PARK CITY
1884

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 1, 1999

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, April 1, 1999.

AGENDA

Closed Session - City Council Chambers - Lower Level

3:00 p.m. Property acquisition

Work Session - City Council Chambers - Lower Level

3:50 p.m. Council questions/comments
4:10 p.m. Extension of water service - National Abilities Center
4:30 p.m. Land Management Code amendments - Phase 1
5:40 p.m. Review of regular meeting

Regular Meeting - City Council Chambers - Lower Level

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

III COMMUNICATIONS FROM COUNCIL AND STAFF

IV WORK SESSION NOTES AND MINUTES OF MEETING OF MARCH 18, 1999

V PUBLIC HEARING

Ordinance approving a plat amendment to combine portions of four lots into two lots of record at 262 Grant Avenue, Park City Survey, Block 72, Park City, Utah

VI CONSENT AGENDA

1. Ordinance approving a plat amendment to combine portions of four lots into two lots of record at 262 Grant Avenue, Park City Survey, Block 72, Park City, Utah

2. Soaring Wings lease amendment

3. Authorization to staff to enter into a cooperative grant agreement with the Utah Department of Transportation for Phase III of the entryway trail

4. Resolution establishing the Old Town Transit Center design Review Task Force

VII APPOINTMENTS

Appointment of Old Town Transit Center Review Task Force

VIII ADJOURNMENT

A Redevelopment Agency Meeting will convene

PARK CITY REDEVELOPMENT AGENCY
SUMMIT COUNTY, UTAH
APRIL 1, 1999

PUBLIC NOTICE IS HEREBY GIVEN that the Redevelopment Agency of Park City, Utah will hold a public meeting, at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes described below on Thursday, April 1, 1999 immediately following the adjournment of the City Council Meeting.

<u>AGENDA</u>

I ROLL CALL

II PUBLIC INPUT

III MINUTES OF MEETINGS OF JANUARY 7, 1999 AND JANUARY 14, 1999

IV NEW BUSINESS

Authorization for Mayor to execute purchase and sale agreement for the acquisition of 560 Main Street, Lot B, from Jim Carr in the amount of $500,000

V ADJOURNMENT

Posted: 3/29/99
see parkcity2002.org

PARK CITY
1884

PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
APRIL 1, 1999

Present: **Mayor Brad Olch; Council members Hugh Daniels; Roger Harlan; Shauna Kerr; Chuck Klingenstein; and Paul Sincock**

Toby Ross, City Manager; Jodi Hoffman, City Attorney; Bob Johnston, Leisure Services Director; Eric DeHaan, City Engineer; Pat Putt, Planning and Zoning Administer; Mark Harrington, Deputy City Attorney; and Rick Lewis, Community Development Director

Meechie White and Richard Dudley, National Ability Center (NAC)

1. **Council questions and comments.** Paul Sincock requested a recap of recycling consumables by City facilities in response to a 5th grader's comment on recycling during the Leadership 2000 session last week. Paid parking will end on April 15 if nothing is done; if the Council wants paid parking to be year-round, a decision needs to be made now. Hugh Daniels felt that with the new technical committee coming on board that it probably should end on April 15 so that the board has the opportunity to formulate recommendations to bring back to Council. Ms. Kerr also pointed out that a meeting date hasn't been advertised on this topic and agreed that paid parking should expire at this time. Chuck Klingenstein expressed his support of the broad based group and felt it important to avail them every opportunity to work through issues.

Roger Harlan reported his attendance at an Olympic Transportation meeting and felt that a discussion on the availability of the Gillmor property for parking should be scheduled for Council review to provide SLOC with some direction. Chuck Klingenstein questioned if this is the most environmentally suitable site for parking as 60 acres will have to be cleared; this is an important decision and should be scheduled soon. Mr. Harlan felt that the public Olympic meeting held on Tuesday was excellent and very positive. He also applauded the City Show produced by employees. He encouraged the public and the Council to participate in the Health Fair sponsored by Father Busson. With regard to the City Show, Hugh Daniels noted that the staff is very talented and the show was entertaining, humorous and informative. Shauna Kerr suggested that employees be recognized with instant bonuses as rewards for the good work involved in the City Show. In response to a question from Shauna Kerr regarding the community's arbor day celebration, Bob Johnston explained that the Parks and Recreation Board will identify a project. Chuck Klingenstein pointed out that the Trust for Public Lands magazine featured an article on Park City's successful open space bond issue.

2. Extension of water service - National Ability Center. Eric DeHaan introduced Meechie White, Executive Director and Richard Dudley, President of the Board of Directors. This property is adjacent to the Gillmor property off of SR248. Ms. White explained that there is an outdoor riding arena, tack shed, pasture and sun shelter. The outdoor program has operated for two summers and they would like to build an indoor arena, barn, main lodge building, small athletic facility, and a dormitory. The goal is to build the indoor arena, barn, and challenge course this summer and the application process is on-going with the County. Richard Dudley explained the construction and design of the barn. Ms. White interjected that this facility will be for people with disabilities in an integrated environment and non-disabled kids have been participating in the horseback riding activities. The indoor riding arena will be available for special events in the community and the facility will not be serving a limited population.

Richard Dudley explained that Jerry Gibbs described an alignment which would require an easement through other properties to the NAC. The low drainage area would have to be bridged with more fill than what the pipeline would have to be buried at and that is why that location was chosen. It also runs with the drainage swill through the lower southeast corner of the NAC property where it would be available and accessible to the lower part of the City acquired property abutting SR224. In response to a question from Roger Harlan, Meechie White indicated they have no water rights to give to the City. Paul Sincock asked if they have alternatives. Ms. White stated that they would be required to have about a 250,000 gallon water tank for fire protection which is cost prohibitive. Chuck Klingenstein felt that this is a worthy project, but this is an area that hasn't been planned by the City or the County. He is concerned about introducing water into the area and added that because the system wouldn't be looped, it could freeze. Mr. Klingenstein suggested that the Planning Commission review this project and discussed the bladders that Deer Crest is using to meet fire suppression requirements on a temporary basis. He would like to see the NAC succeed but is reluctant to approve an 8" water line. Richard Dudley pointed out the expense in providing water suppression protection with a tank and well. He explained that he would bury a water line so that it wouldn't freeze and a fire hydrant would be installed at the end of the line which could be drained to alleviate the build-up of possible bacteria collection. He didn't think the installation of a line is growth inducing as it isn't in an incorporated area and suggested that there could be a contract that no one could attach to it, similar to the White Pine agreement. The Mayor asked if NAC would be willing to annex to the City and Mr. Dudley indicated their willingness. Paul Sincock noted that Summit County doesn't have a master plan for the area either, and asked the status of their application. Ms. White reported that there has been a good reaction to the plan and the County didn't suggest any changes; final Planning Commission approval is scheduled on April 13 . All permit fees have been waived by Summit County.

Roger Harlan asked if a loop system could be created in the same trench. Mr. DeHaan explained that it could simultaneously expose both pipes to settlement or seismic problems and of course, the cost would double. If this were to be approved, stagnation and freezing problems would be addressed with a flush valve which would involve proper maintenance. He emphasized that no one knows the future of the area, and unfortunately there doesn't seem to be another solution other than a dead-end water line. The Summit County and Atkinson Districts are looking at the Rockport water line, but that is 3/4 of a mile away from NAC which would be a much more expensive solution and would still dead-end. There is another higher tank in the Solamere area but it would waste energy by virtue of over-pumping at too high of an altitude and there would have to be a series of pressure reducing valves. In response to a question from Paul Sincock, Ms. Hoffman explained that the annexation of the NAC into the water service district would create a duty to serve. She pointed out that non-contiguous property can not be annexed by a municipality but it may be possible in a water service district, which needs to be researched. Annexation into the water district creates a legal place of use of the water, otherwise it is not a legal place of use under our current water rights to use the water. Ms. White added that when the facility is totally built-out, the year-round use would be a little under five acre feet. Paul Sincock stated that he wouldn't have a problem with this if the Edward Gillmor properties were also annexed, so that it is basically a City service. The planning of the property could be accomplished in the jurisdiction of the City. He shared Mr. Klingenstein's concerns about the long-range vision of the area. Shauna Kerr stated that if asked to vote on this tonight, she would have to deny it, not knowing what the future holds for the area. She suggested that this be referred to the Planning Commission for input with regard to planning issues, to allow time for the Legal Department to research annexation into the water service district, and to assess the interest of the Gillmors to annex. Paul Sincock suggested that the proposed subcommittee of the Park City Planning Commission and Summit County Planning Commission work on this jointly. Ms. Kerr added that the water coming from the City is probably the logical connection, but did not want to facilitate future growth by extending the line prematurely.

The City Attorney explained to Roger Harlan that the easement isn't an issue, but rather the duty to serve and the allowed place of use for the water. Water can not be extended to just anywhere, because there are certain water rights limited to a point source and a place of use. The NAC would have to come within the service district in order to be a legal place of use for our water and once an area is within a service district, there is a duty to serve.

Hugh Daniels stated that he has similar issues and serving the Edward Gillmor section is a great concern. He would like to assess legal options and arrive at a solution without compromising the City's interests. Richard Dudley understood Council's direction, but warned not to hold any hope of the Gillmors to annexing, unless it was part of an open space purchase plan. Ms. Kerr suggested that NAC help facilitate members of the both planning commissions to discuss this project. The Mayor emphasized that the Council is in support of the expansion of NAC, but there are technical issues that need to be considered.

3. Land Management Code amendments - Phase 1. Pat Putt referred to a letter from Gary Nielsen representing the Holiday Ranch Home Owners Association urging Council to preclude accessory apartments in the subdivision pursuant to its CC&Rs. He reported that he met with a local architect on the HR-1 and HRL requirements and it was agreed to make changes in the language to clarify issues that were unclear or not addressed relating to front yard exceptions, building pads, and heights. These will be included in the draft after the rest of the changes are made after the public hearing. He also met with architect David Belz about the height with a pitched roof in the HRC zone which is 37 feet measured to the ridge. Mr. Putt stated that he spoke to a home owner on Ontario Avenue who feels that nightly rentals in the Rossie Hill area is positive because they typically result in one parked vehicle as opposed to several cars at a residence.

With regard to the HRC zone, Hugh Daniels raised the issue of "intensive" uses and felt that certain businesses are intensive by their character regardless of square footage. Mr. Putt explained that this is a carry-over from the previous code which allows commercial activities in the zone provided that they're under 2,000 square feet. There was discussion about all businesses, regardless of size, being conditional uses. Council concurred.

Hugh Daniels noted that the conditional use list for ROS appears extensive, and suggested that grazing be an allowed use. Pat Putt explained that child care is included as well as in-home child care as there are homes that exist in ROS. There was a discussion about precluding mining exploration. Jodi Hoffman explained that it will not affect existing mining operations. Council directed staff to work on the list further and bring it back for review. Ms. Hoffman added that the Park City Mountain Resort was unaware of these proposed changes and has concerns about changing allowed uses to conditional uses. Many existing operations would not be able to be expanded; the primary concern is in the Eagle Race Arena and the resort would like the opportunity for input. There was discussion about criteria for grazing of horses, and the need to include guidelines for other livestock. Ms. Hoffman pointed out there was concern that prohibiting mining use would result in a taking, but to the extent ROS lands are converted to transfer development lands, there doesn't need to be a mining use in order to maintain value.

There were no comments on the estate zone. With regard to the single family zone, Ms. Hoffman emphasized that the current and proposed codes read that the City does not enforce CC&Rs. Some regulations of CC&Rs may be unconstitutional for a government to enforce, many change over time, and some are written and not enforced which renders them unenforceable under state law. There was discussion about the Holiday Ranch request, which would codify one of its regulations under the code. Mark Harrington explained that there is a new problem there. The properties were platted as horse properties and conversions of barns and secondary structures to living quarters are occurring. These are difficult situations for home owner associations to enforce once built and providing the burden of proof of someone living there full-time. The request to preclude accessory apartments is an attempt to obtain an additional level of City involvement in these disputes. Roger Harlan supported separating the City from enforcement of CC&Rs. It was explained that registered home owner associations are notified about building permit applications. Paul Sincock discussed activities in his neighborhood. Jodi Hoffman relayed that few home owner associations are that diligent and have lost their ability to enforce aspects of their covenants.

Hugh Daniels referred to the many zones with the "R" designation and questioned if some could be combined, as several seem to be very similar. Jodi Hoffman responded that staff can look at this issue, but the proposed draft reflects the philosophy of self-contained chapters. She admitted that there are similar provisions, but the alternative is problematic. Hugh Daniels reiterated that some zones could be combined. Ms. Hoffman felt that different regulations will become apparent in the land use table. Council requested a simple report on the differences in the zones. Paul Sincock pointed out that this will be simplified once the code is available electronically and there was discussion about providing meeting packet information to Council in that manner.

Discussion ensued regarding changing timeshares from an allowed use to a conditional use. Hugh Daniels asked that if the state legislature is going to take away the City's taxing authority and reduce the amount of tax from this type of industry, what is the point of allowing them. Jodi Hoffman agreed and felt the City should have the opportunity in the future to deny timeshares to the extent the tax differential changes.

With regard to the RCO zone relating to the Snow Creek development, Pat Putt pointed out that there is one unbuilt pad, and airing on the conservative side, staff kept the zone in the code. Council noted that the underlying zone is RC-MPD and asked if RCO could be eliminated. Ms. Hoffman felt that the property would be guided under the MPD, however, the overlay zone may be needed in the future, but not currently. The Council felt it should be eliminated. There were some comments on the SOB ordinance, but no other input for the GC zone. There were no comments on the frontage protection zone entry corridor overlay zone. With regard to sensitive lands, Chuck Klingenstein relayed that he spoke to staff about other vantage points, including the Jordanelle area. Pat Putt explained that the intent was to allow the Planning Commission discretion to designate a vantage point on a case-by-case basis. Jodi Hoffman felt it may be a good idea to designate more vantage points, but as written, the Planning Commission can chose one or more vantage points on a project, especially with regard to annexation. Rick Lewis interjected that he supports a floating vantage point approach. The City Attorney suggested adding four or five vantage points with the flexibility of adding others on an optional basis. There was discussion about this provision as drafted and Council felt it should be better clarified.

3. Review of regular meeting.

262 Grant Avenue plat amendment. Hugh Daniels disclosed that he is a partial owner in a piece of property located at 222 Grant Avenue.

Soaring Wings lease amendment. Chuck Klingenstein asked if the rents cover the costs of the building. The City Manager explained that the rents were originally established to repay the debt service and escalate over time. Operations are probably not covered as those would include the auditorium or library. Rents cover the proportional share of the common area and the debt service of the library area.

See regular meeting minutes.

Prepared by Janet M. Scott, City Recorder

PARK CITY
1884

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 1, 1999

I ROLL CALL

Mayor Brad Olch called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, April 1, 1999. Members in attendance were Brad Olch, Hugh Daniels, Roger Harlan, Shauna Kerr, Chuck Klingenstein, and Paul Sincock. Staff present were Toby Ross, City Manager; and Thomas Barlow, Assistant Planner

II PUBLIC INPUT

The Mayor invited the public to comment on any matter of City business scheduled on the agenda.

Vic Ayres, Thaynes Canyon resident, stated that there was a street light on Thaynes Canyon Drive a couple of years ago, but it was removed when the buildings were demolished. He requested that a light be reinstalled and urged Council to consider this in the upcoming budget.

Eve Haught, representing the Mayor's Youth Council, reported that they are working on a black-tie event to be held at The Yarrow on May 15. The Easter basket fund-raiser has been successful. They are working with the Racquet Club staff for the restaurant space for their teen center and formulating a teen manual for activities in the summer. Shauna Kerr suggested getting this request on the radio.

Robbie Beck, Historic Main Street Business Alliance, urged Council to consider delaying a decision on year-round parking until the newly formed committee submits its recommendations for review. The Mayor indicated that Council discussed this issue in work session and decided to delay a decision on year-round parking for that reason.

III COMMUNICATIONS FROM COUNCIL AND STAFF

Tom Bakaly reported that the public hearing on the Capital Improvements Program has been moved back to April 22, 1999.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF MARCH 18, 1999

Chuck Klingenstein disclosed that he will abstain from voting as he wasn't in attendance. With no corrections or omissions noted, the Mayor requested a motion to approve. Shauna Kerr, "I so move". Roger Harlan seconded. Motion carried.

Hugh Daniels	Aye
Roger Harlan	Aye
Shauna Kerr	Aye
Chuck Klingenstein	Abstention
Paul Sincock	Aye

V PUBLIC HEARING

Ordinance approving a plat amendment to combine portions of four lots into two lots of record at 262 Grant Avenue, Park City Survey, Block 72, Park City, Utah - Thomas Barlow, Assistant Planner, stated that on March 12, 1999 the Planning Commission forwarded a positive recommendation to the City Council. Hugh Daniels disclosed that he is a partial owner of property located at 222 Grant Avenue. Hearing no questions or comments from the City Council or the audience, the public hearing was closed.

VI CONSENT AGENDA

Chuck Klingenstein, "I move approval". Paul Sincock seconded. Motion unanimously carried.

1. Ordinance approving a plat amendment to combine portions of four lots into two lots of record at 262 Grant Avenue, Park City Survey, Block 72, Park City, Utah - See public hearing and staff report.

2. Soaring Wings lease amendment - See staff report.

3. Authorization to staff to enter into a cooperative grant agreement with the Utah Department of Transportation for Phase III of the entryway trail - See staff report.

4. Resolution establishing the Old Town Transit Center design Review Task Force - See staff report.

VII APPOINTMENTS

Appointment of Old Town Transit Center Review Task Force - Shauna Kerr, "I move to appoint Fred Jones and Chris Larson as members and Karri Hayes as an alternate from the Planning Commission and Hugh Daniels as the City Council liaison and Chuck Klingenstein as an alternate". Paul Sincock seconded. Motion unanimously carried.

VIII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned and a Redevelopment Agency Meeting convened.

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MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3 p.m. Members in attendance were Mayor Brad Olch, Hugh Daniels, Roger Harlan, Shauna Kerr, Chuck Klingenstein, and Paul Sincock. Staff present were Toby Ross, City Manager; Mark Harrington, Deputy City Attorney; and Jodi Hoffman, City Attorney. Chuck Klingenstein, "I move to close the meeting to discuss property acquisition". Paul Sincock seconded. Motion carried unanimously.

The meeting opened at approximately 4:30 p.m.

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The meeting for which these minutes were prepared as noticed by posting 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

Janet M. Scott

Janet M. Scott, City Recorder

PARK CITY 1884

CITY COUNCIL REPORT

DATE: April 1, 1999
DEPARTMENT: Community Development
AUTHOR: Eric DeHaan, P.E., City Engineer Eric DeHaan
TITLE: Extension of Water Service to National Ability Center (NAC)
TYPE OF ITEM: Administrative; Study Only

SUMMARY RECOMMENDATIONS: The Council should discuss the request from the NAC to extend a water line to their facility from Fairway Hills Subdivision.

DESCRIPTION:

A. Topic: The NAC has requested water service from Park City to the proposed NAC facility east of Park Meadows. A copy of a February 4 letter from Meeche White, Executive Director of the National Abilities Center, is attached. The proposed water line would connect at the east end of Morning Sky Court in Fairway Hills, from which it would dead-end about a half mile further east, at the NAC facility. The proposed water line would be 8 inches in diameter. A sketch of the proposed water line is attached.

B. Background: Extension of water service outside Park City's City Limits takes both Council approval and an annexation to the Park City Water Service District. The NAC has worked for some time to obtain a site for their facility and succeeded in obtaining a parcel in the rolling sagebrush hills north of S.R. 248 near U.S. 40, adjacent to the Gillmor property. According to Meeche White, NAC intends to construct a ropes course, barn, and indoor riding arena in the spring and summer of 1999.

C. Analysis: The City staff is somewhat concerned about the possible growth-inducing pressure which a water line could create. The Park City General Plan (Land Use Element, Round Valley section) states “Promote development to occur so that the desired open space buffer around Park City is established in this area”. The Staff fears that once NAC has a City water line, there will be pressure for us to accommodate development near NAC in an effort to cluster additional development there, leaving a buffer against Fairway Hills. The General Plan goes on in the same section to state “Recreation uses requiring fencing and lighting are not considered appropriate for this area”. The question of whether relatively intensive recreational uses are appropriate in our eastern corridor should be discussed by Council since it is inevitably tied to the question of whether Park City should encourage such uses by allowing our water system to be extended. Whether water development fees and connection fees should be waived for NAC should also be discussed. Ordinarily, any fee waiver would be accompanied by an equivalent transfer from the general fund.

D. Department Review: The NAC request has been discussed at some length within Community Development and Public Works departments.

ALTERNATIVES:

A. Approve the Request: NAC will provide an easement and will cover all construction costs, thereby obtaining some level of fire protection as well as adequate culinary water. The following specific disadvantages accompany this alternative:

1. Extending the water line could induce growth proposals in both the private sector and the public sector. Specific limitation of additional services could mitigate this impact to some extent.
2. The existence of a water line outside the City places an administrative burden on the City to coordinate future road development with the water line, and no interlocal planning agreement exists with Summit County which would give us a tool to coordinate the designs. The water line should initially be installed within an approved road right-of-way to allow all-season maintenance access.
3. Dead-end water lines are potential freezing and/or stagnation problems, either of which creates a maintenance burden for the City even if the maintenance of the line is ostensibly NAC's.
4. The necessary annexation to the Park City Water Service District may delay NAC's construction schedule.
5. Park City will incur inspection costs during the initial construction of the water line. Those costs will increase if effective enforcement of construction standards is not provided by NAC.

B. Deny the Request: This alternative would not address the needs of NAC.

C. Consider an Alternative: Allow a 1 ½ inch culinary water connection. This alternative would minimize most of the disadvantages associated with alternative "A" above but it would not provide significant fire protection for NAC. Another alternative would be to wait for the Rockport water transmission line to be completed by the Weber Basin Water Conservancy District. That line may be located close to NAC, providing an alternative to a dead-end line. Yet another alternative would be an NAC connection to the Atkinson Water District (AWD) near Silver Summit. Park City may receive a request to provide temporary service to AWD until the Rockport water line can deliver water. If that service were approved, service to NAC could be considered.

D. Postpone Action: Postpone action until the area between NAC and Park City is approved as part of a Summit County SPA or a Park City annexation.

SIGNIFICANT IMPACTS: The primary financial impact to Park City is in potential long-term maintenance costs such as freeze-ups, line breaks, unauthorized taps by parties other than NAC, and administrative coordination with Summit County planning complicated by the existence of the water line. A service agreement could be developed to shift the financial responsibility to NAC.

RECOMMENDATION: The Council should discuss the proposal from NAC and give direction to NAC and the staff as to which alternative is appropriate. The staff will then return to Council with a formal course of action and a contractual agreement, if necessary.

NATIONAL ABILITY CENTER

P. O. BOX 682799
RK CITY, UTAH
84068-2799
VOICE/TDD (435) 649-3991
FAX (435) 658-3992
e mail nac@xmission.com

February 4, 1999

Rick Lewis
Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060

Dear Rick:

I am writing to request water service to the National Ability Center (NAC) equestrian facility from the Park City Municipal Corporation via the Fairway Hills sub-division. In order to facilitate access to this water supply, the NAC is seeking to obtain an easement through the parcel of land owned by Edward Gillmor. We are working with the family's attorney, Richard Skeen, who has stated that the family is in favor of granting this easement.

Upon an initial evaluation of our water needs, including fire protection, Ron Ivie concluded we would need approximately 2,000 gallons per minute, which would equate to an 8" line. He also strongly suggested we install the maximum size pipe that would ultimately be required all at once versus an initial installation of a smaller pipe that would have to be replaced at a later date.

The National Ability Center would like to propose that we provide the following:

- An easement from the Edward Gillmor family.
- Arrange for, coordinate and pay for the installation of an 8" pipe and hookups.
- Provide for future connection for the Park City Municipal Corp. property located on the south end of our property.

The Park City Municipal Corporation would provide the following:

- Access to the Fairway Hills water line.
- When, and if, the City would like to tap into the water line for development of their land parcel, PCMC will share in the expenses of the initial installation.

We are presently in the process of seeking Master Plan approval from Summit County and are scheduled to present to the Summit County Planning Commission on March 9. Upon initial review, the planners at the County see no major obstacles to the ultimate approval of this project. Our goal is to have all permits in place by the spring of 1999 and to begin installation of utilities, including water, in May of 1999. It is our intention to construct a ropes course, barn and indoor riding arena in the spring and summer of 1999.

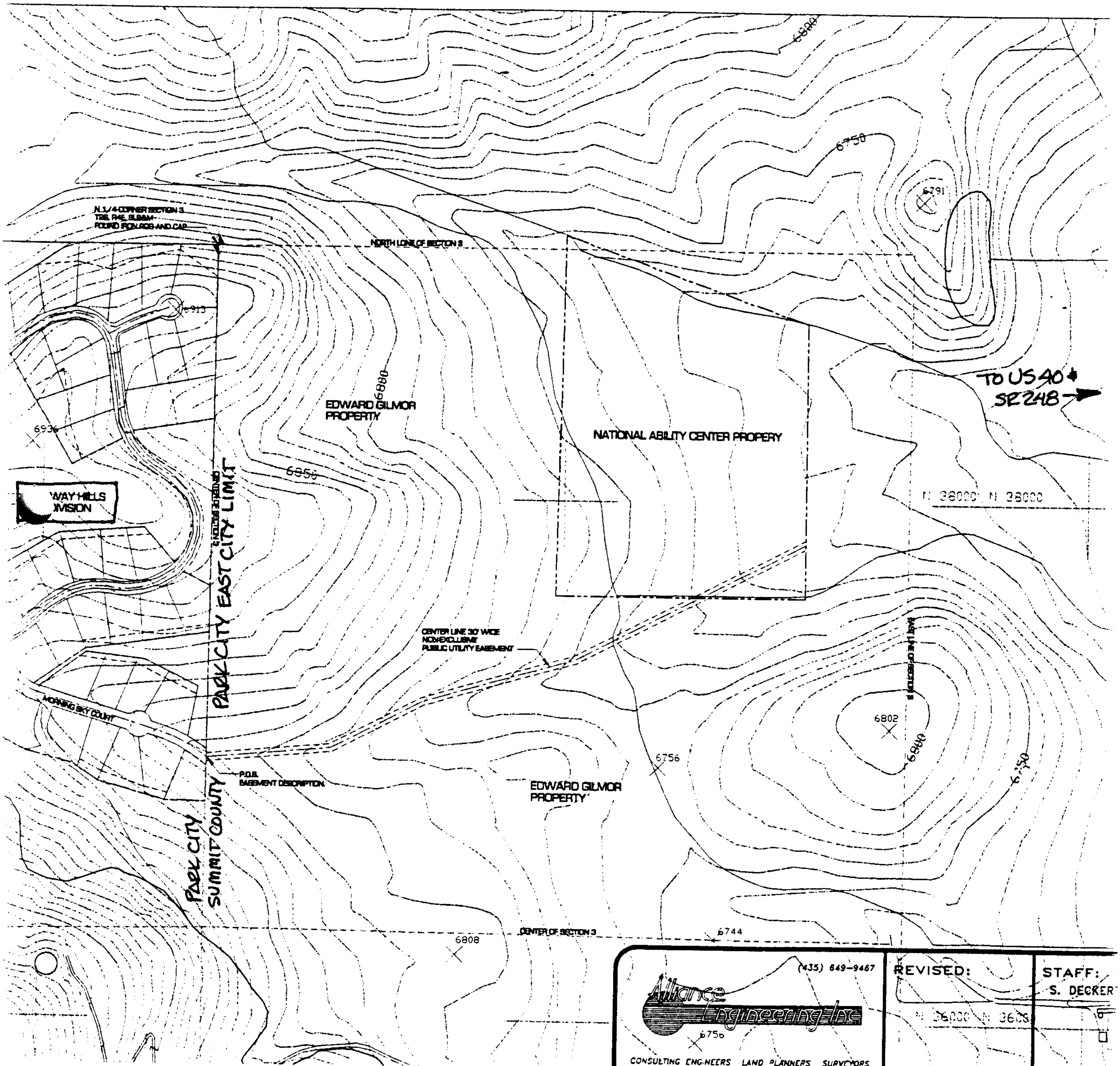
I appreciate the cooperation the City has always given to the National Ability Center and look forward to working with you in the development of that area.

Thank you for your time and consideration. Please feel free to contact me if you have any comments or questions.

Sincerely,

Meeche White

Meeche White
Executive Director



6750
6791
N 1/4 CORNER SECTION 3
T2S, R4E, SLB&M
FOUND IRON ROD AND CAP
NORTH LINE OF SECTION 3
6913
6880
EDWARD GILMOR PROPERTY
NATIONAL ABILITY CENTER PROPERY
TO US 40 & SR 248
6936
6850
PARK CITY EAST CITY LIMIT
N 36000 N 36000
CENTER LINE 30' WIDE NON-EXCLUSIVE PUBLIC UTILITY EASEMENT
MORNING SKY COURT
6802
6840
6750
6756
P.O.B. EASEMENT DESCRIPTION
EDWARD GILMOR PROPERTY
PARK CITY
SUMMIT COUNTY
CENTER OF SECTION 3
6744
6808
(435) 649-9467
Alliance Engineering Inc
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
6756
REVISED:
STAFF:
S. DECKER

PARK CITY
1884

CITY COUNCIL REPORT

DATE: April 1, 1999
DEPARTMENT: Community Development Department
AUTHORS: Thomas E. Barlow
TITLE: 262 Grant Avenue - Plat Amendment
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Conduct a public hearing and consider adopting the attached Ordinance approving a plat amendment to combine portions of four (4) lots in Block 72 in Park City Survey into two (2) lots at 262 Grant Avenue as conditioned.

DESCRIPTION:

A. Topic.

PROJECT STATISTICS

Project Name:	262 Grant Avenue Plat Amendment
Owner:	Terry and Christine Smith
Location:	262 Grant Avenue
Zoning:	Historic Residential (HR-1) District with HR-2 Overlay
Adjacent Land Uses:	Residential
Project Planners:	Thomas Barlow

B. Background.

On March 12, 1999, the Planning Commission voted to forward to City Council a positive recommendation to approve the plat amendment to combine portions of four (4) lots in Block 72 in Park City Survey into two (2) lots at 262 Grant Avenue.

The owners of portions of lots 10, 11, 12 and 13, Terry and Christine Smith, submitted an application to the Planning Department requesting a Plat Amendment. The proposal is to combine the four (4) lots into one lot, Lot A, to accommodate a historic single family structure and to create a second lot, Lot B for a new single family structure. Lots 10, 11 and 12 are each standard 25' x 75' old town lots which have been split between various owners. The Smith's own a total of 6193 square feet.

The historic house will be shifted approximately 3 ½ feet to the north on Lot A to comply with the required side-yard setbacks. The structure has a legal non-conforming zero front-yard setback. The zero front-yard setback is consistent with adjacent historical structures and will not be modified by this proposal. There is a historic shed on the land proposed for Lot A that needs to be demolished and reconstructed on site. All existing and proposed structures/additions will be reviewed for compliance with the Historic District Design Guidelines and Land Management Code regulations.

C. Analysis

The applicant wishes to combine the four (4) lots into two (2) lots to accommodate two single family homes. The proposed lot sizes are compatible with the current ownership pattern along Grant Avenue. Structures in the neighborhood are typically single family residences that are one (1) to one-and-one-half (1 ½) stories on the front elevations and two (2) stories in the rear. Lot A, if approved, will be 3823 square feet to accommodate the historic home and possible addition. Lot B, if approved, will be 2370 square feet to accommodate a possible new single family structure. The size of the structures will be limited by the setback, and height requirements of the Land Management Code for the HR-1 District and any conditions of approval. The requirements for each lot are listed below.

	Lot A (Historic Residence)	Lot B (Vacant)
Proposed Lot Size	3823 square feet	2370 square feet
Setbacks		
• **Front**	10'	10'
• **Rear**	10'	10'
• **Side**	5' minimum 14' total	3'
Slope	N/A - less than 30%	N/A - less than 30 %
Height	27'	* 27'
F.A.R.	N/A	N/A
Building Footprint	1,529 square feet	1019 square feet

*Historically, along Grant Avenue the scale of homes is pre-dominantly one-level with a basement. The Land Management Code allows for a twenty seven foot (27') height limitation which would break this pattern and allow for a two (2) story elevation on this streetscape on the land proposed for Lot B. The Planning Commission during the January 27, 1998 public hearing was in favor of applying specific building volumetrics to any structure to be built on Lot B in order to be compatible with surrounding homes on Grant Avenue. The volumetrics for Lot B, which specifically regulated height, setback, and building articulation are listed below:

(a) Height Restrictions:

- The first thirty (30') feet, fifteen (15) of which is setback, as measured from the west property line, are restricted to a building height of no greater than twenty feet (20') as measured from existing or final grade, whichever yields the shorter building in order to be compatible with surrounding structures on Grant Avenue. The remaining lot area is restricted to the twenty-seven feet (27') height limit as stated in the current Land Management Code regulations for the HR-1 District.

The Land Management Code requires the property owner to protect significant vegetation during any development activity. Significant vegetation includes large trees six inches (6") in diameter or greater measured four and one-half feet (4.5') above the ground, groves of smaller trees, or clumps of oak and maple covering an area of fifty (50) square feet or more measured at the drip line. The property owner must demonstrate the health and viability of all large trees through a certified arborist. As vegetation exists on the lots a vegetation/landscape plan shall be submitted and approved prior to the issuance of a final building permit for each lot.

Sewer services for the newly created single family lot, (lot B) will need to be approved by Snyderville Basin Sewer Improvement District (SBSID). Construction of a new sewer may affect the Swede Alley retaining wall with the colorful mural. A detailed sewer plan shall be submitted and approved prior to the issuance of a building permit for each lot.

D. <u>Notice</u>

Notice of this hearing was sent to property owners within 300' on January 11, 1999. No formal comments have been filed at the time of this report. At the public hearing held on February 10, 1999 public input was received. Mike Dawson, owner of the property next to this project, felt it was important to note that all the vegetation was bulldozed for the Sandridge parking lot. With the parking lot behind this project, he felt it would make more sense to raise the proposed building. He suggested raising up the structure, putting a new structure underneath, and keeping the historic building intact while leaving a backyard that would lead down to the parking lot. He felt that would make sense from a design standpoint for people using the new parking lot. (See Exhibit E - Minutes of February 10, 1999 Public Hearing.)

E. <u>Department Review.</u>

The Community Development Department has reviewed this request. The City Attorney's Office will review the plat prior to recording. The request was discussed at a Staff Review Meeting on January 5, 1999, where representatives from the local utilities and City Staff were in attendance and found it to be in conformance as conditioned.

<u>SIGNIFICANT IMPACTS</u>:

The proposed amendment will result in two (2) lots which meet the minimum lot requirement for the HR-1 District. An addition can be accommodated on Lot A subject to Historic District Commission review. A structure can be built on the land proposed for Lot B.

<u>CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION</u>:

If the plat amendment is not approved as proposed, the historic structure would remain non-conforming. Lot 12 could be developed independently. Encroachment agreements would need to be executed.

<u>SUMMARY AND RECOMMENDATION:</u>

The Community Development Department recommends approval of the proposed Plat Amendment application to allow combining portions of four (4) lots in Block 72 in Park City Survey into two (2) lots at 262 Grant Avenue based on the following Findings of Fact, Conclusions of Law and Conditions of Approval for the 262 Grant Avenue Plat Amendment.

RECOMMENDATION:
Staff recommends that the Planning Commission forward a positive recommendation to the City Council for a Plat Amendment at 262 Grant Avenue based on the following Findings of Fact, Conclusions of Law and Conditions of approval;

Findings of Fact:

1. Historic homes to the north of the lots in question on Grant Avenue are one story. The homes to the south of the proposed lots on Grant Avenue are typically one-and-one-half stories on the front elevation

2. The property is located in the HR-1 District with an HR-2 Overlay.

3. The land proposed for Lot B is currently vacant with significant vegetation consisting mostly of Scrub Oak.

4. The proposed Plat Amendment will combine portions of four (4) lots into two (2) lots to allow for the possible construction of an addition to the historic residence and possibly the construction of a new single family residence.

5. Dedication of a ten (10) foot non-exclusive snow storage easement along Grant Avenue on the land proposed for Lot B is necessary to provide adequate snow removal services because the street is narrow and densely populated.

6. Currently, snow is stored on the land proposed for Lot B.

7. The applicant agrees with the conditions of approval

Conclusions of Law:

1. There is good cause for the plat amendment as it will reduce the degree of non-conformity of an existing non-conforming structure and provide for a compatible new structure to the existing historic streetscape.

2. Neither the public nor any person will be materially injured by the proposed plat amendment.

3. The proposal is consistent with both the Park City Land Management Code Chapter 7 and Chapter 15.

Conditions of Approval:

1. City Attorney and City Engineer review and approval of the plat amendment for compliance with the Land Management Code, State of Utah Code and these conditions of approval are a condition precedent to plat recording

2. A ten (10) foot non-exclusive snow storage easement along Grant Avenue shall be dedicated to the City on the plat for the land proposed for Lot B.

3. All significant vegetation shall be preserved based on Section 15-2.2.12. A vegetation plan shall be submitted and approved prior to the issuance of a final building permit for each lot. The Community Development Director shall determine the Limits of Disturbance of any development activity and may require mitigation for loss of significant vegetation consistent with Landscape Criteria in Chapter 15-2.9.

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4. Every tree, 6" caliper or more, removed during the time of construction shall be replaced by a tree of 2" in caliper, prior to the final certificate of occupancy.

5. Only one (1) single-family home is permitted on the newly-created Lot B.

6. Design Review and approval pursuant to chapter 4 of the Land Management Code, as amended, is a condition precedent to building permit issuance for any addition proposed to the historic home.

7. Design Review and approval pursuant to chapter 4 of the Land Management Code, as amended, is a condition precedent to building permit issuance for the single family home on the newly-created Lot B.

8. The first thirty (30') feet, fifteen (15) of which is setback, as measured from the west property line, are restricted to a building height of no greater than twenty feet (20') as measured from existing or final grade, whichever yields the shorter building in order to be compatible with surrounding structures on Grant Avenue. The remaining lot area is restricted to the twenty-seven feet (27') height limit as stated in the current Land Management Code regulations for the HR-1 District.

9. This approval shall expire one year from the date of City Council approval, unless this plat amendment is recorded prior to that date.

10. Building Permits for Lot A and Lot B may not be issued until the plat is recorded.

11. All Standard Project Conditions shall apply (Please see Exhibit D - Standard Project Conditions).

EXHIBITS:
Exhibit A - Location Map
Exhibit B - Proposed Plat
Exhibit C - Site Plan (Existing and proposed)
Exhibit D - Standard Project Conditions
Exhibit E - Proposed Ordinance
Exhibit F - Minutes of March 12, 1999

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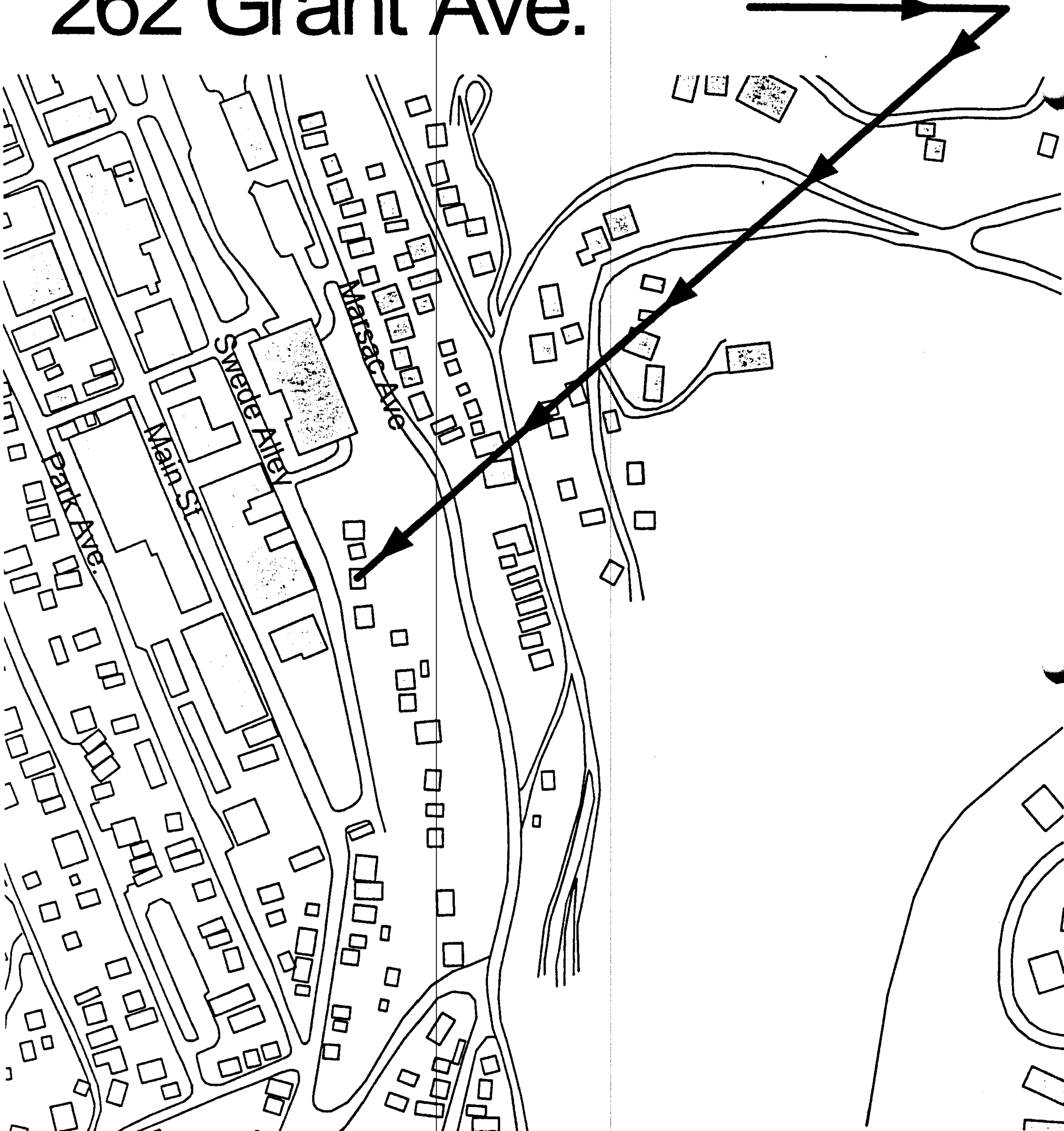
262 Grant Ave.

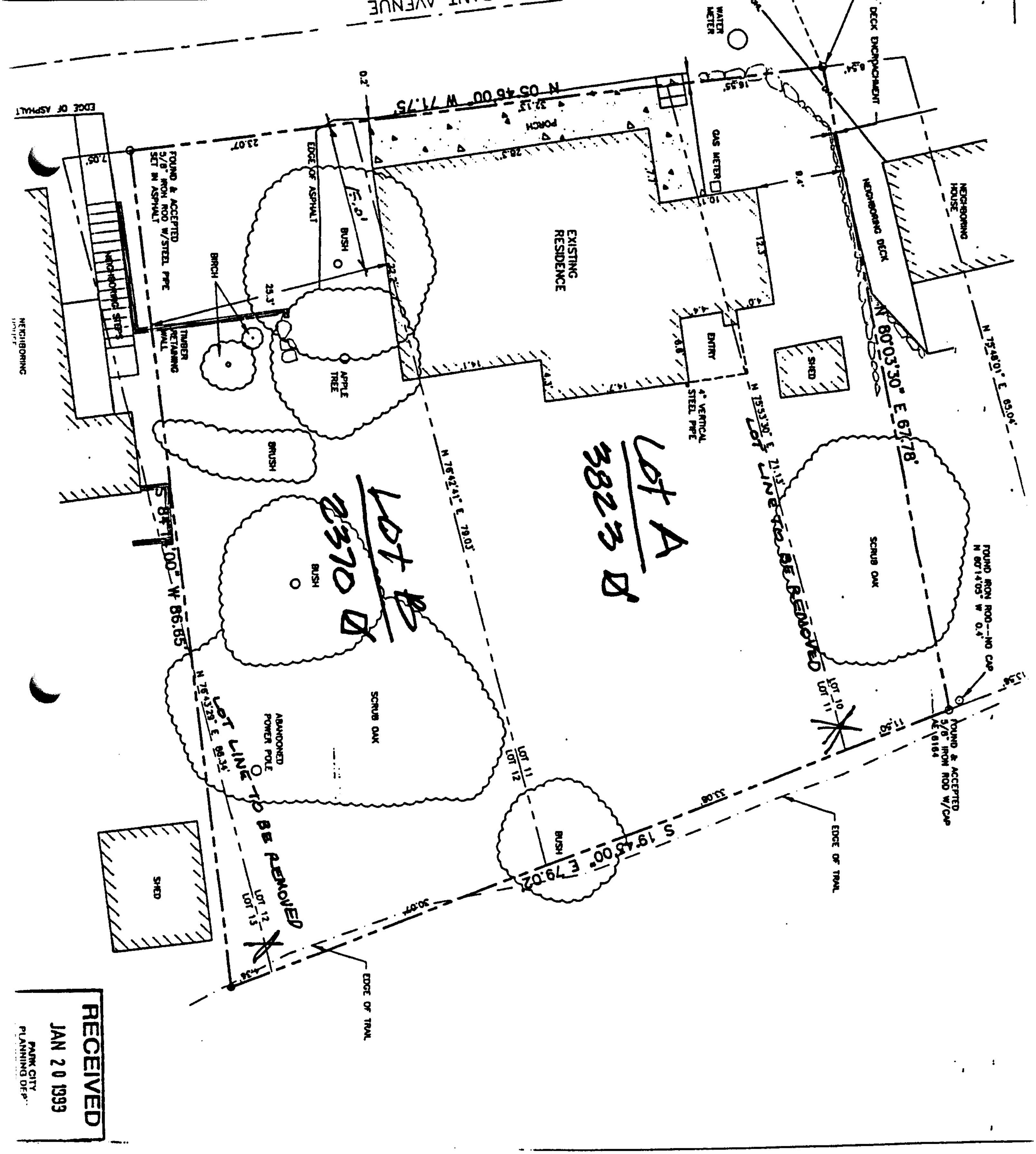


PARK CITY 1884

Exhibit A
Vicinity Map

N

31



LOT 10-13 BLK 72
PARK CITY SURVEY

2602 GRANT AVE.

SURVEYOR'S CERTIFICATE

[illegible]

LEGAL DESCRIPTION

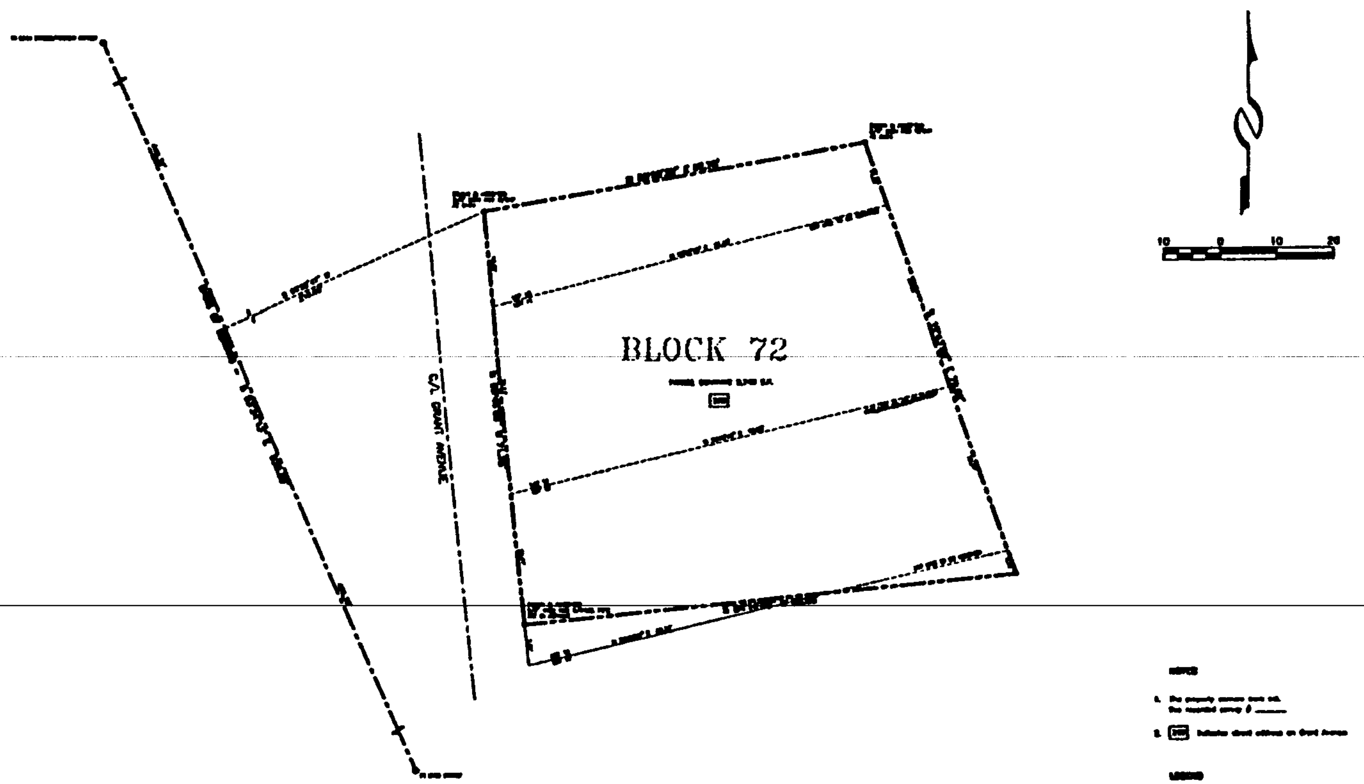
A PART OF LOTS 10, 11, 12, and 13, BLOCK 72, [illegible]

OWNER'S DEDICATION AND CONSENT TO RECORD

[illegible]

ACKNOWLEDGEMENT

[illegible]



LOT LINE AMENDMENT PLAT

262 GRANT PLAT AMENDMENT

LOCATED IN SECTION 18
TOWNSHIP 2 SOUTH, RANGE 4 EAST SALT LAKE BASE
AND MERIDIAN, PARK CITY, SUMMIT COUNTY, UTAH

SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT	PLANNING COMMISSION	ENGINEER'S CERTIFICATE	APPROVAL AS TO FORM	CERTIFICATE OF ATTEST	COUNCIL APPROVAL AND ACCEPTANCE	RECORDED
REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT STANDARDS ON THIS ____ DAY OF ____ 1998 A.D. BY ____ S.B.S.I.D.	APPROVED BY THE PARK CITY PLANNING COMMISSION THIS ____ DAY OF ____ 1998 A.D. BY ____ CHAIRMAN	I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS ____ DAY OF ____ 1998 A.D. BY ____ PARK CITY ENGINEER	APPROVED AS TO FORM THIS ____ DAY OF ____ 1998 A.D. BY ____ PARK CITY ATTORNEY	I CERTIFY THIS RECORD OF SURVEY MAP WAS APPROVED BY PARK CITY COUNCIL THIS ____ DAY OF ____ 1998 A.D. BY ____ PARK CITY RECORDER	APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS ____ DAY OF ____ 1998 A.D. BY ____ MAYOR	STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF ____ DATE ____ TIME ____ BOOK ____ PAGE ____ FEE ____ RECORDER

33

RECEIVED
FEB 05 1999
PARK CITY
PL[illegible]G DEPT.

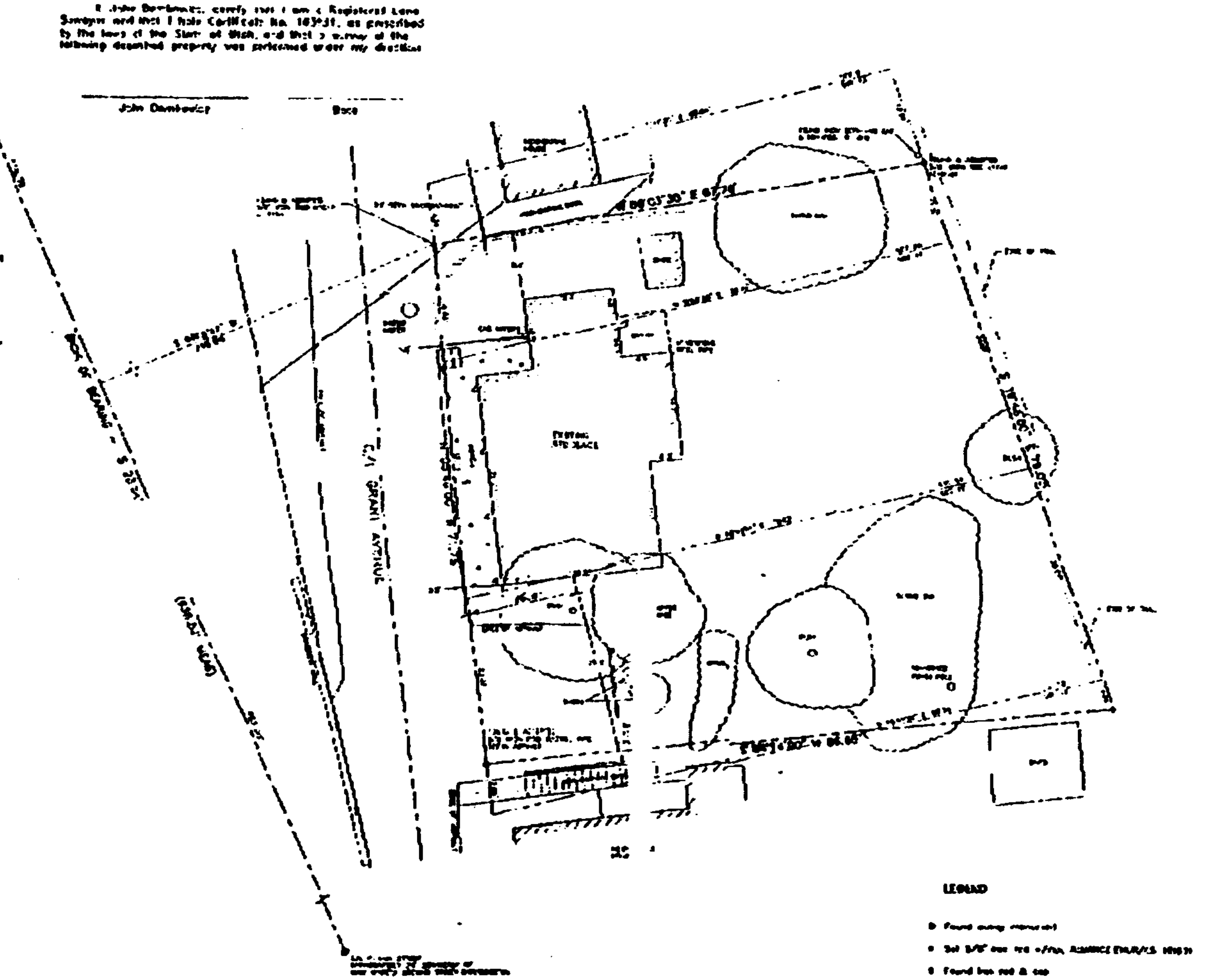
SURVEYOR'S CERTIFICATE

I, John Demkowicz, certify that I am a Registered Land Surveyor and that I hold Certificate No. 163[illegible], as prescribed by the laws of the State of Utah, and that a survey of the following described property was performed under my direction.

John Demkowicz   Date

LEGAL DESCRIPTION

A part of Lots 10, 11, 12, and 13, Block 72, Millsite Reservation, according to the official plat thereof on file and of record in the Summit County Recorder's office, more particularly described as follows: Beginning at a point that is South [illegible] East 0.54 feet from the northwest corner of Lot 10, Block 72, Millsite Reservation, and running thence North [illegible] East 67.78 feet to a point on the easterly lot line of Lot 13; thence along the easterly lot line of Lots 10, 11, 12, and 13 South [illegible] East 78.02 feet; thence South [illegible] West 86.65 feet to a point on the westerly lot line of Lot 12; thence along the westerly lot line of Lots 12, 11, and 10 North [illegible] West 71.25 feet to the point of beginning.



NOTES

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]
7. [illegible]

LEGEND

[illegible]

[illegible]	REVISED:	STAFF: [illegible] DATE: 11/09/98	PAGE 1 OF 1	PARK CITY SURVEY LOTS 10-13, BLOCK 72 262 GRANT AVENUE FOR: TERRY SMITH JOB NO.: [illegible] FILE: [illegible]

PARK CITY MUNICIPAL CORPORATION
STANDARD PROJECT CONDITIONS

1. The proposed project is approved as indicated on the final approved plans, except as modified by additional conditions imposed by the Planning Commission at the time of the hearing. The proposed project shall be in accordance with all adopted codes and ordinances; including, but not necessarily limited to: the Land Management Code (including Chapter 9, Architectural Review); Uniform Building, Fire and related Codes; the Park City Design Standards, Construction Specifications, and Standard Drawings; and any other standards and regulations adopted by the City Engineer and all boards, commissions, agencies, and officials of the City of Park City.
2. All modifications to plans as specified by conditions, and all final design details, such as material and color samples, shall be submitted to and approved by the Community Development Department prior to issuance of any building permits.
3. The applicant is responsible for compliance with all conditions of project approval.
4. A Line Extension Agreement with the Snyderville Basin Sewer Improvement District shall be signed and executed prior to building permit issuance. Evidence of compliance with the District's fee requirements shall be presented at the time of building permit issuance.
5. Final landscape plans, when required, shall be reviewed and approved by the Community Development Department prior to issuance of building permits. Landscaping shall be completely installed prior to occupancy, or an acceptable guarantee, in accordance with the Land Management Code, shall be posted in lieu thereof.
6. Construction staging areas shall also be clearly defined and approved by the Community Development Department, and shall be placed so as to minimize site disturbance. The landscape plans shall include plans for revegetation of all areas disturbed during construction.
7. Final grading, drainage, utility, erosion control and revegetation plans shall be reviewed and approved by the City Engineer prior to commencing construction. Limits of disturbance boundaries and fencing shall be reviewed and approved by the Community Development Department. Limits of disturbance fencing shall be installed, inspected, and approved prior to building permit issuance.
8. All proposed public improvements, such as streets, curb and gutter, sidewalks, utilities, lighting, trails, etc. are subject to review and approval by the City Engineer in accordance with current Park City Design Standards, Construction Specifications and Standard Drawings. All improvements shall be installed or sufficient guarantees, as determined by the Community Development Department, posted prior to occupancy.
9. All construction shall be completed according to the approved plans on which building permits are issued. The approved plans include all site improvements shown on the site plan. "Site improvements" shall include all roads, sidewalks, curbs, gutters, drains, drainage works, grades, walls, landscaping, lighting, planting, paving, paths, and trails, and similar improvements, as shown on the set of plans on which final approval and building permits are based.
10. Any desired modifications to approved plans, after the issuance of a building permit, must be specifically requested and approved in writing prior to execution.
11. Plans shall conform to all design standards for persons with disabilities as required by any applicable federal, state and local laws.
12. Access on state highways shall be reviewed and approved by the State Highway Permits Officer. This does not imply that project access locations can be changed without Planning Commission approval.
13. The required utility easements along street frontages shall include language to allow for these areas to be used for snow storage. Typically, a 10-foot snow storage easement is required above Deer Valley Drive (approximate elevation of 7,200 feet). A five feet easement is necessary below this elevation.
14. Lockout units are not permitted unless specifically approved.
15. The infrastructure review and approval is transferrable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
16. Vesting of all permits and approvals terminates upon the expiration of the approval as defined in the Land Management Code, or termination of the permit as specifically conditioned.
17. The name of a master planned development, plat, record of survey, subdivision, condominium project, or other approved project may not be changed without review and approval by the Community Development Department, said approval is not to be unreasonably withheld. The Community Development Department's review shall be limited to prevent confusion of the project with others in terms of emergency and delivery services and project identification.

PARK CITY 1884

Ordinance No. 99-

AN ORDINANCE APPROVING A PLAT AMENDMENT TO COMBINE PORTIONS OF FOUR LOTS INTO TWO LOTS OF RECORD AT 262 GRANT AVENUE, PARK CITY SURVEY, BLOCK 72, PARK CITY, UTAH

WHEREAS, the owner, Terry and Christine Smith, of the property known as 262 Grant Avenue, have petitioned the City Council for approval of an amendment to Block 72 of the Park City Survey; and

WHEREAS, proper notice was sent and the property posted according to requirements of the Land Management Code and State Law; and

WHEREAS, on March 10, 1999 the Planning Commission held a public hearing to receive public input on the proposed final plat amendment and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, a financial guarantee for all public improvements is necessary to ensure completion of these improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner; and

WHEREAS, the proposed plat amendment allows the property owner to consolidate portions of four (4) lots into two separate lots of record; and

WHEREAS, it is in the best interest of Park City, Utah to approve the plat amendment.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. FINDINGS OF FACT. The above recitals are hereby incorporated as findings of fact. The following are also adopted by City Council as findings of fact:

1. Historic homes to the north of the lots in question on Grant Avenue are one story. The homes to the south of the proposed lots on Grant Avenue are typically one-and-one-half stories on the front elevation

2. The property is located in the HR-1 District with an HR-2 Overlay.

3. The land proposed for Lot B is currently vacant with significant vegetation consisting mostly of Scrub Oak.

4. The proposed Plat Amendment will combine portions of four (4) lots into two (2) lots to allow for the possible construction of an addition to the historic residence and possibly the construction of a new single family residence.

5. Dedication of a ten (10) foot non-exclusive snow storage easement along Grant Avenue on the land proposed for Lot B is necessary to provide adequate snow removal services because the street is narrow and densely populated.

6. Currently, snow is stored on the land proposed for Lot B.

7. The applicant agrees with the conditions of approval

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby adopts the following Conclusions of Law:

1. There is good cause for the plat amendment as it will clean up an existing non-conforming use and provide for a compatible new structure to the existing historic streetscape.
2. Neither the public nor any person will be materially injured by the proposed plat revision.
3. The amended plat is consistent with the Park City Land management Code and applicable State law regarding Subdivision plats.

SECTION 3. CONDITIONS OF APPROVAL. The proposed plat amendment attached as Exhibit A is hereby adopted with the following Conditions of Approval:

1. City Attorney and City Engineer review and approval of the plat amendment for compliance with the Land Management Code, State of Utah Code and these conditions of approval are a condition precedent to plat recording
2. A ten (10) foot non-exclusive snow storage easement along Grant Avenue shall be dedicated to the City on the plat for the land proposed for Lot B.
3. All significant vegetation shall be preserved based on Section 15-2.2.12. A vegetation plan shall be submitted and approved prior to the issuance of a final building permit for each lot. The Community Development Director shall determine the Limits of Disturbance of any development activity and may require mitigation for loss of significant vegetation consistent with Landscape Criteria in Chapter 15-2.9.
4. Every tree, 6" caliper or more, removed during the time of construction shall be replaced by a tree of 2" in caliper, prior to the final certificate of occupancy.
5. Only one (1) single-family home is permitted on the newly-created Lot B.
6. Design Review and approval pursuant to chapter 4 of the Land Management Code, as amended, is a

condition precedent to building permit issuance for any addition proposed to the historic home.

7. Design Review and approval pursuant to chapter 4 of the Land Management Code, as amended, is a condition precedent to building permit issuance for the single family home on the newly-created Lot B.

8. The first thirty (30') feet, fifteen (15) of which is setback, as measured from the west property line, are restricted to a building height of no greater than twenty feet (20') as measured from existing or final grade, whichever yields the shorter building in order to be compatible with surrounding structures on Grant Avenue. The remaining lot area is restricted to the twenty-seven feet (27') height limit as stated in the current Land Management Code regulations for the HR-1 District.

9. This approval shall expire one year from the date of City Council approval, unless this plat amendment is recorded prior to that date.

10. Building Permits for Lot A and Lot B may not be issued until the plat is recorded.

11. All Standard Project Conditions shall apply (Please see Exhibit D - Standard Project Conditions).

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 1st day of April, 1999.

PARK CITY MUNICIPAL CORPORATION

____

Mayor Bradley A. Olch

Attest:

____

Janet M. Scott, City Recorder

Approved as to form:

____

Mark D. Harrington, Deputy City Attorney

Commission to choose a Commissioner to work with the City on the Transit Center RFPs.

Chair Larson and Commissioners Jones, Zimney, and O'Hara reported that they had each received telephone calls from David and Patricia Constable regarding 355 Deer Valley Drive.

Commissioner O'Hara reported that he and other Commissioners met with City Council members to discuss some of the issues and problems confronting them. Chair Larson stated that he and Commissioner Erickson had the same opportunity to meet with City Council members for the same purpose and applauded the City Council for reaching out and including them in the process.

Commissioner Hays felt a joint retreat with the City Council, Planning Commission, and Historic District Commission would be beneficial. Administrator Putt replied that he could forward her suggestion to the City Council. Based on past experience, Chair Larson was unsure how many Commissioners would be interested in attending such a retreat.

Commissioner Jones felt it was important to enhance and improve communications with the Snyderville Basin Planning Commission and suggested that regular meetings be established to keep both Commissions informed of projects and actions. Chair Larson agreed and stated that he has been directed to work with David Allen, the Snyderville Basin Chair, on issues along that line.

Commissioner Jones believed the same opportunity exists to develop similar communication with Wasatch County. There are not as many projects, but they should not neglect that border.

V. PUBLIC HEARING/DISCUSSION/ACTION ITEMS

1. <u>262 Grant Avenue - Plat Amendment</u>

Assistant Planner Thomas Barlow reviewed the plat amendment at 262 Grant Avenue which is behind the Wasatch Brew Pub and Swede Alley. The lots in question are the south half of lot 10, all of Lot 11, most of Lot 12, and the northeast corner of Lot 13. A historic house sits on Lots 10 and 11 with an existing non-conforming zero front yard setback. The applicant proposes moving the structure three and a half feet to the north to comply with current side yard setback requirements. The zero front yard setback is consistent with adjacent historical structures on Grant Avenue. The applicant wishes to combine the four lots into two lots, A and B. If approved, Lot A will consist of 3,823 square feet to accommodate the historic home and a possible addition to the rear. Lot B, if approved, will be 2,370 square feet to accommodate a possible new single-family structure. Historically along Grant Avenue the scale of homes is a basement and one story above for a total height of approximately 20 feet. The Staff requests that the Planning Commission consider applying specific building volumetric limitations on proposed Lot B. Planner Barlow pointed out potentially significant vegetation on the land proposed for Lot B. Under the new Land Management Code, the property owner is required to protect significant vegetation during development activity and has requested input from the Planning Commission on this issue. Sewer improvements are necessary before development can occur on proposed Lot B, and the concrete mural retaining wall behind the Brew Pub will be affected. If the plat amendment is not approved as proposed, the historic structure will remain in a non-conforming side yard setback encroaching into Lot 12, and Lot 12 could be developed separately because it would qualify as a standard lot. Planner Barlow asked the Planning Commission to comment on the issues for discussion outlined in the staff report.

Regarding volumetrics, Commissioner Jones felt language should be written so that whatever is built on the lot is similar in scale, height, and design to what exists. The Commissioners concurred.

Administrator Putt asked if the Planning Commission's expectations for the volumetrics should be that the entire structure be of a one-story nature or that there should be a sufficient one-story element at the front before the step back to any additional story-and-a-half or two-story element.

Commissioner Zimney stated that she would prefer the story and a half that exists there already.

Chair Larson felt they should draft the language so the volumetrics are compatible with the existing built-out neighborhood. Administrator Putt offered to provide a recommendation from the Staff after hearing a response from the applicant.

Commissioner Jones wanted the entire structure to be compatible, not just the facade.

Chair Larson felt that as much of the vegetation as possible should be preserved without precluding development on the site.

Commissioner O'Hara did not believe it would be possible to preserve vegetation and still build. If building is permitted on the property, the approval should be tied to a significant landscape plan.

Commissioner Hays suggested possibly transplanting existing vegetation because new vegetation never looks as good. Administrator Putt offered to discuss the matter with Planner Robinson and get his opinion on the feasibility of transplanting.

Chair Larson asked if the shed is an HDC issue. Planner Barlow replied that it will be because the addition on the historic structure may interfere with the shed. The Staff believed the shed should be demolished and rebuilt elsewhere on the site.

Regarding site design, Chair Larson commented that the Planning Commission does not have the ability to alter minimum perimeter setbacks.

Chair Larson opened the public hearing.

Mike Dawson, owner of the property next to this project, felt it was important to note that all the vegetation was bulldozed for the Sandridge parking lot. With the parking lot behind this project, He felt it would make more sense to raise the proposed building. He suggested raising up the structure, putting a new structure underneath, and keeping the historic building intact while leaving a backyard that would lead down to the parking lot. He felt that would make sense from a design standpoint for people using the new parking lot.

Chair Larson closed the public hearing.

MOTION: Commissioner Jones moved to CONTINUE this matter to a date uncertain. Commissioner O'Hara seconded the motion.

VOTE: The motion passed unanimously.

2. **Eagle Point Phase III - Final Plat**

The applicant is working on new material and requested that this item be continued. The Staff requested that the Planning Commission hold a public hearing and continue the hearing until the next meeting.

Chair Larson opened the public hearing.

There was no input.

PARK CITY
1884

DATE: 3/29/99
DEPARTMENT: Legal mh
AUTHOR: Mark Harrington, Deputy City Attorney
TITLE: Lease Amendment- Soaring Wings
TYPE OF ITEM: Administrative- Consent Agenda

SUMMARY RECOMMENDATIONS: **Authorize the Mayor to execute a lease amendment with Soaring Wings for 1,001 square feet of additional space at the Carl Winters Building.**

DESCRIPTION:

A. Topic: Room 313 and the adjacent office space in the Carl Winters Building.

B. Background: This is part of the space recently vacated by the UVSC. In January, the City Council allocated some space for Library use and directed staff to work with existing tenants to re-allocate the remaining area. Staff anticipates coming back with a similar amendment for the University of Utah.

C. Analysis: The rate for the space is $16.75 per square foot annually and is raised 5% annually. This is higher and raised more frequently than Soaring Wings' current lease. (Attached) The term is the same as the existing lease (expires 12/31/02), but the City retains the right to use the space for the Olympics upon giving the tenant notice by July 1, 2001. Staff is discussing a similar option for the existing space for Olympic use, but the current lease does not have such an out. If an agreement is reached, staff will come back with another amendment.

No options or right of first refusal is given for this new space.

D. Department Review: The Legal and Special Events Departments reviewed this matter.

ALTERNATIVES:

A. Approve the Request: Authorize the Mayor to execute the Lease as attached as Exhibit A.

B. Change the Rental Terms: The Council may decide to alter the terms of the proposed lease, in which case it should incorporate such changes into the motion to approve the lease or remove the lease from the consent agenda and direct staff to prepare the changes for the next meeting.

C. Continue the Item: If the Council wants more information, it should request such additional data and continue the item. The tenant has been allowed to move into the space, subject to this approval, and has paid for the pro-rated March rent.

D. Do Nothing: This is not recommended since the Council needs to make a decision regarding the space.

SIGNIFICANT IMPACTS: The leased area represents approximately 1,001 square feet of office/classroom space.

RECOMMENDATION: **Authorize the Mayor to execute a lease amendment with Soaring Wings for 1,001 square feet of additional space at the Carl Winters Building.**

EXHIBIT "A"

SOARING WINGS MONTESSORI SCHOOL
PARK CITY MUNICIPAL CORPORATION
AMENDMENT #1, 3/__/99

THIS AMENDMENT to the LEASE AGREEMENT dated July 11th, 1992 ("Agreement") by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and the Soaring Wings Montessori School, Inc. (hereinafter referred to as "Tenant") is made to set forth the terms and conditions under which Park City will lease **additional space** in the Carl Winters Building (hereinafter referred to as the "CW Building") under the original Agreement. The parties agree as follows:

1. Property. The property is Room 313 and the adjacent office within the CW Building at 1255 Park Avenue, Park City, Utah as described in Exhibit A (attached and hereafter referred to as Additional Space) is hereby added to the original Agreement dated 7/11/92. The Additional Space contains approximately one thousand and one (1,001) square feet.

2. Term. The term of this Amendment shall commence on March 27th, 1999, and shall have the same term as stated in Paragraph "2" of the Agreement (expires 12/31/02). However, the rent shall be adjusted as stated in Paragraph 5 below, as opposed to the original Agreement.

3. 2002 Olympic Interruption. The Additional Space may be needed for municipal and/or other use during the 2002 Winter Games. Therefore, upon receipt of written notice by the Landlord on or before July 1, 2001, the Tenant shall vacate the Additional Space for the time period specified in the notice, not to exceed 1/20/02 to 3/20/02. No rent shall be due during this vacated period.

4. Surplus Property and Right of First Refusal. The property being leased is currently surplus municipal space, but may be required for municipal or other purposes by Landlord at the conclusion of the Lease terms. No option of first refusal is given for the Additional Space.

5. Rent. The rent for the space shall be as follows:

(a) Rate. $16.75 per square foot annually.

(b) Payments. The rent shall be paid in equal monthly installments of one thousand three hundred ninety-seven dollars ($1,397). Rent shall be due on the first of each month, and past due if not paid by the tenth (10th) of the month. The Tenant shall pay a pro-rated portion for the last five days of March in the amount of two hundred and twenty-five dollars ($225).

(c) Deposit. No additional deposit shall be necessary.

(d) Rent Adjustments. The annual rent for the Additional Space shall be increased by 5% every January 1st. Accordingly, the monthly payments for the Additional Space shall be $1,467 as of January 1, 2000, $1,540 as of January 1, 2001 and $1,617 as of January 1, 2002.

6. Other Terms. All other terms and conditions of the original Agreement apply.

7. Entire Agreement. This Amendment is a written instrument pursuant to Paragraph 34 of the original Agreement between parties and it cannot be altered or amended except by written instrument, signed by both parties.

DATED this _____ day of March, 1999.

PARK CITY MUNICIPAL CORPORATION

____
Toby Ross, City Manager

Attest:

____
City Recorder

Approved as to Form:

____
City Attorney's Office

SOARING WINGS MONTESSORI SCHOOL, INC.

____

Bruce King

CORPORATE ACKNOWLEDGMENT

STATE OF ________)
: ss.
COUNTY OF ________)

On this ___ day of ______________, 199_, personally appeared before me ___________________, who being duly sworn, did say that he/she is the __________________ of ___________________, and acknowledged to me that the preceding Agreement was signed on behalf of said company, by their authority and he/she acknowledged that the company did execute the same for its stated purpose.

____

NOTARY PUBLIC

SOARING WINGS MONTESSORI SCHOOL
PARK CITY MUNICIPAL CORPORATION

THIS AGREEMENT is made by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and the Soaring Wings Montessori School, Inc. (hereinafter referred to as "Tenant") to set forth the terms and conditions under which Park City will lease space in the Carl Winters Building (hereinafter referred to as the "CW Building"). The parties agree as follows:

1. Property. The property leased is in several areas within the CW Building at 1255 Park Avenue, Park City, Utah as described in Exhibit A (attached and hereafter referred to as Premises). The Premises contain approximately two thousand (2,000) square feet, an outdoor play area (hereinafter referred to as the Preschool Playground), a passenger drop-off area in the front of the building and non-exclusive access to parking in the parking lot east of the building.

2. Term. The Lease term shall be one (1) term of four (4) years and three (3) terms of two (2) years each at the Tenant's option. This lease shall automatically renew for each successive two (2) year term unless Tenant notifies Landlord in writing not less than one hundred eighty (180) days prior to the expiration of any lease term of its intention not to renew.

3. Surplus Property and Right of First Refusal. The property being leased is currently surplus municipal space, but may be required for municipal or other purposes by Landlord at the conclusion of the Lease terms. If Landlord determines to lease the premises to anyone other than Tenant consistent with the terms of this lease, Landlord shall obtain a bona fide, executed, written offer from a responsible and fully disclosed lessee and shall submit an exact copy of such offer to Tenant which shall, for a period of thirty (30) days from the date of delivery of such offer, have the right, exercisable by written notice to Landlord, to lease the premises for the price and on the terms and conditions contained in such offer. If Tenant does not exercise its right of first refusal, Landlord may complete the lease of the Premises, provided that, if the lease to such lessee is not completed within sixty (60) days after delivery of such offer to Tenant, Tenant shall again have the right of first refusal herein provided. This right of first refusal shall survive the termination or expiration of this lease.

4. Rent. The rent for the space shall be as follows:

(a) Rate. Twenty-five thousand five hundred dollars ($25,500) annually.

(b) Payments. The initial annual rent of twenty five thousand five hundred dollars (<u>$25,500)</u> shall be paid in twelve (12) equal monthly installments of two thousand one hundred twenty five dollars (<u>$2,125)</u>. Rent shall be due on the first of each month, and past due if not paid by the tenth (10th) of the month. This Lease shall commence on December 28, 1992. Rent for the first month will be charged at seventy one dollars (<u>$71)</u> per day until the end of that month. The term of the Lease shall begin on January 1, 1993.

(c) Deposit. At the time this lease is executed Tenant shall deposit with Landlord two thousand one hundred twenty-five dollars ($2,125). Additionally, Tenant shall pay one hundred eighteen dollars ($118) per month for the first eighteen (18) months of the contract to increase the total deposit. This deposit will be held by Landlord until the end of the lease term and until all obligations of this lease are met, at which time Landlord will refund the rent for the final two months.

(d) Rent Adjustments. The rent shall be increased as follows:

Commencing January 1, 1997...$2,292 per month;
Commencing January 1, 1999...$2,458 per month;
Commencing January 1, 2001...$2,625 per month.

(e) Credit for Early Payment. If the Tenant pays the Landlord the first annual rent by July 15, 1992 then the rent for the first year will be reduced by eight percent (8%). This reduction includes the anticipated interest earnings on the early payment and credits it to the Tenant. If the Tenant pays any subsequent annual rent in advance it will be reduced by four (4%) percent.

(f) Completion and Occupancy. If the Premises are not available for occupancy by December 28, 1992, the Tenant may void the lease and receive a full refund. If the Landlord becomes aware that the Premises will not be available by December 28, 1992 at least sixty (60) days in advance, then Landlord will so notify the Tenant along with an estimate of when the Premises will be available. The Tenant will then have fifteen (15) days to elect to take the space at the new occupancy date or void the lease.

5. <u>Utility Services</u>. Landlord shall be responsible for natural gas, electricity, sewer, refuse collection and water for the leased space. Tenant will be responsible for any other

utilities such as telephone and cable television and shall establish an account with each of these utilities in its own name.

6. Use of the Premises. The premises shall be used only for education and related purposes. Retail uses other than those incidental to educational uses shall be prohibited. Vending machines shall be permitted only within the leased space and not in any common area. The Preschool Playground is principally for the use of the preschool tenants. Other tenants and Landlord may use the space provided that:

(a) The use does not conflict with scheduled use by Tenant;

(b) The Tenant receives written notice of the intent to use the space at least three working days in advance of the proposed use;

(c) The user takes full responsibility for clean up and repair of any damage.

7. Telephone, Cable and Microwave. The Tenant will install its own telephone, television, computer and other communication equipment in the leased space. The remodeled space will include wiring, cables or chases for a wide variety of communications between spaces within the building and externally. Any specialized communication facilities, equipment, wiring, cables or installations will be the Tenant's responsibility.

8. Insurance. The Tenant will provide insurance at its expense covering its contents against loss through theft, fire, vandalism or similar casualties. The Landlord will maintain insurance on the structure for the replacement of the building itself, and the contents of the building owned by Landlord. The Landlord also carries a public liability policy insuring it against claims of personal injury on Landlord's property. The Landlord's policy does not cover the Tenant's employees or patrons who are on Landlord's property exclusively for the purpose of doing business with the Tenant. The Tenant agrees to maintain a comprehensive property liability policy in the amount of five hundred thousand dollars ($500,000) (each person and each occurrence) and to obtain a certificate of insurance naming Park City Municipal Corporation and the Municipal Building Authority of Park City as additional insured and evidencing coverage as to any person on the Premises as a result of Tenant's programs or activities. The Landlord is protected by the Utah Governmental Immunity Act, and nothing herein is intended to waive or limit the protection of the Act in behalf of either entity, but to the extent it is consistent with this intent, it is the purpose of this provision to protect the Landlord from liability or allegations arising out of the Tenant's use of

Landlord's property.

9. Payment of Taxes and Other Assessments. The Tenant shall pay real estate and personal property taxes and other related assessments or taxes on the Tenant's Premises during the term of this lease.

10. Tenant Improvements. The Premises are being leased to Tenant as a finished shell including classroom lighting but excluding floor coverings. Electrical work will be complete. The Premises will be heated and plumbed. Doors will be installed and relocated and stairs to the exterior will be installed. Additionally, the Landlord will provide the following allowances for tenant improvements:

Interior	
Kitchen & Baths	$ 5,500
Floors	3,000
Sinks, Cabinets & Counters	3,000
Planning & Coordination	1,000
subtotal	**$12,500**
Exterior	
Extra Retaining Structures	$ 1,000
Irrigation and landscaping	6,000
Asphalt & Concrete	1,000
Fencing	2,000
Planning and Coordination	1,000
subtotal	**$11,000**
Total	**$23,500**

Savings in one category may be transferred to another category. Landlord will not reimburse any portion of the allowance not spent. Additional costs or additional improvements, finish or furnishing desired by the Tenant and approved by the Landlord in writing are the responsibility of the Tenant, with no additional allowance made for the costs of tenant improvements unless agreed to by Landlord in writing. At the termination of the Lease, all Tenant improvements become the property of the Landlord unless specifically exempted in writing prior to installation. The construction manager will make all determinantions with respect to costs and allowances and document those determinantions in writing.

11. Liens. Tenant shall not permit any liens to attach to the property for work done at Tenant's request or for Tenant's benefit. If Landlord receives notice of any such lien against the property, Tenant shall promptly discharge the lien at Landlord's request, or post funds sufficient to satisfy the lien during any

period of good faith contest of the lien by Tenant. In the event Landlord feels its title to the property is in jeopardy because of any lien Tenant has elected to attach to the property, Landlord may discharge the lien and collect the amount paid from the Tenant. The Tenant agrees to pay all reasonable costs incurred by Landlord in the defense or discharge of any liens on the property.

12. Signs. Landlord reserves the right to specifically review and approve or reject proposed signs on or in the building. Landlord's approval for signs will not be unreasonably withheld, so long as the sign is directional rather than promotional, meets the requirements of the Park City sign code, and conforms with the historic nature and architectural detailing of the building. The Landlord will prepare a sign plan which provide guidelines for all signage and the design of the monument sign at the project entrance. Signs shall be removed and any damage resulting from removal shall be repaired at the termination of the Lease.

13. Assignment/Sublease. The Lease may not be assigned or the Premises sublet without the advance written consent of Landlord except that any space within the building may be sublet to any other tenant within the building. Landlord's consent to assignment or sublease will not be unreasonably withheld.

14. Remedies. In the event the Tenant fails to pay monthly installment payments when due, or fails to pay additional rent as billed for, or violates or reaches any other term or condition of the Lease, Landlord shall have the right to exercise the following remedies, and any other remedies available at law or in equity:

(a) Landlord may, by written notice to Tenant, demand that Tenant either pay rental installments and additional rent due within ten (10) days, or quit the premises within fifteen (15) days;

(b) Landlord may permit the Tenant to remain in possession and sue for the installments and additional rent that are past due;

(c) Landlord may re-let the premises for Tenant's account at the rate and on such terms as are commercially reasonable at the time and under the circumstances, and charge Tenant for any difference in the rental received and the rental agreed to herein, provided that any re-letting shall be done in good faith under the circumstances;

(d) Landlord may agree to a payment of damages in such amount as the parties then agree, and release the Tenant from obligations under this Lease entirely. Unless Landlord has released Tenant's continued performance under this Lease, Tenant is deemed to be in possession of the Premises, and any re-letting by Landlord is on Tenant's account. Tenant is responsible for all payments and obligations under the Lease until Landlord releases Tenant.

15. Covenant of Quiet Possession. Landlord covenants with Tenant that Landlord owns or controls the Premises and that Tenant's possession will not be disturbed by acts or omissions of the Landlord so long as Tenant faithfully performs the obligations of this Lease.

16. Maintenance. The Landlord shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members, and exterior wall surfaces. The Landlord will be responsible for janitorial service in areas used in common with the library and other tenants and cleaning the outside of the glass. Tenant shall be responsible for all interior maintenance, including mechanical and electrical fixtures, heating and lighting, janitorial service, and glass maintenance (both cleaning the inside and replacement in the event of damage) which is within the leased premises or solely serves the Premises. Landlord shall be responsible for mechanical systems which serve portions of the building other than, or in addition to Tenant's space as reasonably necessary to maintain the structure and to service common utility facilities. Exterior maintenance of the site and snow removal shall be Landlord's responsibility. Maintenance of the Preschool Playground shall be the responsibility of the Tenant

17. Access to Other Spaces. Tenant shall not interfere with the access to other spaces within the building or obstruct the entrances to those other spaces in any way. Landlord shall have such access through Tenant's space as reasonably necessary to maintain the structure and to service common utility facilities. Landlord shall have the right to inspect the leased space during the Tenant's normal business hours.

18. Force Majeure. This Lease Agreement shall automatically terminate upon any holding, interpretation, or determination by a court, legislative, or administrative body that Landlord may not lease to a private educational entity or similar establishment or that Landlord may not lease to a private entity, either under existing state and federal law regulation or future state and federal law regulation.

19. Increased Insurance Risk. Tenant will not permit

said Premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the Premises of the same general type as those covered by this Agreement.

20. Care and Repair of Premises by Tenant. Tenant will inspect and accept the Premises for the purposes of this agreement prior to taking occupancy. Tenant will not commit any waste on Premises nor shall it use or permit the use of the Premises in violation of any state law or county or municipal ordinance or regulation applicable thereto. Tenant may, with prior written consent of Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the leased space as Tenant may require for the conduct of its business without, however, materially altering the basic character of the building or improvements or weakening the structure on the leased premises. Any permanent alterations or improvements to the Premises shall become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

21. Damage or Destruction. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the Premises without expense to the Tenant subject to delays due to adjustment in insurance claims, strikes and other causes beyond the Landlord's control. If such damage or destruction shall render the Premises uninhabitable in whole or in part, the rent shall be abated wholly or proportionately until the damage shall be repaired and the premises restored. If the damage or destruction shall be so extensive as to require the substantial rebuilding, the effect of which may require removal of Tenant's operations from the Premises, either Landlord or Tenant may elect to terminate this lease by written notice to the other within thirty (30) days after the occurrence of such damage or destruction.

22. Surrender of Premise. Tenant agrees to surrender the Premises at the expiration or sooner termination of this Agreement or any extension thereof in the same condition or as altered pursuant to the provisions of this Agreement. Ordinary wear, tear and damage by the elements or other acts of God excepted.

23. Hold Over. Should Tenant hold over the Premises or any part thereof after the expiration of the term of this Lease

unless otherwise agreed in writing, such holding over shall constitute a tenancy from month to month only, and Tenant shall pay as monthly rental the same monthly rental provided for herein.

24. Available Space. If additional space becomes available in the CW Building, Tenant shall be offered that space in the CW Building before making it available to non-tenants. The Landlord reserves the right to use space that becomes available and to negotiate for use of the space with any tenant of the CW Building at the time the space becomes available.

25. Auditorium. Tenant shall have access to the auditorium in the CW Building on a basis at least as favorable as the general public.

26. Indemnity. The Tenant covenants and agrees to indemnify, hold Landlord harmless from all claims, loss damage, injury or liability (hereafter "Liability") resulting from Tenant's use and occupancy of the Premises to the full extent provided in the Utah Governmental Immunity Act, including reasonable attorney's fees, but excluding any Liability resulting from acts or omissions of Landlord, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. § 63-30-1, et seq). The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.

Landlord will indemnify and hold Tenant and its employees harmless to the full extent provided in the Utah Governmental Immunity Act, and limited by Paragraph 23 of this lease, from claims, loss, damage, injury, or liability resulting from Landlord's use and occupancy of the Premises or from the conduct of Landlord's operations; including, but not limited to, Landlord's negligence or intentional acts. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. § 63-30-1, et seq.).

27. Landlord Liable only for Negligence. Except where caused by Landlord's negligence, Landlord shall not be liable for any failure of water supply, natural gas supply or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains or any subsurface area or from any part of the building or buildings or for an interference with light.

28. Nondiscrimination. Tenant agrees not to discriminate

against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

29. Waiver of Covenants. It is agreed that the waiver of any of the covenants of this Lease Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein contained.

30. Rights of Successors and Assigns. The covenants and agreements contained within the Lease shall apply to the benefit of and be binding upon the parties hereto and upon their respective successors in interest and legal representatives, except as expressly otherwise hereinbefore provided.

31. Security. The Landlord will install doors with locking hardware. The Tenant is entitled to put locks on the doors to its space, provided the Landlord is given keys for reasonable access and building maintenance. Both parties will attempt to keep the exterior doors locked after their use of the building is completed for the day, and the Tenant shall have the obligation of checking all exterior doors at the conclusion of each day to make sure that they are locked, and that windows in the rooms used by the Tenant are secured. Lights and radiators should be turned off at the conclusion of the Tenant's use each day.

32. Notice Provision. Any and all notices required by this Lease Agreement shall be in writing and delivered personally to the party to whom the notice is to be given, or mailed by certified mail, postage prepaid, and addressed as follows:

If to Landlord:
Park City Municipal Corporation
P. O. Box 1480
Park City, Utah 84060

If to Tenant:
Soaring Wings Montessori School, Inc.
2083 Equestrian Ct.
Park City, UT 84060

33. Entire Agreement. This Agreement constitutes the entire and only agreement between parties and it cannot be altered or amended except by written instrument, signed by both parties.

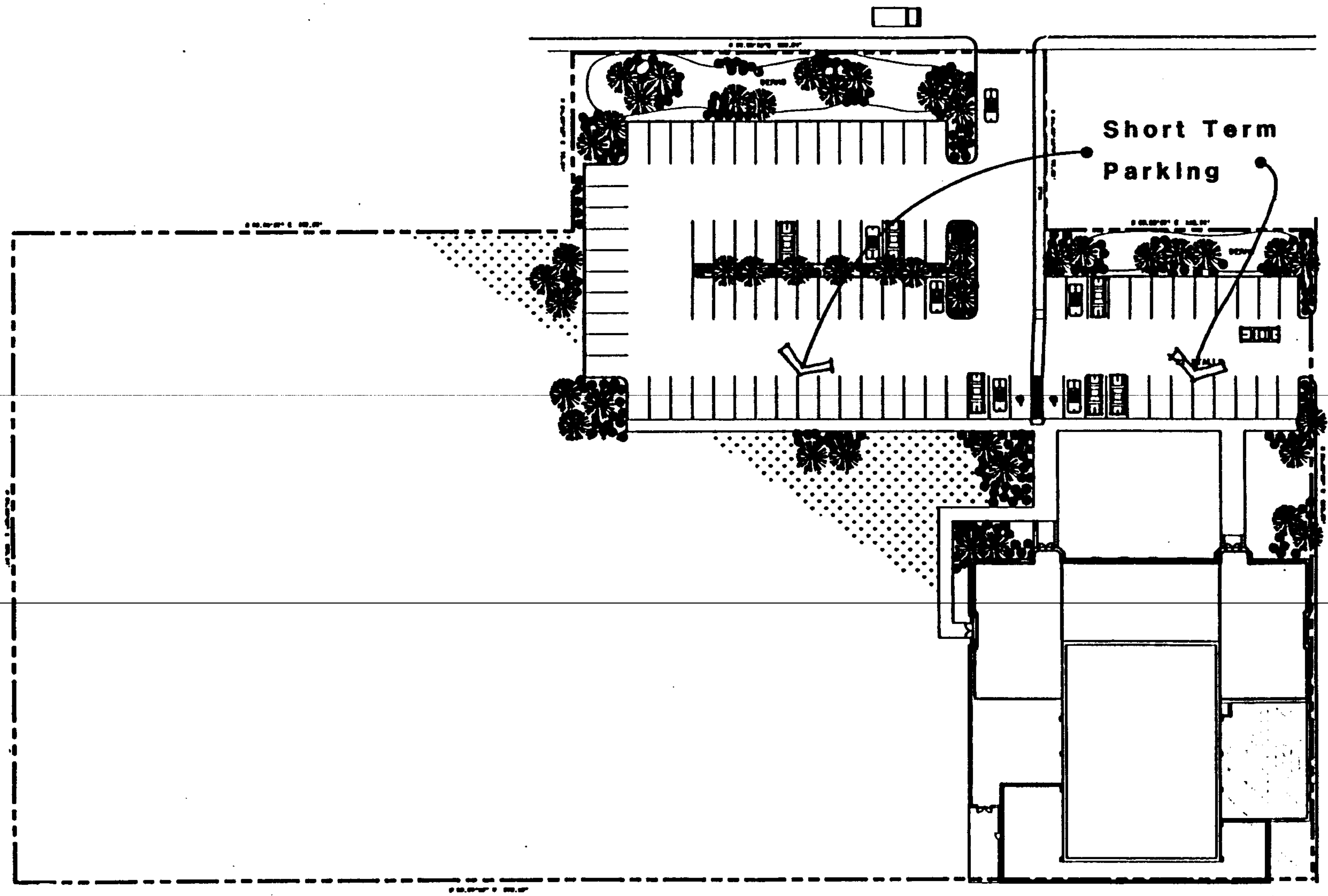
DATED this 11th day of July, 1992.

PARK CITY MUNICIPAL CORPORATION

Toby Ross, City Manager

SOARING WINGS MONTESSORI SCHOOL, INC.

Duna Strachan, President



SITE PLAN

NORTH

Exhibit "A"

page 1 of 2

CARL WINTER SCHOOL COMMERCIAL RENOVATION
PARK CITY, UTAH

PRELIMINARY SITE PLAN

SD101

COOPER/ROBERTS ARCHITECTS, A.I.A. o 202 WEST 300 NORTH o SALT LAKE CITY, UTAH 84103

(801) 355-5915

DATE: March 25,1999
DEPARTMENT: Office of Capital Management and Budget
AUTHOR: Matt Twombly MAT
TITLE: Cooperative Agreement with Utah Department of Transportation and payment of matching funds.
TYPE OF ITEM: Authorization of Cooperative Agreement

SUMMARY RECOMMENDATIONS: Staff requests approval to enter into an agreement with and payment of $58,500 to the Utah Department of Transportation (UDOT) for the City's share of the costs for Phase 3 of the Entryway Trail.

DESCRIPTION: The Transportation Commission approved an award of $234,000 in federal enhancement funds for the $292,500 Phase 3 trail project from the Farm to the City/County boundary. The cooperative agreement and payment of $58,500 are for the City's costs to participate in the project.

A. **Background:** Phase 2 of the Entryway Trail at the farm was completed by the City's funds. Staff had requested a change in the scope of Phase 2 in order to extend the federal funds to Phase 3 of the project. The Transportation Commission approved the change of scope and approved an award of $234,000 of the $292,500 required for the project. $58,500 is the City's matching cost requirement for the project.

B. **Analysis:** The cooperative agreement and $58,500 payment to UDOT is for the consultant design engineering and UDOT design review, approvals, agreements and project management. The City will be the consultant performing the design engineering on the project where the costs for such services will be reimbursable to the City. The cost for UDOT design review, approvals, agreements and project management will not be reimbursable to the City.

C. **Department Review:**
Office of Capital Management and Budget
Legal

ALTERNATIVES:
A. **Approve the Request:** Approval for the City to enter into a cooperative agreement with UDOT and make payment of $58,500 to UDOT for the City's matching share of funding for the project.

B. **Deny the Request:** This may be an option if City Council does not want to continue with the federal funding of this project.

C. **Continue the Item:** The agreement may require more extensive analysis than time allows in the April 1, 1999 meeting. The consequence of continuance may impact the project schedule.

SIGNIFICANT IMPACTS:

Fiscal

There is currently a total of approximately $405,000 available in the Trails Master Plan Implementation CIP account. The City was awarded a State of Utah non-motorized trail grant of $56,850 for the Phase 3 trail. This grant can be applied against the City's match requirement of $58,500. We have received $28,425 as the initial payment against this grant for the project. We anticipate that approximately $1,650 of City funds would be required to fund this project.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: In the event that Council decides not to approve to enter into a cooperative agreement and make payment of $58,500 then the project will not receive the approved federal funding.

RECOMMENDATION: Staff recommends that the City Council approve entering into a cooperative agreement with UDOT and payment of $58,500 to UDOT for the City's matching share of the project.

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: April 1, 1999,
DEPARTMENT: Office of Capital Management and Budget
AUTHOR: Tom Bakaly, Director of Capital Programs and Budget TBB
TITLE: Adoption of Old Town Transit Center Design Review Task Force Resolution and Appointment of Task force Members
TYPE OF ITEM: Legislative/Administrative

SUMMARY RECOMMENDATIONS: The City Council should: Adopt a resolution that forms the Old Town Transit Center Design Review Task Force and; Appoint Planning Commission members and an ex-officio City Council member as stipulated in the resolution.

DESCRIPTION:

A. Topic: Formation of Old Town Transit Center Design Review Task Force and appointment of members

B. Background: In 1991, the City Council formed the Town Lift Design Review Task Force consisting of Historic District Commission (HDC) members, Planning Commission members and a City Council member. The City found that this collaborative design review approach to large scale projects was effective. Using the Town Lift Deign Review Task Force as a model, staff received direction from City Council at its January retreat to explore the possibility of using such a Task Force for design review of the Old Town Transit Center.

Staff has informally discussed the concept a few times with the Planning Commission and the HDC, and both commissions have been receptive to the idea. On March 24, 1999, the Planning Commission selected Chris Larson, Carrie Hayes and Fred Jones for City Council to consider for appointment to the Task Force. Staff has recently shared a copy of the proposed resolution with the Chair of the HDC, and she seemed receptive to the Task Force. Staff his sent a memo and a copy of the resolution to each HDC member, and staff will confirm on Monday, March 29, 1999 that the entire HDC supports the formation of the Task Force.

C. Analysis:

The Task Force would be formally empowered with design review responsibilities of the Old Town Transit Center to ensure compliance with the City's Design Review Guidelines. The Task Force would consist of all five HDC members, two Planning Commission members and one non-voting City Council member. The Planning Commission has identified three commissioners for City Council to consider: Chris Larson, Carrie Hayes and Fred Jones. It is envisioned that City Council would select 2 Planning Commissioners for the Task Force and appoint the third Commissioner as an alternate. City Council should also appoint a City Council member to serve as an ex-officio (non voting member) of the Task Force. It would also be prudent if City Council appointed an alternate City Council member for the Task Force.

It is envisioned that the HDC Chairperson would be the Chairperson of the Task Force. Each of the seven (7) members would have one vote, and their approval/denial would be forwarded to the Planning Commission as part of the Conditional Use Permit (CUP) process. It is the hope of staff that the formation of this Task Force would facilitate communication between the HDC, Planning Commission and City Council concerning the Old Town Transit Center. It is important to note that the Design Review Task Force's decision would represent the formal design review process of the Old Town Transit Center. The design review of the Transit Center would not return to the HDC.

D. Department Review: This staff report has been reviewed by the Community Development Department, the Legal Department, the Public Works Department and the City Manager's Office.

ALTERNATIVES:

A. Approve the Request: Adopt the resolution and appoint Task Force members as stipulated in the attached resolution.

B. Deny the Request: City Council could deny the proposed resolution or propose an alternate "make-up" of the Task Force. Denying the resolution would mean that the review of the Old Town Transit Center would be conducted first by the HDC and then forwarded to the Planning commission for design review as part of the CUP process.

C. Continue the Item: The item could be continued 1-2 weeks without significant impact to the project schedule. Staff would like to get started with the design of the Old Town Transit Center and the first step in that process would be a "kick-off" meeting with the Task Force.

D. Do Nothing: This would have the same effect as denying and/or continuing the request.

SIGNIFICANT IMPACTS: It is the hope of staff that the formation of the Old Town Transit Center Design Review Task Force would facilitate commission and City Council interaction and thus streamline the design review process for the project.

CONSEQUENCES OF NOT TAKING RECOMMENDED ACTION:

If City Council did not adopt the resolution, the design review of the Old Town Transit Center would be conducted first by the HDC and then forwarded to the Planning commission for design review as part of the CUP process.

RECOMMENDATION:

Adopt a resolution that forms the Old Town Transit Center Design Review Task Force and appoint Planning Commission members and an ex-officio City Council member as stipulated in the resolution.

Resolution No. __-99

RESOLUTION ESTABLISHING THE OLD TOWN TRANSIT CENTER DESIGN REVIEW TASK FORCE

WHEREAS, the City Council on occasion has formed a temporary Design Review Task Force to provide a broad-based review of the designs of significant projects within the Historic District; and

WHEREAS, federal funding time lines and the City's proposed design and construction schedules require a heightened level of review in a compressed time frame; and

WHEREAS, the newly proposed Old Town Transit Center is a public project with impacts greater than those traditionally reviewed by the Historic District Commission, and the broader representation on the Design Review Task Force has been beneficial in the review of larger projects in the area; and

WHEREAS, the entire Historic District Commission will serve on the Design Review Task Force.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Park City, Utah that the Old Town Transit Center Design Review Task Force is established as follows:

<u>SECTION 1. MEMBERSHIP.</u> The membership of the Old Town Transit Center Design Review Task Force ("Task Force") shall include all members of the Historic District Commission, two Planning Commissioners appointed by the City Council, and one ex-officio, non-voting City Council member appointed by the City Council. In making appointments, the City Council shall take into consideration the background and experience of the candidates in matters affecting Park City's Historic District.

<u>SECTION 2. DUTIES.</u> The Task Force shall conduct design review of the Old Town Transit Center in accordance with the City's Historic District Design Guidelines. The review shall occur prior to the issuance of a Conditional Use Permit for the project. The review is supplemental to Community Development Department review pursuant to Land Management Code § 4.5(b). There shall be no separate review by the Historic District Commission.

(A) <u>Chairperson</u>. The Historic District Commission chairperson shall serve as chairperson of the Task Force. The Chairperson shall vote.

(B) <u>Quorum</u>. No business shall be conducted without a quorum at the meeting. A quorum shall exist when a majority (at least 4) of the voting members are present. All meetings must comply with the Utah Open and Public Meetings Act.

(C) <u>Voting</u>. All actions and final design approval of the Task Force shall be represented by a vote of the membership. A simply majority of the members voting at a meeting shall approve any proposed action.

SECTION 3. APPEALS. Decisions of the Task Force are appealable to the Planning Commission and shall be heard as part of the Conditional Use Permit public hearing. The decision of the Planning Commission may be appealed or called up to the City Council in the same manner as final actions of the Planning Commission, subject to the same procedures as outlined in the Park City Land Management Code.

SECTION 4. TERM. The Task Force shall dissolve upon final approval of the design of the Old Town Transit Center, but in no event shall the Task Force remain active past March 31, 2000, without subsequent City Council approval.

PASSED AND ADOPTED this __th day of April, 1999.

PARK CITY MUNICIPAL CORPORATION

____

Mayor Bradley A. Olch

Attest:

____

City Recorder

Approved as to Form:

____

City Attorney's Office

H:\USERS\TOM\HDCDESIG.RES

PARK CITY
1884

DATE:	3/29/99
DEPARTMENT:	Legal
AUTHOR:	Mark Harrington MK
TITLE:	Authorization to Enter Purchase and Sale Agreement for the Acquisition Of 560 Main for $500,000
TYPE OF ITEM:	RDA- Administrative

SUMMARY RECOMMENDATIONS: Authorize the Mayor to execute a Purchase and Sale Agreement in a form approved by the City Attorney, and all other necessary closing documents, with James Carr for 560 Main, Lot B of the Carr Replat in an amount of $500,000.

DESCRIPTION:

A. Topic:

Acquisition of 560 Main.

B. Background:

The City Council has discussed this purchase at several prior meetings. The Purchase and Sale Agreement is drafted to be consistent with terms as negotiated by Myles Rademan, pursuant to prior City Council direction. On February 25, 1999, the City Council approved a replat of the property to clear-up lot line encroachments.

C. Analysis:

The City has $400,000 allocated in federal grant money for this purchase. The City's 20% ($100,000) match will be paid from the Main Street RDA. The City will conduct soils tests on the parcel prior to closing. The closing is scheduled to be within 14 days of the plat recordation, but no later than July 1, 1999.

D. Department Review:

The Legal Department and Administrative Dept. reviewed this report.

ALTERNATIVES:

A. Authorize the execution of the Purchase and Sale Agreement:

This is the recommended action.

B. Deny the Request:

The City Council should direct staff as to how to proceed with an acquisition strategy. The federal money should be encumbered prior to October 1, 1999 for the City to maintain its position within the federal funding cycle.

C. Continue the Item:

If the Council wants more information, it should remove the item from the consent agenda and continue to a work session meeting.

SIGNIFICANT IMPACTS:

The area in question is vacant and is one of the few open spaces left on Main Street. The City and Swede Alley task force have identified this parcel as key to the redevelopment and pedestrian plans for Swede Alley.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

The City risks losing the opportunity to purchase the property, and the City Council would need to examine how to appropriate the federal money earmarked for this purchase.

RECOMMENDATION:

- Authorize the Mayor to execute a Purchase and Sale Agreement in a form approved by the City Attorney, and all other necessary closing documents, with James Carr for 560 Main, Lot B of the Carr Replat in an amount of $500,000.

REAL ESTATE PURCHASE CONTRACT

This is a legally binding contract. Utah law regulates real estate licensees to use this form. Buyer and Seller, however, agreed to alter or delete the provisions, as necessary. If you desire legal or tax advise, consult your attorney or tax advisor.

Buyer **REDEVELOPMENT AGENCY OF PARK CITY**
Seller **JAMES W. CARR**

OFFER TO PURCHASE

1. **PROPERTY**: 560 Main Street, Park City, Utah
also described as: Lot B, Carr Replat, Section 16, Township 2 south, Range 4 East, Salt Lake Base and Meridian, Park City, Summit County, Utah (the "Property").

1.1 Included Items. Not Applicable. The Property is vacant.

1.2 Excluded Items. Not Applicable.

1.3 Water Rights. Water rights are not included in this sale.

1.4 Survey. (Check applicable boxes): A survey ☒ WILL ☐ WILL NOT be prepared by a licensed surveyor. The Survey Work will be: ☐ Property corners staked ☐ Boundary Survey ☐ Boundary & Improvements survey ☒ Other (specify) Carr Replat Plat Amendment. Responsibility for payment ☐ Buyer ☒ Seller ☐ Buyer and Seller share equally. Buyer's obligation to purchase under this Contract ☒ IS ☐ IS NOT conditioned upon Buyer's approval of the Survey Work. If yes, the terms of the attached Survey Addendum apply.

2. **PURCHASE PRICE**. The Purchase Price for the Property is $500,000.00.

2.1 Method of Payment. The Purchase Price will be paid as follows:
$ Not Applicable (a) Earnest Money Deposit. Under certain conditions described in this Contract, **THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.**
$ Not Applicable (b) New Loan, Buyer agrees to apply for a new loan as provided in Section 2.3. Buyer will apply for one or more of the following loans:
☐ **CONVENTIONAL** ☐ **FHA** ☐ **VA** ☐ **OTHER** (specify):

If an FHA/VA loan applies, see attached FHA/VA Loan Addendum.
If the loan is to include any particular terms, then check below and give details:

☐ SPECIFIC LOAN TERMS:

$ Not Applicable	(c) Loan Assumption (see attached Assumption Addendum if applicable)
$ Not Applicable	(d) Seller Financing (see attached Seller Financing Addendum if applicable)
$ Not Applicable	(e) Other (specify)______________________________
$ 500,000.00	(f) Balance of Purchase Price In Cash at Settlement
$ 500,000.00	**PURCHASE PRICE (total of (a) through (f))**

2.2 **Financing Condition**. (check applicable box)

(a) ☐ Buyer's obligation to purchase the Property IS conditioned upon Buyer qualifying for the applicable loan(s) referenced in Section 2.1 (b) or (c) "the "Loan"). This condition is referred to as the "Financing Condition."

(b) ☒ Buyer's obligation to purchase the Property IS NOT conditioned upon Buyer qualifying for a loan. Section 2.3 does not apply.

2.3 **Application for Loan.**

(a) **Buyer's Duties**. No later than the Application Deadline referenced in Section 24(a), Buyer shall apply for the Loan. "Loan Application" occurs **only** when Buyer has:

(i) completed, signed, and delivered to the lender (the "Lender") the initial loan application and documentation required by the Lender; and

(ii) paid all loan application fees as required by the Lender. Buyer agrees to diligently work to obtain the Loan. Buyer will promptly provide the Lender with any additional documentation as required by the Lender.

(b) **Procedure If Loan Application Is Denied**. If Buyer receives written notice from the Lender that the Lender does not approve the Loan (a "Loan Denial"), Buyer shall, no later than three calendar days thereafter, provide a copy to Seller. Buyer or Seller may, within three calendar days after Seller's receipt of such notice cancel this Contract by providing written notice to the other party. In the event of a cancellation under this Section 2.3(b):

(i) If the Loan Denial was received by Buyer on or before the _______ day of ____________, 19__, the Earnest Money Deposit shall be returned to Buyer;

(ii) If the Loan Denial was received by Buyer after that date, Buyer agrees to forfeit, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money as liquidated damages. A failure to cancel as provided in this Section 2.3(b) shall have no effect on the Financing Condition set forth in Section 2.2(a). Cancellation pursuant to the provisions of any other section of this Contract shall be governed by such other provisions.

2.4 **Appraisal of Property**. Buyer's obligation to purchase the Property ☒ IS ☐ IS NOT conditioned upon the Property appraising for not less than the Purchase Price. If the appraisal condition applies and the Property appraises for less than the Purchase Price, Buyer may cancel this Contract by providing written notice to Seller no later than three (3) calendar days after Buyers receipt of notice of the appraised value. In the event of such cancellation, the Earnest Money Deposit shall be released to Buyer. A failure to cancel as provided in this Section 2.4 shall be deemed a waiver of the appraisal condition by Buyer.

3. **SETTLEMENT AND CLOSING**. Settlement shall take place on the Settlement Deadline referenced in Section 24(d), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when all of the following have been completed:

3.1 Buyer and Seller have signed and delivered to each other or to the escrow closing office all documents required by this Contract, by the Lender, by written escrow Instructions or by applicable law;

3.2 Any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow closing office in the form of collected or cleared funds; and

3.3 Any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half ½ of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current_year, rent, and interest on assumed obligations shall be_prorated at settlement as set forth in this Section. Tenant deposits (including, but not limited to, security deposits, cleaning deposits, and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed:

(i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and

(ii) the applicable Closing documents have been recorded in the office of the county recorder.

The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four (4) calendar days of Settlement.

3.4 Seller is contemplating a 1031 Like-Kind Exchange. Buyer agrees to take such good faith action as necessary to facilitate such process if pursued by Seller. Seller acknowledges that federal funds are being used for this purchase and such funds may preclude a 1031 exchange. Seller shall investigate this issue without prejudice to Buyer's rights herein.

4. **POSSESSION**. Seller shall deliver physical possession to Buyer within: 2 hours ☐ ____________ days after Closing; ☐ Other (specify).

5. **CONFIRMATION OF AGENCY DISCLOSURE**. At the signing of this Contract:

[ ] Seller's Initials [ ] Buyer's Initials

The Listing Agent, Doug Tulloch, represents ☒ Seller ☐ Buyer ☐ both Buyer and Seller as a Limited Agent.
The Selling Agent, Not Applicable, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller as a Limited Agent. Seller is responsible for any commission due Selling Agent.
The Listing Broker, ____________, represents ☒ Seller ☐ Buyer ☐ both Buyer and Seller as a Limited Agent.
The Selling Broker, Not Applicable, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller as a Limited Agent.

6. **TITLE INSURANCE**. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price.

7. **SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(b), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":
(a) a Seller property condition disclosure for the Property, signed and dated by Seller;
(b) a commitment for the policy of title insurance;
(c) a copy of any leases affecting the Property not expiring prior to Closing;
(d) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and
(e) other (specify)

8. **BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS.** Buyer's obligation to purchase under this Contract (check applicable boxes):
☒ IS ☐ IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;
☐ IS ☒ IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;
☒ IS ☐ IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Property (specify):
(a) Soils and environmental tests.

If any of the above items are checked in the affirmative, then Sections 8.1, 8.2, 8.3, and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as the "Evaluations & Inspections." Unless otherwise provided in this Contract, the Evaluations & Inspections shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with the

Evaluations and Inspections and with the walk-through Inspection under Section 11.

8.1 **Evaluations & Inspections Deadline**. No later than the Evaluations & Inspections Deadline referenced in Section 24(c) Buyer shall: (a) complete all Evaluations & Inspections; and (b) determine if the Evaluations & Inspections are acceptable to Buyer.

8.2 **Right to Cancel or Object**. If Buyer determines that the Evaluations and Inspections are unacceptable, Buyer may no later than the Evaluations & Inspection Deadline, either:
(a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or
(b) provide Seller with written notice of objections.

8.3 **Failure to Respond**. If by the expiration of the Evaluations & Inspections Deadline, Buyer does not:
(a) cancel this Contract as provide in Section 8.2; or
(b) deliver a written objection to Seller regarding the Evaluations & Inspections, the Evaluations & Inspections shall be deemed approved by Buyer.

8.4 **Response by Seller**. If Buyer provides written objections to Seller, Buyer and Seller shall have seven (7) calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three (3) calendar days after expiration of the Response Period, whereupon the Earnest Money Deposit shall be released to Buyer, if this Contract is not canceled by Buyer under this Section 8.4. Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.

9. **ADDITIONAL TERMS**. There ☐ ARE ☒ ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: ☐ Addendum No. _______ ☐ Survey Addendum ☐ Seller Financing Addendum ☐ FHA/VA Loan Addendum
☐ Assumption Addendum ☐ Lead-Based Paint Addendum (in some transactions this addendum is required by law) ☐ Other (specify):

10. **SELLER WARRANTIES & REPRESENTATIONS.**

10.1 **Condition of Title**. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer as Closing by general warranty deed, unless the sale is being made pursuant to a real estate contract which provides for title to pass at a later date. In that case, title will be conveyed in accordance with the provisions of that contract. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Except for any loan(s) specifically assumed by Buyer under Section 2.1(c), Seller will cause to be paid off by closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

10.2 **Condition of Property**. Not Applicable - vacant.

11. **WALK-THROUGH INSPECTION**. Not Applicable.

12. **CHANGES DURING TRANSACTION**. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer; (a) no changes in an existing lease shall be made; (b) no new leases shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; and (d) no further financial encumbrances to the Property shall be made.

13. **AUTHORITY OF SIGNERS**. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. **COMPLETE CONTRACT**. This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties.

15. **DISPUTE RESOLUTION**. The parties agree that any dispute, arising prior to or after Closing, related to this Contract ☒shall ☐may (upon mutual agreement of the parties) first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

16. **DEFAULT**. If Buyer defaults, Seller may sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, Buyer may sue Seller to specifically enforce this Contract or pursue other remedies available at law.

17. **ATTORNEY FEES AND COSTS**. In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be rewarded for participation in mediation under Section 15.

18. **NOTICES**. Except as provided in Section 23, all notices required under this Contract must be:
    (a) in writing;
    (b) signed by the party giving notice; and
    (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. **ABROGATION**. Except of the provisions of Sections 10.1, 10.2, 15 and 17 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. **RISK OF LOSS**. All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

21. **TIME IS OF THE ESSENCE**. Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract:
    (a) performance under each Section of this Contract which references a date shall absolutely re required by 5:00 P.M. Mountain Time on the stated date; and
    (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, receipt of the Seller Disclosures, etc.).

    Performance dates and times reference herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as so otherwise agreed to in writing by such non-party.

22. **FAX TRANSMISSION AND COUNTERPARTS**. Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This contract and any addenda and counteroffers may be executed in counterparts.

23. **ACCEPTANCE**. "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other:
    (a) signs the offer or counteroffer where noted to indicated acceptance; and
    (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. **CONTRACT DEADLINES**. Buyer and Seller agree that the following deadlines shall apply to this Contract:

(a) Application Deadline — Not Applicable ________ (Date)

(b) Seller Disclosure Deadline — April 15, 1999 ________ (Date)

(c) Evaluations & Inspections Deadline — April 30, 1999 ________ (Date)

(d) Settlement Deadline — Within 14 calendar days of recordation of Carr Replat, but in no event later than July 1, 1999.

25. **OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: 5:00 ☐A.M. ☒P.M. Mountain Time on April 15, 1999 this offer shall lapse, and the Brokerage shall return the Ernest Money Deposit to Buyer.

BUYERS SIGNATURE ____________________ **Date** __________ **Time** ______

THE LATER OF THE ABOVE OFFER DATES SHALL BE REFERRED TO AS THE "OFFER REFERENCE DATE."

____

(Buyers Names) - Please Print **(Notice Address)** **(Phone)**

ACCEPTANCE / COUNTEROFFER / REJECTION

CHECK ONE:

☐ **ACCEPTANCE OF OFFER TO PURCHASE**: Seller Accepts the foregoing offer on terms and conditions specified above.

☐ **COUNTEROFFER**: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached **ADDENDUM NO.** ____________________.

SELLER'S SIGNATURE ____________________ **Date** __________ **Time** ______

____

(Sellers' Names) - Please Print **(Notice Address)** **(Phone)**

☐ **REJECTION**: Seller Rejects the foregoing offer.

SELLER'S SIGNATURE ________________________ **Date** ____________ **Time** _______

* * * * * * * * * * * *

Document Receipt

State law requires Broker to furnish Buyer and Seller copies of this Contract bearing all signatures. (***Fill in applicable section below.***)

A. **I acknowledge receipt** of a final copy of the foregoing Contract bearing all signatures:

BUYER'S SIGNATURE ________________________ **Date** ____________ **Time** _______

SELLER'S SIGNATURE ________________________ **Date** ____________ **Time** _______

B. **I personally** caused a final copy of the foregoing Contract bearing all signatures to be ☐faxed ☐mailed ☐hand-delivered on ____________________ (Date), postage prepaid, to the ☐Seller ☐Buyer.

Sent/Delivered by (specify) ____

k:legal/mh/agree/carrpurchagr.wpd