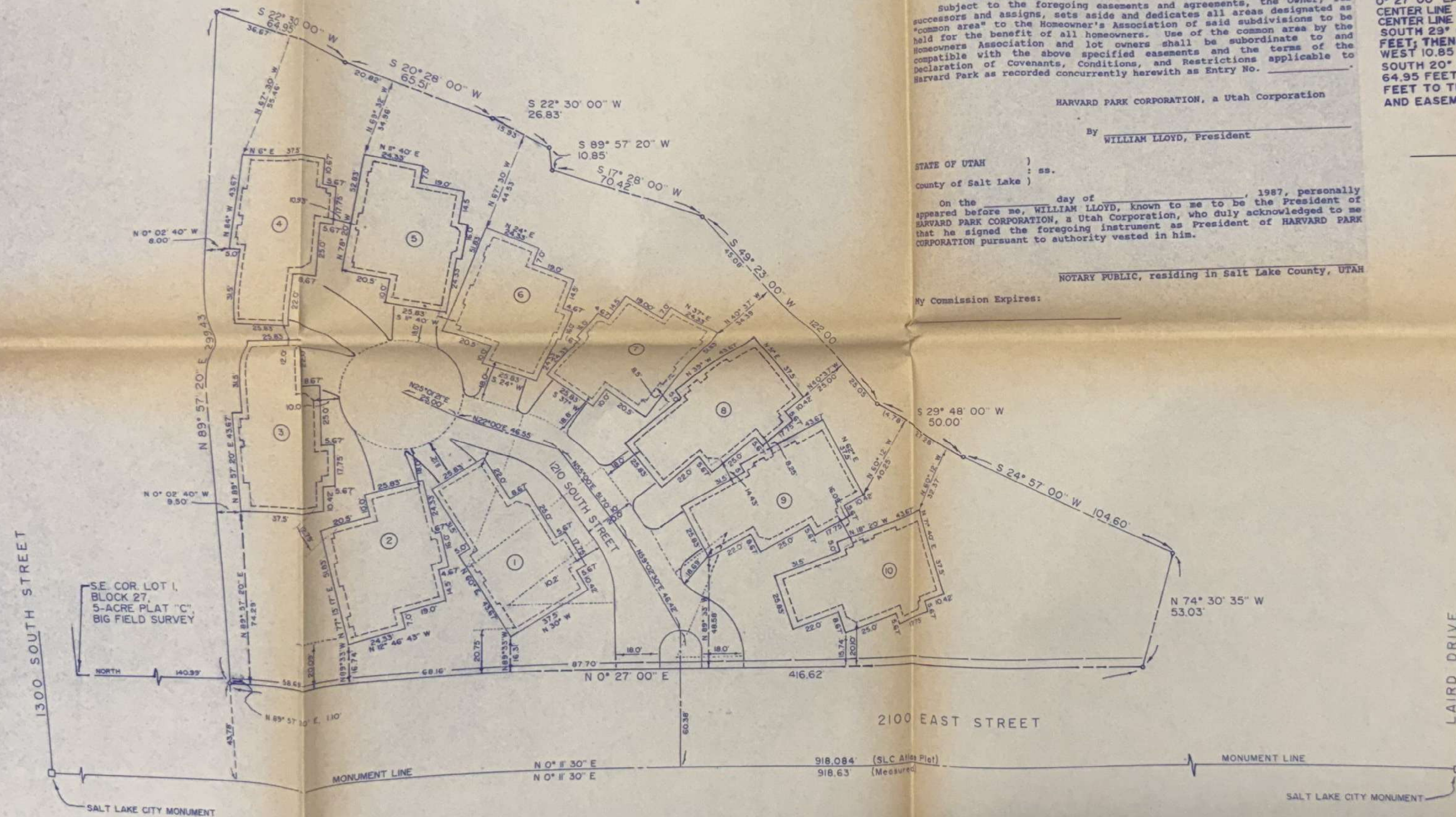
Date *[Signature]*
By *[Signature]*



**ATTACHMENT Y: Draft Harvard Park Plat
from Subdivision Petition
File, July 10, 1987**

HARVARD PARK

A PLANNED UNIT DEVELOPMENT SUBDIVISION LOCATED IN BLOCK 27 5-ACRE PLAT "C" A SALT LAKE CITY SURVEY



OWNER'S DEDICATION

In recording this plat, Harvard Park, a P.U.D. SUBDIVISION, the undersigned has designated and dedicated all land within said subdivision and outside of P.U.D. lot boundaries as common area. This common area is to be used for driveways, sidewalks, landscaped open space, easements for utility main and service line, recreation, and other activities and related requirements for the operation of Harvard Park.

Owner hereby dedicates to the public the following easements over all land designed as "common areas":

- (1) A utility easement for all public and private utilities now located in, on, under or over the property and those which may be proposed, approved and accepted by any utility, maintaining, obtaining, altering, repairing, replacing, removing or rerouting of such utilities.
- (2) An easement for ingress and egress, emergency vehicle access, storm drainage for the public and Salt Lake City Corporation over the common areas improved and designated as private driveways, including 1210 South.
- (3) The Owner, its successors and assigns, agrees to indemnify, serve harmless and defend Salt Lake City Corporation from all claims, demands, and damages to improvements of any kind thereon arising out of the City's and the public's use of said driveways and easements.

Subject to the foregoing easements and agreements, the Owner, its successors and assigns, sets aside and dedicates all areas designated as "common area" to the Homeowner's Association of said subdivisions to be held for the benefit of all homeowners. Use of the common area by the Homeowners Association and lot owners shall be subordinate to and compatible with the above specified easements and the terms of the Declaration of Covenants, Conditions, and Restrictions applicable to Harvard Park as recorded concurrently herewith as Entry No.

HARVARD PARK CORPORATION, a Utah Corporation

By WILLIAM LLOYD, President

STATE OF UTAH)
County of Salt Lake) ss.

On the _____ day of _____, 1987, personally appeared before me, WILLIAM LLOYD, known to me to be the President of HARVARD PARK CORPORATION, a Utah Corporation, who duly acknowledged to me that he signed the foregoing instrument as President of HARVARD PARK CORPORATION pursuant to authority vested in him.

NOTARY PUBLIC, residing in Salt Lake County, UTAH

My Commission Expires: _____

SURVEYOR'S CERTIFICATE

I, SCOTT F. MCNEIL, A REGISTERED LAND SURVEYOR, HOLD CERTIFICATE No. 4099, AS PRESCRIBED BY THE STATE OF UTAH, AND DO HEREBY CERTIFY THAT BY AUTHORITY OF THE OWNERS, I HAVE MADE AN ACCURATE SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HERewith, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND COMMON AREAS TO BE HEREFTER KNOWN AS HARVARD PARK P. U. D. SUBDIVISION, AND THAT THE SAME HAS BEEN SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

BOUNDARY DESCRIPTION

BEGINNING AT A POINT NORTH 40.99 FEET AND NORTH 89° 57' 20" EAST 10 FEET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 27, FIVE ACRE PLAT "C", BIG FIELD SURVEY, ACCORDING TO THE SALT LAKE CITY ENGINEER'S PLATS, AND RUNNING THENCE NORTH 0° 27' 00" EAST 416.62 FEET; THENCE NORTH 74° 30' 35" WEST 53.03 FEET TO THE CENTER LINE OF EMIGRATION CREEK AS ORIGINALLY LOCATED; THENCE ALONG SAID CENTER LINE OF CREEK AS FOLLOWS: SOUTH 24° 57' 00" WEST 50.00 FEET; THENCE SOUTH 29° 48' 00" WEST 50.00 FEET; THENCE SOUTH 49° 23' 00" WEST 122.00 FEET; THENCE SOUTH 72° 28' 00" WEST 70.42 FEET; THENCE SOUTH 89° 57' 20" WEST 10.85 FEET; THENCE SOUTH 22° 30' 00" WEST 26.83 FEET; THENCE SOUTH 20° 28' 00" WEST 65.51 FEET; THENCE SOUTH 22° 30' 00" WEST 26.83 FEET; THENCE LEAVING SAID CREEK NORTH 89° 57' 20" EAST 299.43 FEET TO THE POINT OF BEGINNING, SUBJECT TO ANY EXISTING RIGHT-OF-WAYS AND EASEMENTS. CONTAINING 1.81 ACRES.

DATE _____

SCOTT F. MCNEIL
CERTIFICATE No. 4099

Preliminary Plans
7-10-87

NOTE: DIMENSIONS AND BEARINGS SHOWN FOR LOTS 1 THROUGH 10 REFER TO THE SOLID PROPERTY LINES, AND NOT THE DASHED LINES (FOR BUILDINGS). UNLABELED LOT LINE BEARINGS ARE PARALLEL OR PERPENDICULAR TO THE GIVEN BEARINGS FOR THAT BUILDING.



**McNEIL
ENGINEERING**
CONSULTING ENGINEERS
4685 S. Highland Drive
SLC, UT 84117

CITY PLANNING DIRECTOR

APPROVED THIS _____ DAY OF _____, 1987 BY THE SALT LAKE CITY PLANNING COMMISSION.

PLANNING DIRECTOR

CITY DEPARTMENT OF PUBLIC WORKS

I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT EXAMINED BY THIS OFFICE AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE AND IS HEREBY APPROVED.

CITY TRANSPORTATION ENGINEER	DATE _____
CITY ENGINEER	DATE _____
PUBLIC WORKS DIRECTOR	DATE _____

CITY DEPT. OF PUBLIC UTILITIES

APPROVED THIS _____ DAY OF _____, 1987.

S.L.C. PUBLIC UTILITIES DIRECTOR

CITY ATTORNEY

APPROVED AS TO FORM THIS _____ DAY OF _____, A.D., 1987.

SALT LAKE CITY ATTORNEY

CITY MAYOR

PRESENTED TO SALT LAKE CITY T. _____ DAY OF _____, A.D., 1987, AND IS HEREBY APPROVED.

S.L.C. RECORDER

S.L.C. MAYOR

SALT LAKE COUNTY RECORDER

RECORDED _____
STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF _____ BOOK _____ PAGE _____
DATE _____ TIME _____
FEES _____
SALT LAKE COUNTY RECORDER

ATTACHMENT Z: Example of Findings and Order Disclaimer Language, 1986

BEFORE THE BOARD OF ADJUSTMENT, SALT LAKE CITY, UTAH

FINDINGS AND ORDER, CASE NO. 249-B

REPORT OF THE COMMISSION:

This is an appeal by Simon Trolley Square, Inc., an Indiana Corporation, from the refusal of the Building Inspector of Salt Lake City, Utah, to issue a variance allowing the applicant to use leased parking or in the alternative to reduce the parking requirement for Parcel #1 of the proposed subdivision, located between 500 and 600 South and 600 and 700 East Streets and the block between 600 and 700 South and 600 and 700 East Streets, contrary to the provisions of the Zoning Ordinance in a Commercial "C-3" and Residential "R-3A" District.

The Board asked that both Case No. 249-B and Case No. 250-B be discussed in unison. Richard Rappaport, legal representative was present. Virginia Walton, 733 Green Street; S.J. Millre, 665 South 600 East; Bruce Giffen, 657 South 600 East; Jim Orphanakis, 675 South 600 East; Spencer and Ruth Daniels, 2261 Logan Avenue and Mark Thomas, 860 Park Street were also present. Mr. Hafey explained that Case No. 249-B concerns only the block upon which the present development is located. He noted that in order for the applicant to secure the financing for the project it is necessary for the development to be divided into three separate parcels. The applicant has filed for a minor subdivision and has divided the development into three parcels. Therefore, the applicant has two proposals which will provide the necessary parking for each parcel. Upon the division of the development, Parcel #1 does not have the required number of parking stalls; therefore, the applicant is asking in Case No. 249-B that they be allowed to lease parking from the other parcels (Parcels #2 & #3). Case No. 250-B attempts to provide the additional parking by enlarging the parking lot to the south and lease the parking needed. The enlargement of the parking lot would require the removal of three residential structures and the use of one vacant parcel. The vacant parcel located on the southeast corner of 600 South and 600 East Streets was recently considered for a conditional use as a parking lot. This request was denied because it would cause the garden type apartments on the land to the east to become surrounded by parking lots. The three residential structures are located at 633 South 600 East Street, 636 Ely Place and 630 South 700 East Streets. These structures are single-family dwellings except for 630 South 700 East which appears to be a two-family dwelling.

Mr. Rappaport explained that Simon Trolley Square is the contract purchaser for Trolley Square. He noted that the Simon Company is the second largest shopping center owner in the country. He further noted that the applicant has some very exciting plans for rehabilitating Trolley Square. However, because the applicant is seeking Industrial Revenue Bonds for the proposed renovation of the development it is necessary for the development to be divided and purchased by three separate partnerships (TS1, TS2 and TS3). At the present time Trolley Square is experiencing financial

difficulties and it is in the City's best interest for this proposed purchase and renovation to take place. The external configuration of Trolley Square will not be changed. Only the survey map will be changed in order to divide the development into three separate subdivision parcels. He noted that the number of parking spaces will remain the same; however, the division of the development causes Parcel #1 to be short the required number of stalls (431 required, 399 can be provided with the leased spaces from Parcels #2 & #3). Mr. Rappaport pointed out on the map the parcels involved and noted that by law it is only permitted for 47 parking spaces (9 percent of the number provided in Parcel #2, 15 stalls, and #3, 32 stalls,) to be leased from the other two parcels or partnerships as proposed in Case No. 249-B. He noted that if cross easements were permitted for the parking and ingress and egress to the parking, there would be no problem with the number of stalls; however, the financing cannot be acquired if cross easements are included in the proposal. He noted that by redesigning the parking lot to the south an additional 20 parking spaces can be provided which would provide 419 of the 431 required parking stalls for Parcel #1. The Board asked what the term of the lease would be. Mr. Rappaport explained that the lease would be for less than a year as required by the bonding laws.

Mrs. Daniels explained that the expansion as proposed in Case No. 250-B would make ingress and egress on Sego Avenue and Ely Place which is not a public street. She noted that she is opposed to the expansion because this right-of-way is very narrow and is not a public street. She further noted that when the parking lot to the south was approved the provision was given that landscaping be provided along the west. She noted that trees were installed however, they have not been maintained. Mrs. Walton expressed her opposition to the proposed expansion of the parking lot to the south because of the removal of the residential units.

Later in the meeting the various aspects of the case were reviewed. The Board noted that the total number of parking spaces were there and it was only a matter of how the spaces were arranged on three parcels. The Board also noted that the leases could be written to allow unrestricted access for the use of the stalls and the access across the different parcels.

From the evidence before it, the Board is of the opinion that the petitioner would suffer an unnecessary hardship from a denial of the variance; that the spirit and intent of the Zoning Ordinance will be upheld and substantial justice done in the granting of the variance.

IT IS THEREFORE ORDERED that the variance, Case No. 249-B, to allow the applicant to use 47 leased parking stalls from Parcels #2 and #3 for Parcel #1 of the proposed subdivision, contrary to the provisions of the Zoning Ordinance, subject to the relandscaping in the parking lot to the south being maintained and lightproof landscaping be installed where required as set forth in the original variance and that the variance be subject to the provision that if for any reason the lease agreement for the parking is not

renewed the variance becomes null and void and that the parking remain as it is allowing unrestricted access to all parking areas. Provided these restrictions are complied with, the decision of the Building Inspector is reversed and said officer directed to issue the required permits in accordance with the order and decision of the Board provided the construction plans show conformity to the requirements of the Uniform Building Code and all other City Ordinances applicable thereto; and provided such reduction or addition does not conflict with any private covenants or easements which may be attached to or apply to the property, all conditions of the Board to be fully complied with before the Building Inspector can give a certificate of occupancy or final inspection, said order to expire within six months from the dating of this order. This variance expires if work has not been started within six months.

THE FAILURE OF THE APPLICANT TO ABIDE BY THE CONDITIONS OF THIS VARIANCE SHALL CAUSE IT TO BECOME NULL AND VOID, WHICH IN EFFECT IS THE SAME AS THE VARIANCE HAVING BEEN DENIED.

Action taken by the Board of Adjustment at its meeting held Monday, June 23, 1986.

Dated at Salt Lake City, Utah, this 7th day of July, 1986.

Nancy K. Pace
Chairman

Mechelle Forsyth
Acting Secretary