



APRIL 23, 2020
PLANNING COMMISSION MEETING 6:00 P.M.

Per Executive Order 2020-5 issued by Governor Gary R. Herbert on March 18, 2020, this meeting will be conducted electronically and may be viewed on the City's YouTube channel: <https://www.youtube.com/channel/UCI00z0Zgdmz4y1FoI0l7CJA>. An anchor location will not be provided.

To submit written comments prior to the meeting, please email the Planning Commission at planning-commission@moabcity.org. To ensure that the Planning Commission has the opportunity to review written comments prior to the meeting, written comments will only be accepted until 5 pm the day prior to the public hearing.

1. 6:00 P.M. Call To Order
2. Citizens To Be Heard
3. Approval Of Minutes

Documents:

[PC-MIN-202020-01-23 FINAL DRAFT.PDF](#)

4. Planning Director's Report

Documents:

[DIRECTORS REPORT 4.23.2020.PDF](#)
[MOAB CITY PLANNING COMMISSION BYLAWS AS ADOPTED 2018.PDF](#)

5. Public Hearing

- 5.1. Action Item - Public Hearing And Recommendation To City Council On Ordinance #2020-12 - Approving A Zoning Map Amendment For Property Located At 191 Walnut Lane Moab UT 84532, Amending The Split Zoned Parcel From R-2 Single-Household And Two-Household Residential Zone And R-4 Manufactured Housing Residential Zone, To Only R-4 Manufactured Housing Residential Zone; And Amending The City Of Moab Official Zoning Map.

Documents:

[PC NELSON COURT REZONE AGENDA SUMMARY 042320.PDF](#)
[EXHIBIT A ORDINANCE 2020-12 NELSON COURT REZONE.PDF](#)

[EXHIBIT B PLAT.PDF](#)
[EXHIBIT C CONTEXT ZONING MAP.PDF](#)
[EXHIBIT D VACINITY MAP.PDF](#)

6. Action Item

- 6.1. Action Item - Review And Possible Approval Of Planning Commission Resolution 03-2020
– A Resolution Approving The Condominium Conversion Of The Bungalows At 200 North
Located At 53 East 200 North, 55 East 200 North, 57 East 200 North, 59 East 200 North.

Documents:

[PC AGENDA SUMMARY 4.23.2020 KNIGHT.PDF](#)
[EXHIBIT 1 PLANNING RESOLUTION 03-2020.PDF](#)
[EXHIBIT 2 KNIGHT BUNGALOWS LOCATION MAP.JPG](#)
[EXHIBIT 3 AERIAL PHOTO.JPG](#)
[EXHIBIT 4 APPLICATION FORM.PDF](#)
[EXHIBIT 5 LETTERS TO TENANTS.PDF](#)
[EXHIBIT 6 KNIGHT BUNGALOWS PLAT.PDF](#)
[EXHIBIT 7 CONDO CONVERSION CODE REQUIREMENT.PDF](#)
[EXHIBIT 8 CONDOMINIUM DECLARATION \(MOAB\)-3.PDF](#)

7. Discussion Item - Overnight Accommodations Reboot
8. Future Agenda Items
9. Adjournment

MOAB CITY PLANNING COMMISSION WORKSHOP
MEETING MINUTES—DRAFT
JANUARY 23, 2020

The Moab Planning Commission held a workshop and a regular meeting on the above date in the Council Chambers at the Moab City Center, located at 217 East Center Street. An audio recording of the evening meeting is archived at: <https://www.utah.gov/pmn/index.html> and a video recording is archived at: https://www.youtube.com/watch?v=x_6ooLnzWAE.

Planning Commission Chair Pro Tem Kya Marienfeld called the regular meeting to order at 6:00 PM. Commission members Kya Marienfeld, Marianne Becnel, Brian Ballard, Luke Wojciechowski and Jessica O'Leary were present. Commission member Becky Wells was absent. Staff in attendance were City Planning Director Nora Shepard, Assistant Planner Cory Shurtleff and Deputy Recorder Joey Allred. Four members of the public and media were present.

Election of Chair and Vice Chair:

Discussion: There was no discussion.

Motion and vote: Commission member Ballard moved to approve Kya Marienfeld as Planning Commission Chair for 2020. Commission member O'Leary seconded the motion. The motion passed 5-0 with commission members Becnel, Ballard, Wojciechowski, Marienfeld and O'Leary voting aye. Commission member Ballard moved to approve Marianne Becnel as Planning Commission Vice-Chair. Commission member O'Leary seconded the motion. The motion passed 5-0 with Commission members Becnel, Ballard, Wojciechowski, Marienfeld and O'Leary voting aye.

February Planning Commission Meeting Dates:

City Planning Director Shepard explained that she had wanted to adjust the meeting dates for February, but that due to various conflicts, the meeting dates would remain on February 13th and 27th of 2020.

Shepard announced that there would be a Utah Chapter of the American Planning Association Conference at the Hoodoo in Moab on February 26-28, 2019 if any of them would like to attend. She explained what such an event entailed.

The Commission made introductions around the table.

Approval Of the June 27, 2019, July 3, 2019, August 22, 2019, September 12, 2019, September 26, 2019, October 10, 2019, November 7, 2019, November 21, 2019 and December 12, 2019 meeting minutes:

Discussion: There was no discussion.

Motion and vote: Commission member Becnel moved to approve the minutes from June 27, 2019, July 3, 2019, August 22, 2019, September 12, 2019, September 26, 2019, October 10, 2019, November 21, 2019 and December 12, 2019. Commission member Ballard seconded the motion. The motion passed 5-0 with Commission members Becnel, Ballard, Wojciechowski, Marienfeld and O'Leary voting aye. Commission member Ballard moved to approve the minutes from November 7, 2019. Commission member O'Leary seconded the motion. The motion passed 5-0 with Commission members Becnel, Ballard, Wojciechowski, Marienfeld and O'Leary voting aye.

Citizens To Be Heard:

There were no citizens to be heard.

Public Hearing:

Shepard explained to the Commission and the public that as the last meeting had been cancelled due to the lack of a quorum, the public hearing would need to be re-noticed and a new public hearing scheduled. However, the Commission would still hear from the members of the public that were present.

Public Hearing And Possible Recommendation To The City Council-An Ordinance Amending The City Of Moab Municipal Code Section 17.69.050(E) To Modify The Minimum Square Footage For Construction of Workforce Housing Units From 1,000 Square Feet To A Minimum Of 400 Square Feet:

Discussion: Shepard said, "I'm gonna ask you to open the public hearing, listen to the presentation and take public input and then I'm gonna ask you to continue the public hearing because by the time we cancelled the last meeting due to lack of a quorum, it was too late to notice this meeting, because of when she would have needed to get the notices to the newspaper. So, it has been officially re-noticed for the next meeting. She said, "So, we will, we'll ask you to continue the public hearing and then take action at that time. And I apologized to the applicant for that. It's just one of those timing issues that we run into."

Shepard then gave a brief history of the Assured Workforce Housing Ordinance that required not less than 1,000 square feet per unit and the fee in lieu option. The Henry Shaw Hotel wants to build smaller Assured Workforce Housing units on site. Commission Chair Marienfeld asked where Council was on this issue because the increase was made at that level and Shepard told her that the subject was brought up at a Council meeting and they would be willing to entertain it.

Commission Chair Marienfeld opened the unofficial public hearing at 6:17 PM. On the Ordinance Amending The City Of Moab Municipal Code Section 17.69.050(E) To Modify The Minimum Square Footage For Construction of Workforce Housing Units From 1,000 Square Feet To A Minimum Of 400 Square Feet.

It was noted that one letter had been sent in on this issue.

Elizabeth Boone- Provided a presentation and said, "I'm Elizabeth Boone the architect of the Reynolds Ash and Associates and I'm the architect that's working on the Henry Shaw Hotel and we've been working on the Henry Shaw Hotel since 2015. So, this has been a project in our office for a while and during this process we encountered the Workforce Housing Ordinance which passed, and we've been working to adopt it in a way that still pencils for the project. So, my critique of the 1,000 square foot units and the reason why it hasn't been executed to date, and everyone's paying the fee in lieu of, is because it doesn't pencil. So, the cost of building these units, it's cheaper for the developers to just pay the fee in lieu and move on than to actually provide you guys with the units. And so, one critique is that, you know, now all the units are concentrated into one location that the City controls versus sort of a variety of units throughout town on the same site as say, people that are working and could be living there to their benefit. So with that being said, I also wanted to share with you some typical apartment size samples from some projects that we've been involved with over the last few years and I would also like to note that there has been a downward trend in apartment sizes in the last ten years and we're seeing a decrease of up to 12% in some cities and so people are accommodating smaller lifestyles with the benefit of being, you know, in a more walkable area, or having proximity to other amenities. So, this is actually a project that I'm working on in Gilbert and I wanted to point out the studio unit at 423 net square feet on the left side of that drawing. You go to the next one. This is a project that was just completed in Durango. This building is 100% sold. Very high demand for these types of units in Durango. This was not an affordable project by any means and sort of just market rate sales and the studio unit there is 392 net square feet. This one's actually under construction in Durango right now and this is a series of studio units only and

these are each at 442 net square feet. We had such success with the previous project that really saw a position in the market for these 400 net square foot units and that was sort of the driver on this project. And then I wanted to also show the proposed design for the units at the Henry Shaw Hotel. So, these are 394 net square feet, 437 gross square feet, so that includes all the perimeter walls and there's a couple little 3-D's of, you know a little kitchenette, as dining area, a bed. This could potentially be a Murphy bed and then a closet with a full bath. So, very livable. And then, if you go to the final slide, this is actually the apartment that I lived in for five years in Manhattan and it's 278 square feet, and I think one of the critiques that we saw in this letter was that, how do people entertain and have enough space in these small units and, certainly after living in this unit, I didn't and my neighbors didn't have any issues entertaining and still living a full life in 278 square feet. And so, while we're not in a major city like New York who is setting small unit trends. They recently built a micro apartment for similar type of workforce housing and veteran's housing and their apartment ranges were 150 to 400 square feet. So, we're not quite that extreme, but we do want to be reasonable about what is the baseline? And 1,000 feet feels very generous and I think that there's room to reduce that to make it work for the development. I'll take any questions." Commission Chair Marienfeld said, "all right, thank you. Does anyone have any questions?" Commission Member Ballard said, "I have a question. And so, your purpose of being here is to share all of this because you're proposing?" Shepard said, "they're proposing to do that." Boone asked, "can we go back three slides, I believe? This is what we're proposing. I think what I wanted to do was show a palette of successful apartments in the 400 square foot range. Also share our 400 square foot workforce housing proposal. The cost of building this to us is about the same as the fee in lieu of." Commission Member Ballard said, "that's good." Boone said, "we prefer to build campus availability on our site, but unless we have this reduction, we can't do that." Commission Member Ballard said, "so, that's where we're at here. So, you're in favor of all this?" Shepard said, "Yes." Commission member Ballard said, "That's great." Commission Chair Marienfeld said, "thank you, Elizabeth."

Commission Chair Marienfeld asked, "Okay, do we have anyone else for the public hearing tonight on this issue tonight, and it will be continued." Shepard said, "Yeah." Commission Chair Marienfeld said, "To our February 13th meeting." Shepard said, "Absolutely. And certainly, you can discuss it, but people will have the opportunity and did receive a public comment which is forwarded to you. Commission Chair Marienfeld said, "Thank you. Okay, so I will continue the public hearing if anyone would like to discuss things now just to kind of get a general temperature before we do more public comment potentially in three weeks. If that works on our schedule tonight? Maybe take just a few minutes."

Commission Member Becnel said, "sure, let's just crunch some numbers. How many square feet is the Henry Shaw Hotel?" Boone answered, "we're at 113,000." Commission Member Becnel asked, "15.57 per square foot is your fee in lieu, is that right?" Shepard answered, "Yeah." Commission Chair Becnel asked, "so, you're at \$1,759,410.00?" Boone answered, "Yep." Commission Member Becnel asked, "what's the cost per square footage for you build affordable housing?" Boone answered, "\$250.00 per square foot." Commission Member Becnel said, "Bull shit." Commission Chair Marienfeld said, "Whoa." Commission Member Becnel said, "pardon my French, but that's not true." Commission Member Ballard said, "now wait a second, say that again? Commission Member Marienfeld said, "alright, pause. I think we need to. Everybody just, like take a minute because we, we don't need cursing to the public on the record." Commission Member Ballard said, "no, no, no, you might be right if you're talking about land use, all that kind of stuff. Okay, so she's probably right, okay? So, I think the question was asking is per square foot for building that size and we're thinking what, you've got 30 units in there or something, I don't know." Boone answered, "11." Commission Member Ballard said, "okay, 11. So that square footage is going to go down, right? Do you have, does she have to build on the site to do this, or can she build them anywhere?" Shepard answered, "They can build them anywhere, but they have chosen to go this route." Commission Member Ballard said, "Yeah, okay. That's good, I'm just, just curious about that. So, I have another

leading question on that, as well. For us. Okay, and that is that since this proposal is in front of us at 400 square feet, can I, if I owned a motel, could I build that unit anywhere in town?" Shepard and Commission Chair Marienfeld answered, "Yes." Commission Member Ballard said, "okay, on a 1,000 square foot piece of ground?" Shepard answered, "Yes, you would have to build it, and this is another thing we have to fix in the code, and probably deed it the City or a public entity." Commission Member Ballard said, "well, that's kind of where I'm going this. So, that needs to be addressed. Although, I like the idea of 400 square feet though, because that makes total sense. You know what I mean? To have that, the small square footage, because if they're required to provide housing, they don't have to be required to build something huge to have a huge family. They're meeting that requirement, but if they want to build two of them, do they have to have 2,000 square feet if they're connected?" Shepard said, "I hadn't thought about that. They could make them 2,000 square feet if they wish." Commission member Ballard asked, "but, could they do it on less?" Shepard answered, "yes." Commission Member Ballard asked, "okay, so she's putting 11 units in there, does she have to have 11,000 square feet to put that in or can she do it on their much smaller base?" Shepard said, "the way this is proposed, they could be smaller units." Commission Member Ballard said, "Smaller units, smaller property and that's kind of where she was heading." Shepard said, "yes. And you're absolutely right, Maryanne, it's sort of, it's kind of cutting them a bread, but it's also getting them built on site. So, I think from our point of view, if somebody wants to come in and do a motel and they want to put him on site, then cool. And we're trying to encourage." Commission Member Marienfeld said, "and we were. I remember the discussion when we were writing and tweaking and passing this ordinance along to City Council last year, was, you know, obviously the, the easy way out is gonna be fee in lieu. It's simple, it doesn't require any future involvement on the part of the developer once everything's done and how are we gonna incentivize some of the things that are gonna get us housing faster? Right now, we do have Walnut Lane, so we actually do have a place that the fee is in lieu is going directly, but we might not have that in a few years. We might not have a project that's actively happening and if someone owns land already, or if you have a spot to be able to provide that. I mean, this is something we were talking about when we wrote the ordinance in the first place." Commission Chair Becnel said, "so, pardon my shock factor, but..." Commission Chair Marienfeld said, "We don't have to go with 400, we don't have to make that our recommendation. We can tie it to something as Nora was saying." Commission Member Becnel said, "I'm still talking. Pardon my shock factor with this, but our whole purpose here to be helping our community. How does this project, 200 plus units actually help our community and how many jobs is that creating? According to our housing research, that's gonna create maybe, like 100 more jobs like housekeepers and maintenance people. Is that really worth 11 units of housing? We're already behind 1,000 units. So, what I'm saying here is, like let's look at the bigger picture. We spent three years on affordable workforce housing for a reason and now we finally came to an agreement and we're talking about this again? And, they can pay the fee in lieu. Fine, they're not asking for a 60% reduction in a fee in lieu, they're asking for a price cut on the project where they're gonna save \$500,000.00 + per square footage. I mean. Just do what we asked for. Pay the fee in lieu, but don't change something that we've been working on for three years that we've put thousands of hours of eyes and lawyers into. That's my stance."

Commission Chair Marienfeld asked, "anyone else have any questions or things to weigh in on? We'll have a continuation of the public hearing in three weeks and maybe we could get more information by then, too." Shepard said, "if you need specific information, we'd be happy to generate that for you. Just let me know. Commission Chair Marienfeld said, "I think I would like, maybe for other Commissions to, to think about if there's a way we could. My inclination at least right now is 1,000 is too big to require. My house, my entire house is 1,000 square feet and I have a three-bedroom, two-bathroom house, so it's. That's big. And I think the way things are going, we do want to incentivize actually providing housing as a mix. We're always gonna want a mix, we're always gonna get the fee in lieu in some way probably continuing with most developments, but if you know you do have a sizable project that's willing to

provide something on site, in particular, I think that's good. 400 square feet does seem small. I'll be honest, looking at the mock-up of what's proposed, it seems small as well. So, if there's some sort of happy medium we could come to where it would still be more of an incentive to provide that immediate housing to the community, but not quite that little if we're not requiring more units. That, again being a caveat. Potentially we could require more units for a reduction in size too, and this might be something for the architect in the immediate stance to maybe have a sort of frank open conversation with the Planning staff about, say, you know realizing we're not gonna, you know, hold you to that necessarily, but any input we have because you're going through this right would be really useful, about what would be feasible? What would tip you back over to fee in lieu? How big would be too big? How many units at how many 450 square foot units would be too many units that would tip you back into fee in lieu. I think because we have a real situation in front of us for the first time with this was really good information, we should take advantage of." Commission Member O'Leary said, "well, I think it's also important to recognize some of the big differences between Moab and a city. People are coming to Moab. You know, I first moved here to climb and to ride my bike and you're gonna have all this gear. People that are coming to live here are gonna have bikes and boats and this and that. So, is there an additional area they have access to to store all their stuff? I mean, we do have a bike theft problem in this town, and we don't want it to increase." Shepard said, "Right. So, there are lots of different kinds of people looking for housing in the community and I think most people that, that will working the hotels and motels probably won't have bikes. They probably won't have cars. Some of them may have bikes as their only means of transportation. So, if we're trying to hit very low income, which we're trying to do, and nobody else is really proposing that, then they probably aren't here to climb and they're not here to ride their bikes. They're here to work and make money. So, this kind of unit is oriented toward that kind of person and not the kind of person like you and me, who, yeah, we have lots of stuff." Commission Member O'Leary said, "well I lived in my car when I first came here too, so." Commission Chair Marienfeld said, "Nora, there, there is a bit more of an overlap that I think you're maybe recognizing. I do. I do think that, because when we're looking at like our, all of our other affordable housing ordinances or things we've discussed have had on site storage for things like that, and I think if that's something that can be provided, it would certainly kick that up, because on site secure bike storage would be a huge boon having some sort of dedicated 4x4 storage unit for each housing unit, as well. It doesn't even. It could be on the other side of the building, but as long as it's there. Like, there's actually a storage unit shortage in Moab as much as there is housing." Commission Member Becnel said, "but I think there's a big difference between where a person will live and where they deserve to live, and this town is all about setting the bar high. Just because you're a Mexican immigrant family and you're forced to live in 300-400 square feet doesn't mean that that's the right thing for us to make these people do." Shepard said, "Certainly." Commission Chair Marienfeld said, "Alright, if anybody else has any initial thoughts you will have this discussion again in a few weeks.

Commission Member Ballard said, "well, I have a lot of concerns about it, but rather than discuss it now, should we wait for that?" Shepard said, "if you have crucial information that can provide or that you want us to provide to help you make a decision." Commission Member Ballard said, "okay, well first of all, I think the 400 square feet is not unreasonable. Okay, we were talking about this PAD system that we were had going and we were going much less than that, okay? So, 400 feet, 400 square feet is, is quite a bit more than that and I think she pointed out that there is some nice places for people. I don't think they're required to give them the Taj Mahal, you know. I mean, they're, their employers. They're almost getting their rent, I don't know it's free, but at least it's getting provided. My concern is that if they're gonna put in, say 11 units behind their motel. Yeah, that's good, because they can walk to work and they're there. I didn't. Never liked the idea that the employer is also the owner of there where they live. I've, I've kind of been against that, but I do like the other side of it where they were living right on site there. It's easy for them to get to and from, but if they happen to build more. Let's say they hire "x" amount of people, say

they have 30 employees, but 10 don't live, don't want to live there because they live in town, right? That's gonna happen that's all. I think that's obviously gonna happen. Then what do they do with the other half of them? Can they rent them out?" Shepard said, "Yes." Commission Member Ballard said, "Okay, so they can take them, and they don't have to have them for employee housing." Shepard said, "they have to have them for workforce housing and they have to be restricted as to the amount of rent they can charge based upon the income levels that they're trying to hit and one of the advantages of the smaller units is that it's a much lower rent. So, people who are really very low income can actually afford something. Commission member Ballard said, "okay, so maybe there's not something about that, because, because I think what's gonna take place here is if they build those buildings on their site and they only have half of them rented to employees that they provided, the other half are empty." Commission Chair Marienfeld said, "well no, you could rent them." Commission member Ballard clarified, "so, you can rent them, and you're stipulate what that rent is?" Shepard said, "yeah, they all have to be deed restricted and they have to, there's a really strict formula s to the amount of rent you can charge and how much that can appreciate per year, so they are subject to 50 year deed restrictions." Commission Chair Marienfeld said, "on those units and it if they are not filled by employees they will be offered to other qualifying low, qualifying low income renters." Shepard said, "Yeah." Commission member O'Leary asked, "and if their employment changes but they're still living in town?" Shepard said, "well that's, I mean it would be the tenant's choice. I don't know. I mean I don't know; we haven't gotten to the details. They haven't even come to the Planning Commission for site plan approval yet, because they don't know exactly what they're designing because they're actually talking about incorporating the units into the main structure okay, and having separate entrances and things, but. So, they wouldn't be a separate building out back like the Hoodoo. It would actually be incorporated into the primary structure is what they're proposing, but it would allow that." Commission member Ballard said, "I would think that would be an issue, but I noticed down here that you've to the 17.69.050 the area of affordable housing they're discussion affordable housing here for 1,000 square feet, are, they're just gonna reduce that, are they suggesting to reduce that affordable housing as well as this, the workforce housing, I mean?" Shepard said, "same thing." Commission member Ballard asked, "Is it really the same thing?" Shepard answered, "Well, I'm probably using the terms interchangeably, but they are subject to the assured workforce housing." Commission member Ballard asked, "Okay, okay, so they just kind of fall into that group?" Shepard answered, "Yes. They have to build or do something per that ordinance." Commission member Ballard asked, "So, is affordable housing right now, down to. Have we got that down to 400 square feet?" Shepard said, "Well, you can build in the PAD, you can build 275 square feet. You can also build a 500 square foot unit in the R-3, so it's, you know, and it probably goes back to, should it have been a thousand square feet to begin with when we're not seeing the units getting built? So, maybe we're considering whether the original requirement should be adjusted. That's exactly what we're doing and if you think some numbers change, like if they make them smaller, they have to do more of them, that's an option. I don't know whether we'll actually get them built? So, maybe we're considering whether the original requirement should be adjusted. That's exactly what we're doing. And if you think some numbers change, like if they make them smaller they have to do more of them, that's an option. I don't know whether they will actually get them built. I mean we're trying to kind of, trying to deal with reality. I mean we're trying to, kind of trying to deal with reality." Commission Chair Marienfeld said, "Yeah, that's why I just, I want to make sure we're use, whether or not we end up, I don't mean this as a cut. Whether or not we end up recommending this to City Council or what we recommend. I want to. We have a real-world situation in front of us, which we haven't had yet and a chance to really use this to get something that is actually feasible." Shepard said, "Right. Which is what happens when you adopt an ordinance and people are trying to figure out how to make it work, right? And there is, well, and we, we have to enter into with the, the developer or whoever, we will enter into what's called ALURA, so it's Land Use Regulation Agreement. It's a deed restriction. It's very restrictive. We were looking at another one. We were actually negotiating like a first right of refusal if somebody defaults, I mean there's all kinds of. It's very complicated from a legal standpoint but

that we haven't even begun some of those negotiation. However, the very low or extremely low-income price point is defined by the County. HUD defines it, and so if you're trying to hit the very low, then it's a lot, lot lower rents than a moderate or just 100% of AMI. So, your, you know you're talking about hitting those lower income brackets." Commission Chair Marienfeld said, "And another thing we could think about would be having variation in unit sizes. Say you can have a minimum of just 400, but all a certain percentage of whatever units you're providing could be that small, if that would be something feasible to, so you don't end up with all 400 square foot units, you end up with a mix, which was kind of what we did with the PAD where it intending a mix. Like you need to have some very low, but they don't all have to be very low and I think it does make sense if you're asking for very low-income housing to have it be less than 1,000 square feet. I mean, just thinking about it." Shepard said, "It would be very difficult to provide a \$300 per month rent for a 1,000 square foot unit." Commission member Ballard asked, "So, is there a fee that's being set there then, for if somebody has a mote, they're providing this workforce housing, can they say this is what we're charging our employee for rent? Shepard answered, "they have to agree to maximum rents." Commission member Ballard asked, "What, and that maximum rent is set by?" Shepard answered, "It's based on. There are formulas that are based on the level of median income in the County." Commission Chair Marienfeld said, "Yeah, it's the USDA formula. It's same one they use for the Rural Development Loans." Commission member Ballard asked, "Okay, but, but I'm wondering if an employer in lieu of that rent is gonna be able to say that a minimum wage that we're paying you or, or you know. Let's say they're getting \$12 per hour for cleaning rooms or something. Are they gonna be able to put that down at nine?" Councilmember Marienfeld said, "They always could as long as it's the legal minimum wage." Shepard said, "We would try to work something into an agreement so that wouldn't necessarily happen, and again they could rent these to anybody that works in Moab." Commission member Ballard said, "Well, I'm just saying that it gets into a big bag of worms." Shepard said, "This whole thing gets into a big back of worms. This is extremely complicated code that was adopted and it's, it's almost, with this exception, it's almost impossible for people to actually build the units because of the land costs associated with it, and you know, and so we want to try to get something. We don't want to give people a free ride. We understand that there's a huge impact. On the other hand, what's gonna get units built? Commission member Ballard said, "Because if they can't afford it, how can the City?" Shepard said, "Well, that's the problem we're having." Commission member Ballard said, "I mean, if you're gonna pay in lieu, in lieu of and then if its not enough for them to be able to afford it, the City's gonna be in the red, and I'm not sure they can afford that." Commission Chair Marienfeld said, "Yeah, the idea, I think being with providing housing. Pretend. I think as far as code writing we should pretend that these units are anywhere that they're providing. We have to. You know if an employer is gonna pay poorly, I don't agree with this, but the argument would be that the free market will make it so they can't hire employees. I don't think that's true, but you that's the, you know, if, if you're, if you have, you know if you get first-come first-serve on housing units at your employer and then they're opened up to other members of the community you can take them. You know, if I don't how. I don't know that we can talk about wages all?" Shepard answered, "It's not, no. It's crossing too many." Commission member Ballard said, "It is, but, but I would just like to make one more comment and that is I think the 400 square feet is not unreasonable." Commission Chair Marienfeld said, "Yeah, I agree." Shepard said, "I have lived in a lot." Commission member Marienfeld said, "Yes. Size. I don't think it's unreasonable as a living space whether or not we want to allow it as the minimum in all instances is a different story." Shepard said, "Yeah, I agree with that. So, maybe I'll try to set up, sort of alternatives to talk about." Commission Chair Marienfeld said, "And if, you're available to continue discussions with the planning staff, it'd be really great to kind of get those outward parameters, because you're sort of mired in it right now, just understanding if you give us, here's your high-end square footage number, we're not gonna be like, okay we're gonna do that . So, be forthright as you can, I think with staff." Shepard said, "Okay, great."

At 6:46 PM Commission Chair Marienfeld continued the public hearing.

Review And Possible Recommendation To City Council On Resolution 01 -2020 The Two-Mac Minor Subdivision Located At 1053 Mill Creek Dr. Moab, UT 84532 Deed restriction:

Discussion: Shurtleff provided a brief presentation explaining that this item involves subdividing the 1.49-acre parcel located at 1053 Mill Creek Drive into three lots. With lot one becoming .62 acres, lot two becoming .36 acres and lot 3 becoming 2.22 acres. The property is vacant and situated immediately west of the Gravel Pit Lanes Bowling Alley and has street frontage access to Mill Creek Drive. This property and the bowling alley are zoned C-4 general commercial zone. Directly across from this property are the Cinema Court Apartments and a section of County property zoned small lot residential and general business access. The property has a cliff, or hill, on the northern boundary. No removal or contouring is being requested during the processing of this application. The reason for requesting that this parcel be divided into smaller lots was, hopefully, for local developers to build small commercial projects to serve the local community. Landowners Doug and Jeremy McElhaney were present to answer any questions the Commission had. Doug McElhaney explained that lot 1 is larger, but much of it is unusable because of the cliff located there. Commission member Ballard clarified their intent is to build commercial buildings. Doug McElhaney explained that that was not what they were proposing. They were proposing is that as the property stands it cannot be developed by a small developer. The issues caused by the terrain are insurmountable as one parcel. Therefore, they were proposing to split it into three manageable sized lots so that a small commercial development could be built on it without a 30-space parking lot. Hopefully, a local developer or person would want to buy one and build a small building on it. Shepard noted that there would be no change in zoning. The C-4 zones allows buildings to be built right next to each other just like Main Street. There was discussion regarding easements and the City right of way and the potential uses that could be put there.

Motion and vote: Commission Chair Marienfeld moved to forward a positive recommendation to the City Council for the approval of the Two-Mac Minor Subdivision Resolution 01-2020. Commission member Ballard seconded the motion. The motion passed 5-0 with Commission members Becnel, Ballard, Wojciechowski, Marienfeld and O'Leary voting aye.

Review And Possible Recommendation To The City Council On Ordinance 2019-30, An Ordinance Amending The City Of Moab Municipal Code, Section 17.31 RC Resort Commercial Zone To Allow Hotels And Motels, Subject To Revised Development Standards:

Discussion: Shepard explained that she would go over the additional information that she had created based upon the City Council's request. There wasn't very clear direction given by Council. Shepard proposed stepping back and possibly having some joint work sessions with the Planning Commission and City Council to try to get to the core of what it is they're trying to achieve and how they want to achieve it. There are two Councilmembers that feel very strongly about some kind of restriction on the numbers until everyone is caught up. There have been a lot of numbers floating around about numbers of units and how many existing rooms there are and how many proposed and somehow the community ended up with a unit calculation that the number of overnight accommodations units that are in the queue are 38% of what the City currently has. She didn't know where that number came from. Just for the City, it's 20% that are in the queue at this time that are moving forward. Shepard wanted to give people real numbers to work with. The only hotel in the queue that has not been approved by the Planning Commission is the Henry Shaw. Most of them have their building approval. She displayed the parcels that are left in the RC zone and discussed what may be placed on those parcels. There had been some discussion with one of the landowners regard the standards being proposed. They thought that requiring a certain amount of commercial space and incentivizing that was a good idea and their vision was a small boutique hotel with a separate retail business that could serve either the people staying out there or the Moab residents. Commission Chair Marienfeld asked if there was anything that Council wanted from the Commission at

this point. All of the Council had very individual comments and she would really like for at least three of them to give staff some directions so that they aren't spinning their wheels. Commission Chair Marienfeld felt that the best thing to do would be to get the joint meeting scheduled. Commission member Ballard felt that they needed to have more meetings to accomplish anything. The recommendation was to continue to look at the emails that Shepard had been sending and try schedule a joint meeting as soon as possible.

Motion and vote:

Future Agenda Items: Possibly Four Corners Behavioral Health

Adjournment: The meeting was adjourned at 7:11 PM.

Moab Planning Commission April 23, 2020

Director's Report

Bylaws

Attached for your reference are the approved bylaws for the Moab City Planning Commission. Please take the time to look them over prior to the meeting. If there are any questions, we can discuss them at the meeting on April 23, 2020.

The bylaws include a section on meeting attendance that reads as follows:

1.2 Attendance. Each commissioner shall be responsible for attending at least seventy-five percent of the regularly scheduled meetings within the calendar year. Should circumstances arise where a Commissioner is unable to attend a scheduled meeting, the commissioner shall be responsible for notifying the Planning Department as soon as possible. Commissioners who fail to attend seventy-five percent of the meetings shall be removed from the Commission.

At the end of every quarter, the Mayor reviews the attendance records of the Planning Commission. In the past few quarters, there are some members that have had several absences. It is important that the Planning Commissioners be aware of their attendance.

You can have "excused" absences for reasons such as having a baby, family emergencies, work conflicts that cannot be avoided, and similar situations. That is going to happen and is expected occasionally.

Remote Meetings

The past few meetings have been unusual due to the remote meetings necessary to comply with COVID-19 restrictions. Remote meeting attendance is important as well.

We have a great Planning Commission and members represent a broad range of ideas and interests in the community. Please be mindful of your attendance.

If you are having difficulty with the technology for the remote meetings, please let us know and we will do everything we can to accommodate you.

MOAB CITY PLANNING COMMISSION BYLAWS

2/20/2018 as adopted

PURPOSE

These policies and procedures are designed and adopted for the purpose of providing guidance and direction to the members of the Moab City Planning Commission in the performance of their duties. The Planning Commission shall be governed by the provisions of all applicable State statutes, City ordinances, and these rules. Nothing in these rules shall be interpreted to provide an independent basis for invalidating or in any way altering a final decision of the Commission.

ARTICLE 1 – GENERAL PROVISIONS

The Moab City Planning Commission, hereinafter referred to as the “Commission,” shall be governed by the following statutes, ordinance, and rules:

- 1.1 Applicable State Statutes, Local Ordinances and Rules. To the extent that they remain in force and in effect and as they may be amended from time to time, the Commission and its members shall be governed by state statutes and local ordinances and policies including the following:
 - a. State statutes applying to public boards, members, and officials.
 - b. State statutes governing the activities of Municipal Planning Commissions.
 - c. The Moab City General Plan and Moab Municipal Code Book and other applicable ordinances and regulations approved by the Moab City Planning Commission or Moab City Council.
 - d. The adopted Rules of Procedure for Planning Commission Meetings. (Resolution #2018-06)
 - e. The rules and policies of the commission as set forth herein.
- 1.2 Familiarity with State Statutes, Local Ordinance, and Rules Affecting the Commission. Upon taking office, all members of the Commission shall familiarize themselves with the applicable statutes, ordinances and rules, and, while in office, shall maintain such knowledge, including knowledge of amendments and additions, and shall be strictly governed thereby in the conduct of Commission affairs.
- 1.3 Number of Commission Members and duration of term. The number of Planning Commission members shall be seven (7) and they shall serve for a term of three (3) years.

ARTICLE 2 – POWERS AND DUTIES

The Commission shall have the following powers and duties:

- a. To prepare or cause to be prepared a General Plan, or elements thereof, and to recommend the General Plan, or elements, to the Moab City Council;

- b. To prepare or cause to be prepared amendments to such plan and elements thereof and to recommend the amendments to the Moab City Council;
- c. To review and make recommendations to the Moab City Council with regard to amendments to the General Plan Land Use and Zoning Map;
- d. To initiate, review and make recommendations to the Moab City Council on applications for amendments to the zoning text of the Moab Municipal Code to promote health, safety and welfare;
- e. To hear, review and recommend approval or disapproval of applications where required by the Moab Municipal Code in accordance with the rules and regulations established by the Moab City Council, or to approve certain development applications when specifically authorized by the Moab City Council; and
- f. To adopt by-laws, policies, procedures and regulations for the conduct of its meetings, the consideration of application for development approval, and for any other purposes deemed necessary for the function of the Commission.

ARTICLE 3 – CONDUCT OF COMMISSION MEMBERS

- 3.1. Ethical Principles. The following ethical principles shall guide the actions of the Commission and its members in carrying out the powers and duties described above:
 - a. Serve the Public Interest. The primary obligation of the Commission and each member is to serve the public interest.
 - b. Support Citizen Participation in Planning. The Commission shall ensure a forum for meaningful citizen participation and expression in the planning process, and assist in the clarification of community goals, objectives and policies.
 - c. Avoid Conflicts of Interest. Commission members shall avoid conflicts of interest and even the appearance of impropriety. A commissioner with a potential conflict of interest shall make the interest public, abstain from voting on the matter, not participate in any deliberations on the matter, and leave any chamber in which such deliberations are to take place. The commissioners shall also not discuss the matter privately with any other official voting on the matter.
 - d. Render Thorough and Diligent Planning Service. If a commissioner has not sufficiently reviewed relevant facts and advice affecting a public planning decision, that commissioner should not participate in that discussion.
 - e. Not Disclose or Improperly Use Confidential Information for Financial Gain. A commissioner shall not disclose or improperly use confidential information for financial gain, and must not disclose to others confidential information acquired in the course of his/her duties, or use it to further a personal interest.

- f. Ensure Full Disclosure at Public Meetings. The Commission shall ensure that the presentation of information on behalf of any party to a planning question occurs only at the scheduled public meeting on the question, not in private, unofficially, or with other interested parties absent, and must make partisan information regarding the question received by mail, telephone, or any other communication, part of the public record.
- g. Respect for and Courtesy to Other Commission Members, Public and Staff. Each commission member has the same rights and privileges as any other member. Any commissioner has the right to be heard and to hear what others have to say about items being considered by the Commission.

3.2 Representation of Applicants or Petitioners. No member of the Commission shall represent applicants or petitioners on matters on which the Commission is to make determinations or recommendations.

3.3 Ex-parte Communications. Pre-arranged private meetings between a commissioner and an individual(s) and their agents, or other interested parties with a matter pending before the Commission are prohibited. Partisan information on any application received by a Commissioner, whether by mail, telephone, or other communication should be avoided. When such communication does occur it must be made part of the public record by the commissioner.

3.4 Attendance. Each commissioner shall be responsible for attending at least seventy-five percent of the regularly scheduled meetings within the calendar year. Should circumstances arise where a Commissioner is unable to attend a schedule meeting, the commissioner shall be responsible for notifying the Planning Department as soon as possible. Commissioners who fail to attend seventy-five percent of the meetings shall be removed from the Commission.

ARTICLE 4 – MEETINGS AND ORGANIZATION

4.1 Regular Meetings. Regular meetings of the Commission shall be scheduled at least twice a month unless there are mitigating circumstances, such as lack of a quorum, lack of items to be discussed, holidays and other circumstances.

4.2 Citizen Planner Workshop. All Commissioners are required to attend a minimum of one (1) citizen planner workshop trainings conducted by the Utah League of Cities and Towns. All commissioners shall attend a second training offered by any of the following: Utah Chapter of the American Planning Association, the Utah Land Use Institute, or other acceptable urban planning or planning law conference.

4.3 Special Meetings, Work Sessions and Field Trips. Special meetings, work sessions and field trips for any purpose may be held at the call of the chair, the Moab City Council or the Planning Department. Work session and field trip meetings shall be for the discussion and informational purposes only; no action shall be taken on any item.

- 4.4 Open to the Public. All regular, special, work session and field trip meetings of the Commission are open to the public and will be noticed in accordance with the requirements of The Open and Public Meetings Act.
- 4.5 Membership. The Commission shall consist of seven (7) members selected from the public at large and form a representative sample of the community. Members shall serve for terms not to exceed three (3) years in length.
- 4.6 Officers. At an annual meeting to be held at the first regular meeting at the commencement of each calendar year, the members of the Commission shall elect one (1) of its members as Chair and one (1) as Vice Chair. In the absence of the Chair, the Vice Chair shall act as Chair and shall have all powers of the Chair. If both the Chair and Vice Chair are absent or unable to preside over the meeting, the commission members present shall appoint an Acting Chair to preside. If the Chair leaves the Commission during an appointed term, the Vice Chair shall succeed to the office of Chair for the remainder of the term. If the Vice Chair leaves the Commission or succeeds to office of the Chair, the Commission, at its next regularly scheduled meeting, shall hold an election to fill the vacancy of the Vice Chair.
- 4.7 Role of the Chair. The Chair shall be in charge of all proceedings before the Commission, and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Commission. Whenever the Chair rules a motion out of order, the Chair shall explain why it is so, and advise the mover of corrections needed to make the motion in order.

ARTICLE 5 – PROCEDURES

- 5.1 Quorum and Necessary Vote. No regular or special meeting of the Commission at which action may be taken may be called to order, or items voted upon, by the Commission without a quorum consisting of at least four (4) members of the Commission being present. A majority of the Commission members then present and voting is required for final action. A quorum is not required to hold a work session or field trip, so long as notice is given in accordance with The Open and Public Meetings Act.
- 5.2 All meetings shall be conducted in accordance with the
- 5.3 Forms and Procedures of Decisions and Motions. Robert's Rules of Order Newly Revised, may be used by the Chair as a general guide.
- 5.4 Motions. Any Commissioner, including the Chair, may make or second a motion.
- a. Motions should be supported by reasons. The person making the motion is encouraged to state the reasons and finding(s) supporting the motion at the time the motion is made. Any conditions for approval shall be stated. The motion may refer to the staff report for detail of the conditions for approval if the person making the motion desires to do so.
 - b. Motions may be repeated for clarification following discussion and prior to the vote at the request of any Commissioner.

- c. Planning Commission may request legal advice from the City Attorney in the preparation, discussion and deliberation of motions and findings in support of any motion.

5.5 Voting. All Commission members, including the Chair, are entitled to vote. No Commission member shall discuss or vote on any matter deciding an application or petition except after attending the public meeting(s) and/or hearing(s) on the matter and listening to all testimony presented. A member may qualify to participate in further discussion and vote on the matter by examining the evidence and reviewing the record of the meeting(s) and/or hearing(s) at which the member was absent.

5.6 Rules of Order. In accordance with these rules, the Chair shall decide all points of procedure and order unless otherwise directed by a majority vote of the members in attendance.

5.7 Conduct During Public Hearings. During all meetings and hearings, persons providing testimony shall proceed without interruption except that of the Commission. All comments, arguments and pleadings shall be addressed to the Chair. There shall be no debate or argument between individuals. The Chair shall maintain order and decorum, and, to that end, may order removal of disorderly or disruptive persons.

ARTICLE 6 – AMENDING BY-LAWS

6.1 Amending By-Laws. These by-laws may be amended by a majority vote of the Commission, except where such amendments would be contrary to the requirements or limitations set forth by State Law or Moab Municipal Code. An amendment may be proposed at any regular meeting of the Commission. Member shall receive a copy of the proposed or amended by-laws not less than one week prior to the meeting at which said proposed changes shall be heard.

Moab Planning Commission Agenda Item

Meeting Date: April 23, 2020

Title: Public Hearing and Recommendation to City Council on Ordinance #2020-12 Approving a Zoning Map Amendment for property owned by James Nelson, located at 191 Walnut Lane Moab UT 84532, amending the split zoned parcel from R-2 Single-Household and Two-Household Residential Zone and R-4 Manufactured Housing Residential Zone, to only R-4 Manufactured Housing Residential Zone; and Amending the City of Moab Official Zoning Map.

Date Submitted: February 25, 2020

Staff Presenter: Cory P. Shurtleff, Assistant Planner

Property Owner: Nelson Court LLC, James Nelson

Applicant: James Nelson

Location: 191 Walnut Lane, Moab, Utah 84532

Zoning: Property is currently split zoned, R-2 Single-Household and Two-Household Residential Zone and R-4 Manufactured Housing Residential Zone.

Attachment(s):

Exhibit A: Draft Ordinance #2020-12

Exhibit B: Plat

Exhibit C: Context Zoning Map including Ordinance #2020-01 Zoning Map Amendment

Exhibit D: Vicinity Map prior to Ordinance #2020-01 Zoning Map Amendment

Options: The Planning Commission is being asked to hold public hearing and continue action to a future meeting;

While researching this rezone request, the staff noticed that the parcel information we have shows an inconsistency in the parcel configuration that has likely been caused by a survey error. The applicant is having additional survey work done to determine the exact legal description of the parcel to be rezoned. Therefore, the staff is recommending that the Planning Commission hold the public hearing and continue action to a future meeting. That Meeting will occur as soon as the consistency issue is resolved.

Narrative:

The application was submitted by property owner James Nelson on February 25, 2020 with sufficient documentation and fee payment. The narrative submitted by the applicant was as follows: Amend split zone to one zone, complete to R-4.

Background:

The property located at 191 Walnut Lane, owned by Nelson Court LLC, James Nelson, is currently operating as a mobile home park with 13 lots. This property is directly west of the City owned Walnut Lane Property, and adjacent to the east of the vacant Moab Valley Health Care property. The parcel is currently split zoned with R-4 Manufactured Housing Residential Zone (in which the property's use is permitted) on the majority of the South portion of the parcel; and R-2 Single-Household and Two-Household Residential Zone on the northern third of the parcel. The total area of the parcel is approximately 1.04 acres, with approximately .35 acres of the parcel zoned R-2. The R-

2 Zone is extending south from the residential neighborhood beyond the northern boundary of the parcel.

Following the “Walnut Lane” Ordinance #2020-01 rezone, where Planning Commission forwarded a positive recommendation to City Council, and City Council approved the ordinance amending the Official Zoning Map, the applicant wants to modify the zoning on the parcel so that it is all in one zone to allow for easier development in the future. The “Walnut Lane” Ordinance #2020-01 rezone, is nearly identical in nature where the applicant is hoping to resolve discrepancy in zoning that was likely adopted in error on his property.

Zoning Map Change Criteria:

Section 17.04.060 of the Moab Municipal Code sets forth criteria to consider when reviewing a Zoning Map Amendment. The criteria are listed below followed by a response or analysis by city staff as follows:

17.04.060 Map amendment and approval criteria. The Planning Commission and City Council shall consider the following criteria in reviewing a proposed map amendment.

A. Was the existing zone for the property adopted in error?

Staff Comment: It is likely the property was split-zoned in error, as the established R-2 zone was drawn down the center of the right-of-way for 200 N and did not follow property boundaries for three parcels along Walnut Lane. Since then been amended with Ordinance #2020-01 to align the two adjacent Walnut Lane Properties as entirely R-4, creating a peninsula of R-2 on this property.

B. Has there been a change of character in the area including, but not limited to: the installation of public facilities or new utilities; other approved zone changes; new growth trends; deterioration of existing development; or the need for development transitions?

Staff Comment: The properties own by the City located directly east of this property were amended with Ordinance #2020-01 and rezoned as is being requested with this application.

C. Is there a need for the proposed zoning within the area or community?

Staff Comment: Yes. The current use on the property is not permitted in the R-2 zone, and it is best planning practice to correct a split-zoning error when possible.

D. Is the proposed zoning classification compatible with the surrounding area or uses; will there be adverse impacts; and/or can any adverse impacts be mitigated?

Staff Comment: The proposed zone change is compatible with the surrounding area. The adjacent properties are a mix of R-2, R-4, and C-2 zones and include single-family residential, multifamily residential, a mobile home park, overnight accommodations, and healthcare services uses.

E. Will benefits be derived by the community or area by granting the proposed zoning?

Staff Comment: Rezoning the property to R-4 will grant the City a higher residential density to develop more affordable and attainable housing for the community. Additionally, PAD developments are not permitted in the R-2 zone, so by amending the zone, the City will be able to use the PAD to redevelop the property.

F. Are adequate facilities available to serve development for the type and scope of development suggested by the proposed zoning classification? If utilities are not available, can they be reasonably extended?

Staff Comment: Yes, as no proposed changes are planned for this parcel currently, the present facilities available to serve the parcel are sufficient. At a time of redevelopment in the future, upgrades to facilities may be required.

G. Does the application conform with the provisions of the Moab General Plan, the Land Use Code, and applicable agreements with affected governmental entities?

Staff Comment: The Future Land Use Map of the General Plan shows this property as Residential, reflecting the current R-2 and R-4 zoning. The zone change will comply with the elements, goals, and policies of the Moab General Plan, including the following:

- Promote a variety of housing types and neighborhoods for primary residences.
- Encourage housing opportunities for a variety of needs and income levels.
- *Promote strategies that improve the ability of all Moab residents to have access to affordable, quality housing.*

Comparison of Uses:

Permitted Uses in the R-2 Zone	4 Permitted Uses in the R-4 Zone
ADUs	ADUs
Agriculture	Agriculture
Daycare	Carpentry Shops
Foster care homes	Boys' and Girls' Schools and correctional institutions
Group homes	Day Care
Home occupations	Group Homes
One-household dwellings and accessory uses	Public Libraries
Places of worship	Home Occupations
Planned unit developments	One-household dwellings and accessory uses
Public facilities	Place of Worship
Public libraries	Planned unit developments
Public parks and public recreation buildings	Public Facilities
Schools	Public Parks and public recreation buildings
Two-household dwellings and accessory uses	Schools
	Two-household dwellings and accessory uses

CITY OF MOAB ORDINANCE NO. 2020-12

AN ORDINANCE APPROVING A ZONING MAP AMENDMENT FOR PROPERTY LOCATED AT 191 WALNUT LANE, CONSOLIDATING A SPLIT ZONE PARCEL FROM R-2 SINGLE-HOUSEHOLD AND TWO-HOUSEHOLD RESIDENTIAL ZONE, AND R-4 MANUFACTURED HOUSING RESIDENTIAL ZONE, TO ONLY R-4 MANUFACTURED HOUSING RESIDENTIAL ZONE.

WHEREAS, the following describes the intent and purpose of this ordinance:

- a. Applicant and property owner James Nelson has applied to rezone parcel 01-0001-0107 located at 191 Walnut Lane, Moab UT 84532. Taxing description of parcel: BEG SW COR LOT 3 SEC 1 T26S R21E; E 6 2/3 RDS; N 25 RDS; W 6 2/3 RDS; S 25 RDS POB 1.04 AC; and
- b. To modify the split zoning of the parcel to have only one zone within the parcel. Currently zoned R-2 Single-Household and Two- Household Residential Zone and R-4 Manufactured Housing Residential Zone, to only R-4 Manufactured Housing Residential Zone; and
- c. The portion of R-2 zoned parcel that is being rezoned is approximately .35 acres of the total parcel approximately 1.04 acres;
- d. The property is currently a mobile home park and intends to continue its use as is, for the immediate future; and
- e. The adjacent properties include single-household and multi-household residential, mobile home park, and health care service; and
- f. The applicant provided the Planning Commission with an application and the appropriate documents as required in MMC Section 17.04. The Planning Commission reviewed the application in a duly advertised public hearing held on April 23, 2020; and
- g. The Planning Commission determined that the amendment to the zoning maps is in accordance with the General Plan and development trends of the community and that this zoning amendment supports opportunity for affordable housing in the local community. Having evaluated the staff report, statements from the applicant and the public, the Planning Commission concluded that the proposed change in zoning for this property was an acceptable amendment to the Official Zoning Map; and
- h. The Planning Commission has determined that the review standards in Moab Municipal Code chapter 17.04.060, Map amendment approval criteria, have been met as follows:
 - A. The proposed zoning classification for residential use is compatible with the majority of surrounding uses and impacts to the existing development can be mitigated,
 - B. Adequate facilities are available to serve the type and scope of the development suggested by the proposed zoning classification,
 - C. The surrounding uses will be buffered from other residential and commercial development in the area; and
 - D. The application conforms to the provisions of the Moab General Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MOAB CITY COUNCIL, having considered public comment, staff comments, and discussion of the pertinent aspects of the proposed zone change, by

adoption of Ordinance #2020-12, does hereby find, determine, and declare, that the applicable provisions of the Moab Municipal Code and the intent of the Moab General Plan can be met;

AND, FURTHERMORE, the City Council approves the application to rezone the property located at 191 Walnut Lane, Moab UT 84532, to a singular zone R-4 Manufactured Housing Residential Zone, amending the Official Zoning Map, is hereby APPROVED.

PASSED AND APPROVED in open Council by a majority vote of the Governing Body of Moab City Council on May 12, 2020.

SIGNED: _____
Emily Niehaus, Mayor

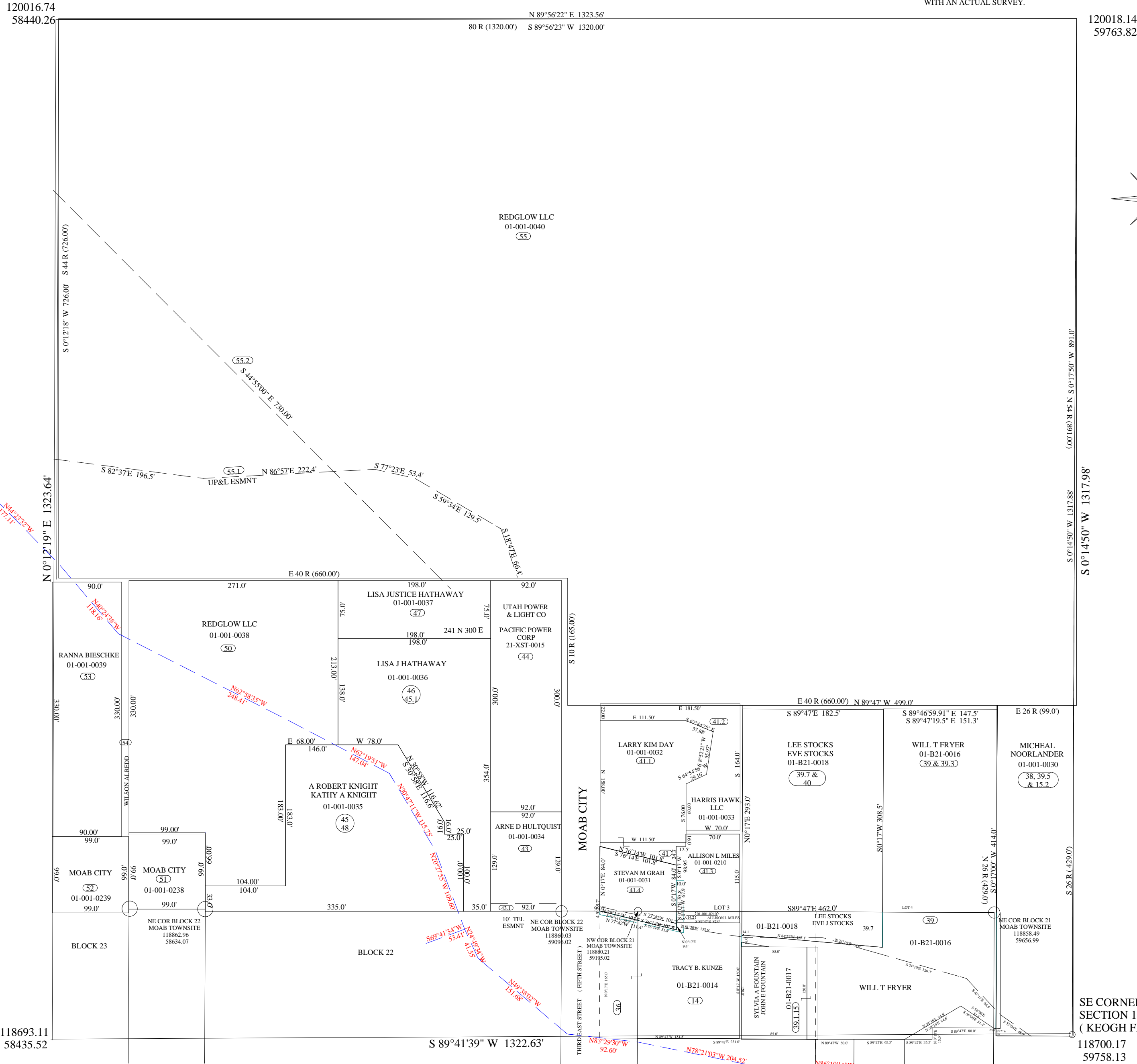
ATTEST: _____
Sommar Johnson, Recorder

LOT 1 (NE1/4 NE1/4) SECTION 1 T26S R21E

SCALE: 1" = 100'

BK 21 PG 191

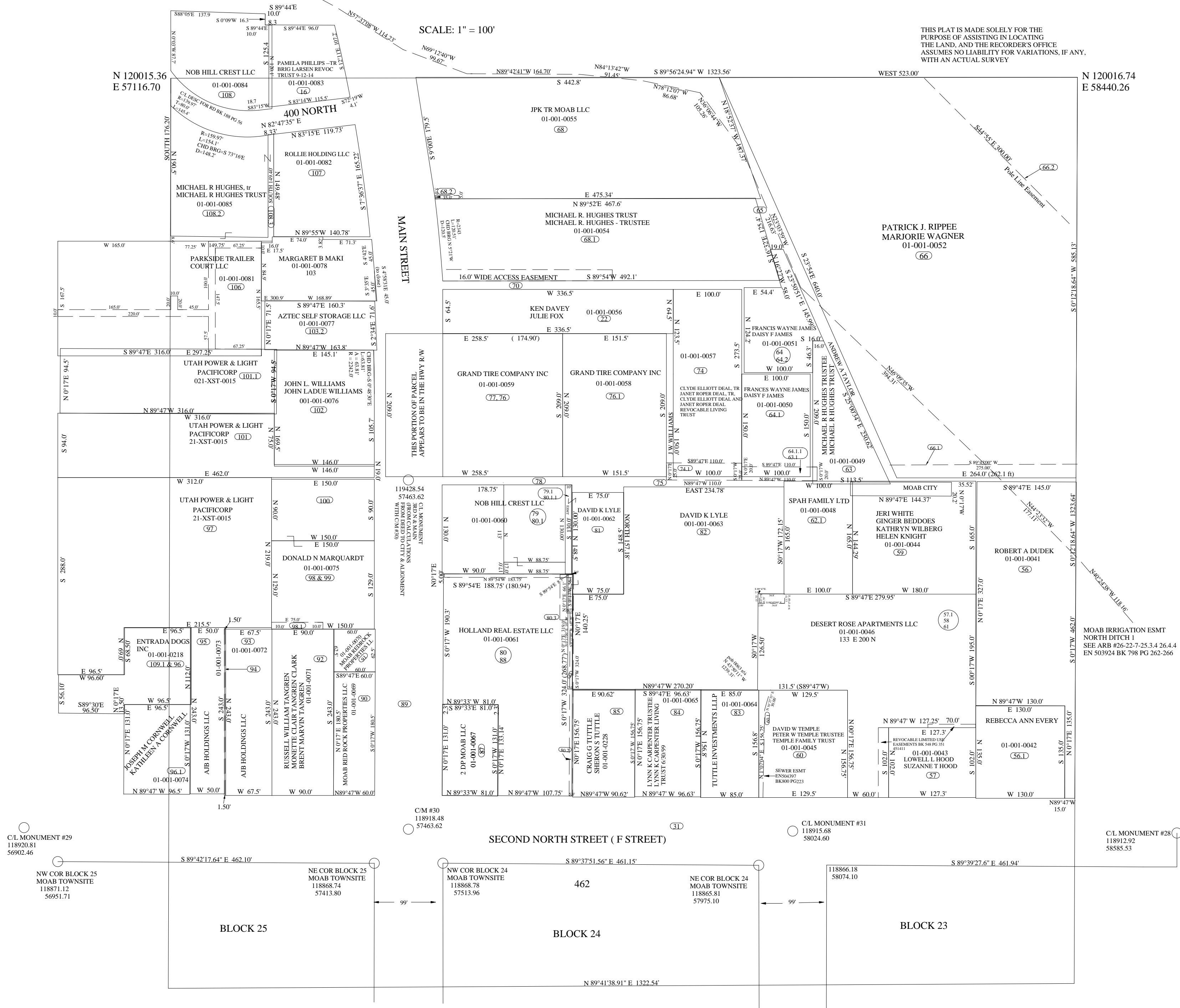
THIS PLAT IS MADE SOLELY FOR THE
PURPOSES OF ASSISTING IN LOCATING
THE LAND, AND THE RECORDER'S OFFICE
ASSUMES NO LIABILITY FOR VARIATIONS IF ANY,
WITH AN ACTUAL SURVEY.



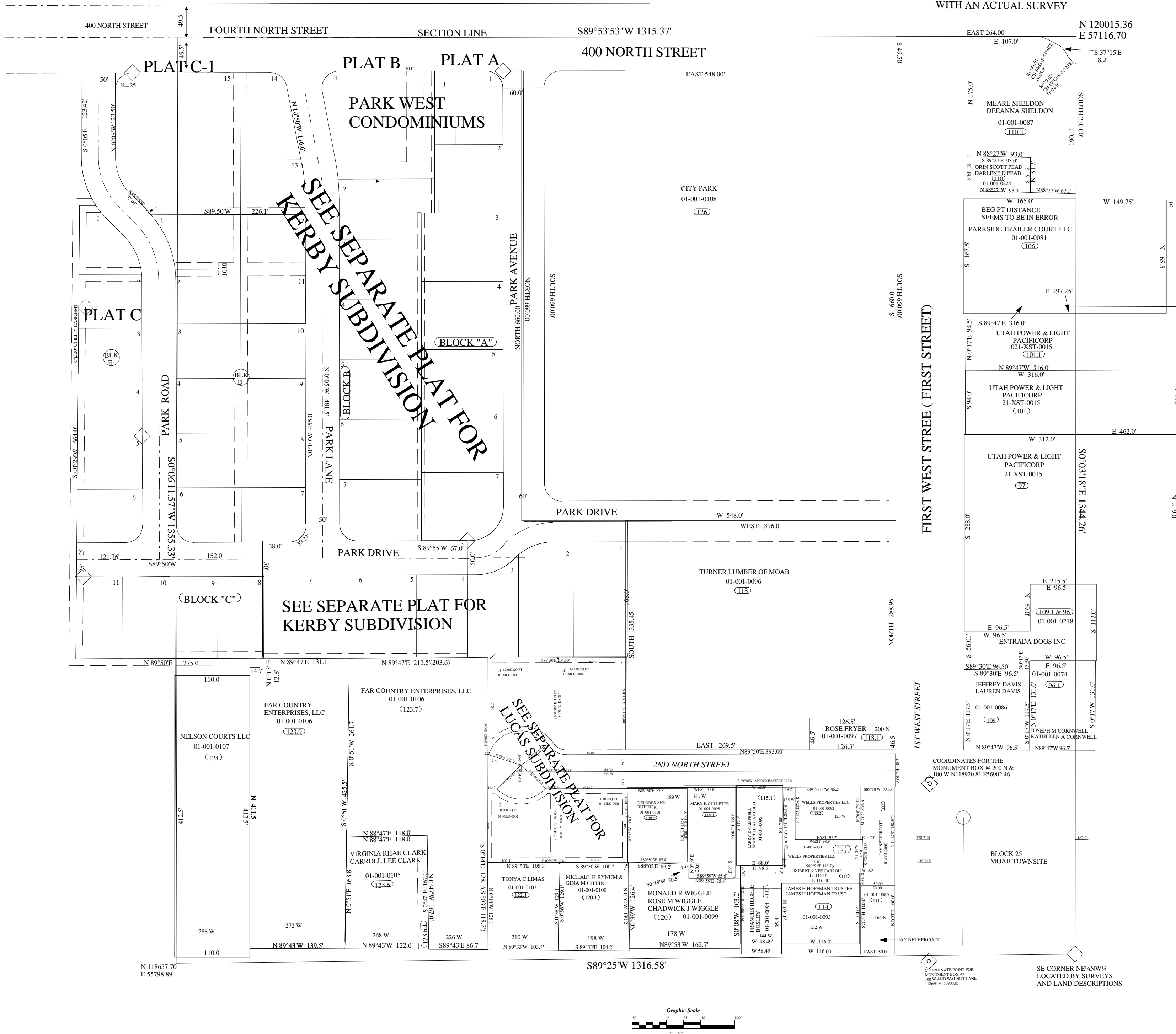
SE CORNER LOT 1,
SECTION 1, T26S, R21E, SLB&M
(KEOGH FILE)

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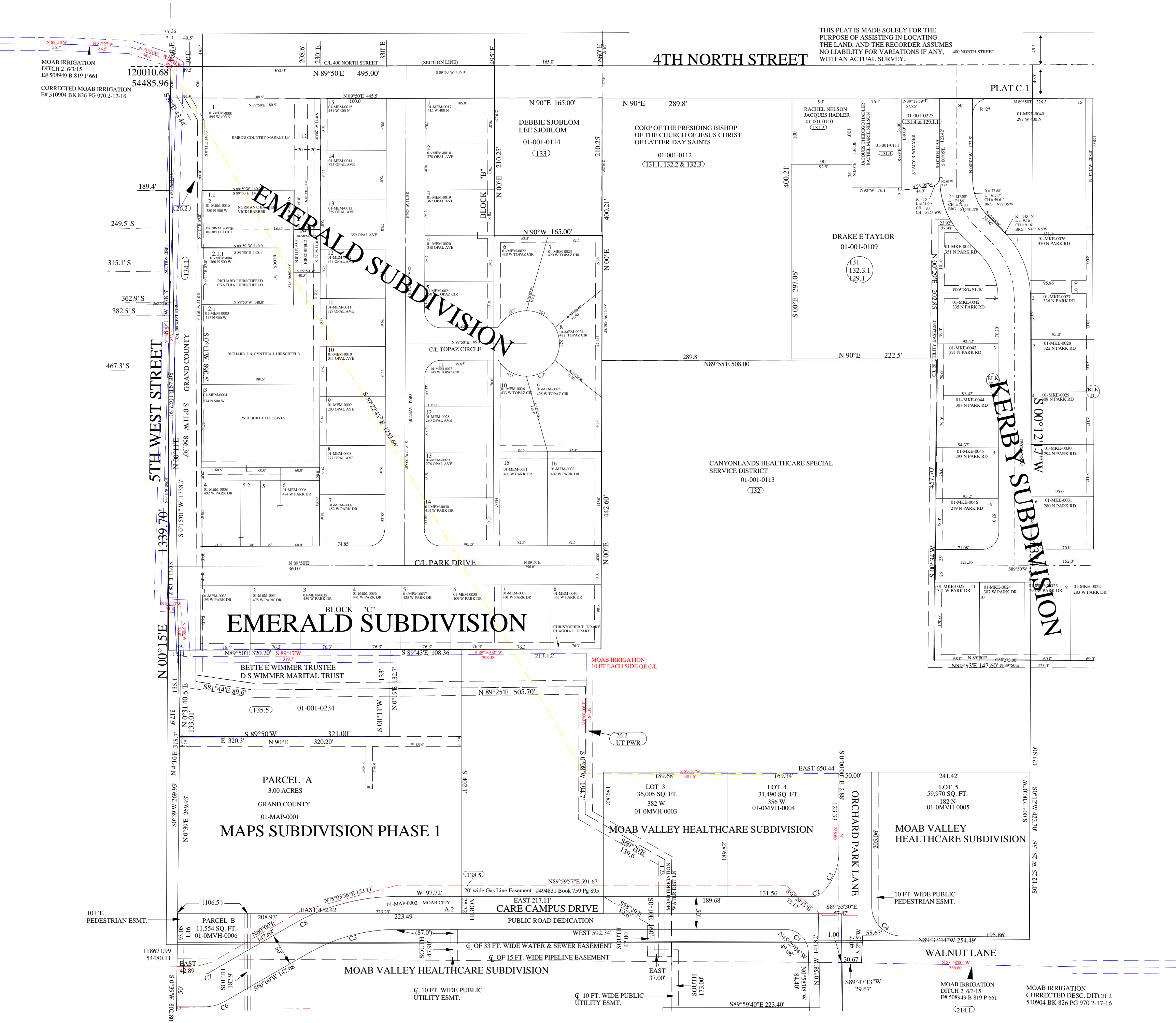
LOT 2 (NW¹/₄ NE¹/₄) SECTION 1 T 26 S R 21 E



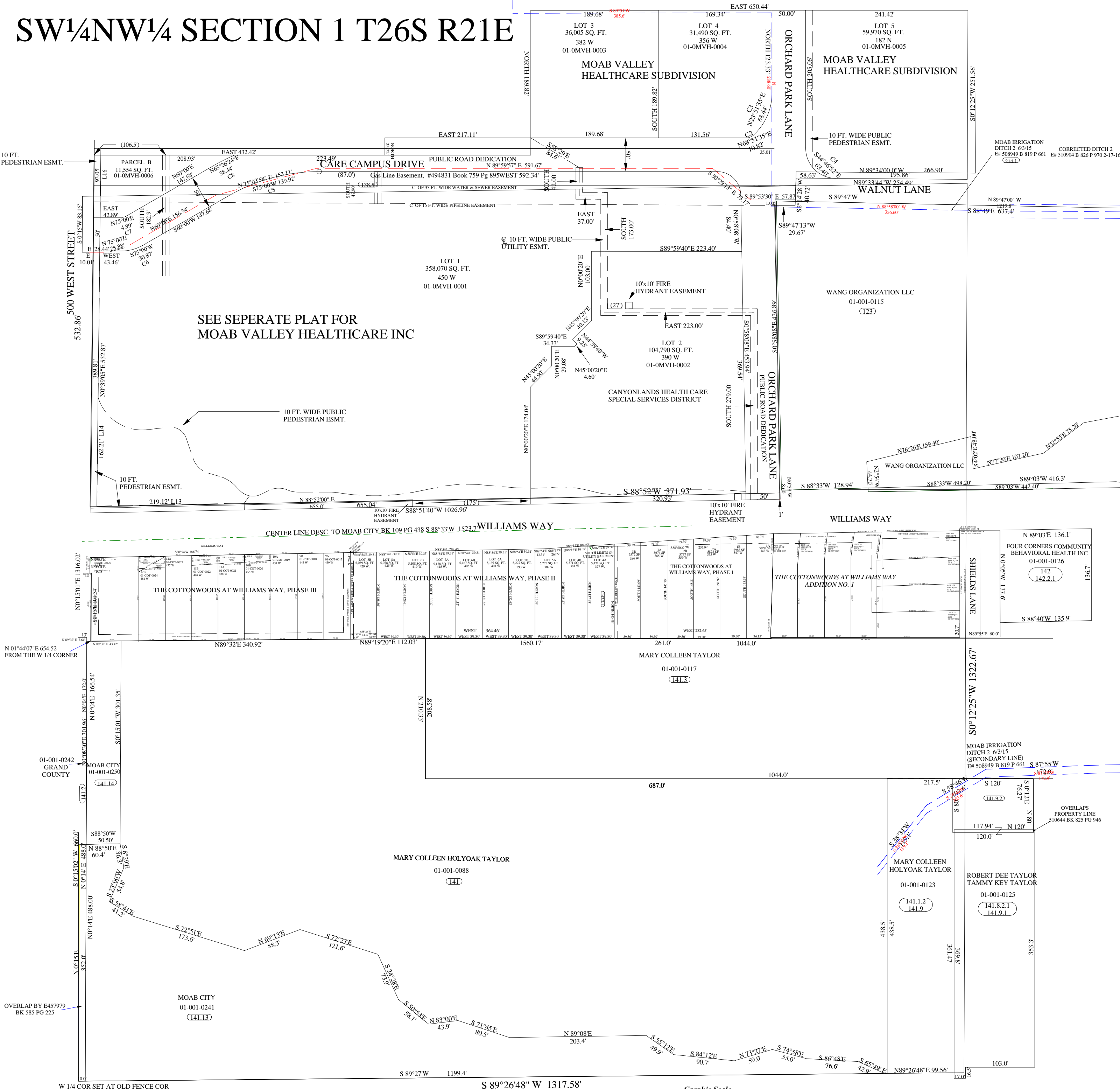
THIS PLAT IS MADE SOLELY FOR THE
PURPOSE OF ASSISTING IN LOCATING
THE LAND, AND THE RECORDER ASSUMES
NO LIABILITY FOR VARIATIONS IF ANY,
WITH AN ACTUAL SURVEY



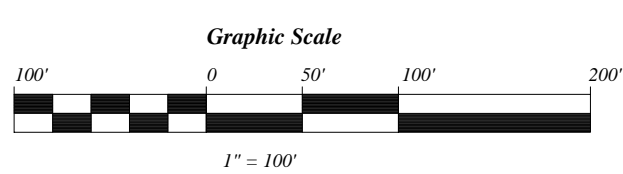
(LOT 4) NW 1/4 NW 1/4 SECTION 1 T26S, R21E



SW1/4NW1/4 SECTION 1 T26S R21E



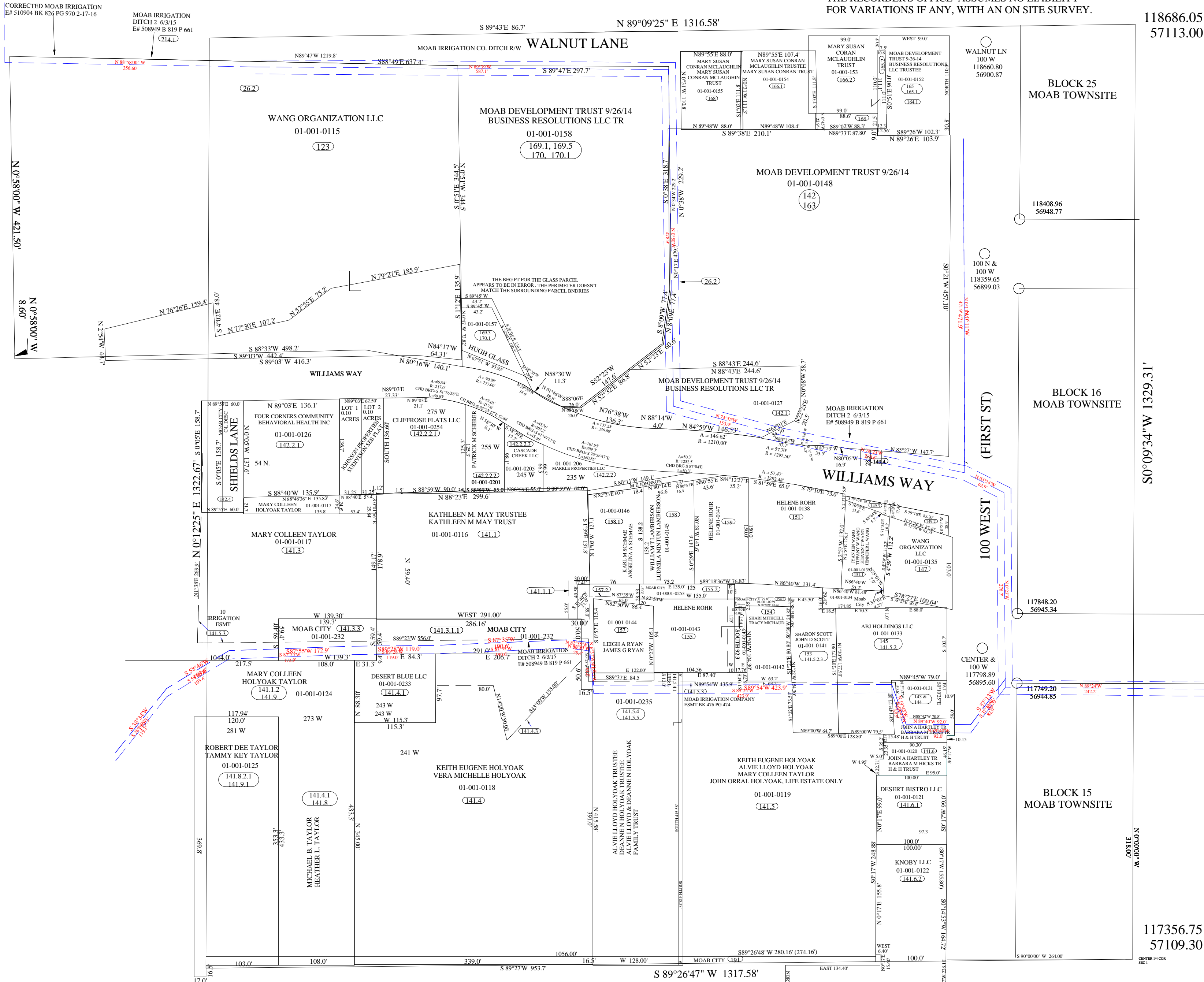
W 1/4 COR SET AT OLD FENCE COR
117331.30 54474.26
(WOULD BE N 117333.65 E 54474.25 IF SET AT 38.88 CH
N FROM SW COR
IF SET BY PROP DIST N 117389.11 E 54474.51
SURVEY INFORMATION BY RLJ 11/29/78
GRAND COUNTY SURVEYER'S OFFICE FILE)



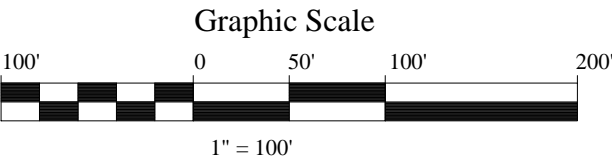
SE1/4NW1/4 SECTION 1 T26S R21E SLB&M

THIS PLAT IS DRAWN FROM THE PARCEL DESCRIPTIONS
AND IS SOLELY FOR THE PURPOSE OF ASSISTING IN LOCATING
THE LAND.
THE RECORDER'S OFFICE ASSUMES NO LIABILITY
FOR VARIATIONS IF ANY, WITH AN ON SITE SURVEY.

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57113.00

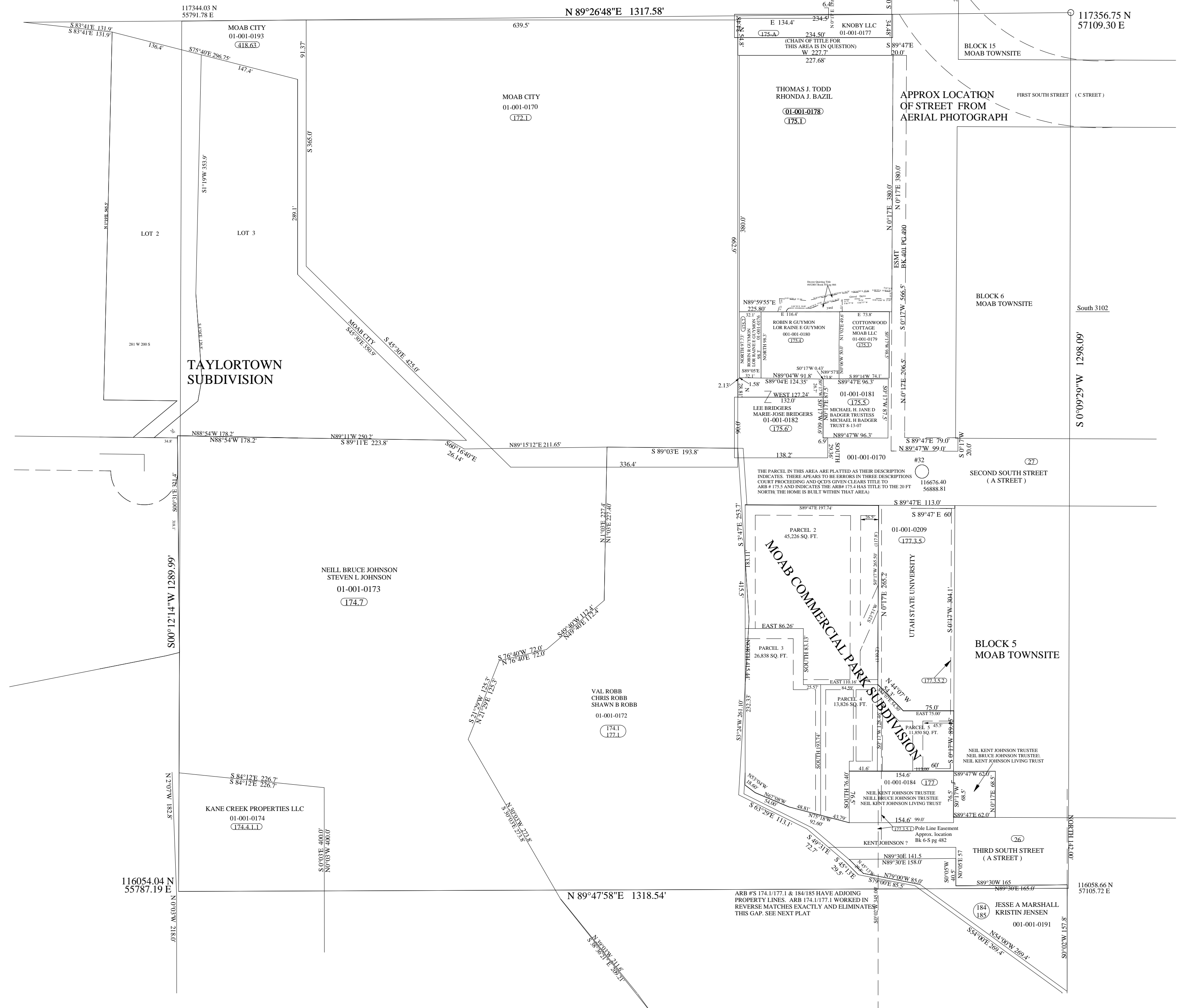


SW COR SE1/4NW1/4
VALLEY CONTROL
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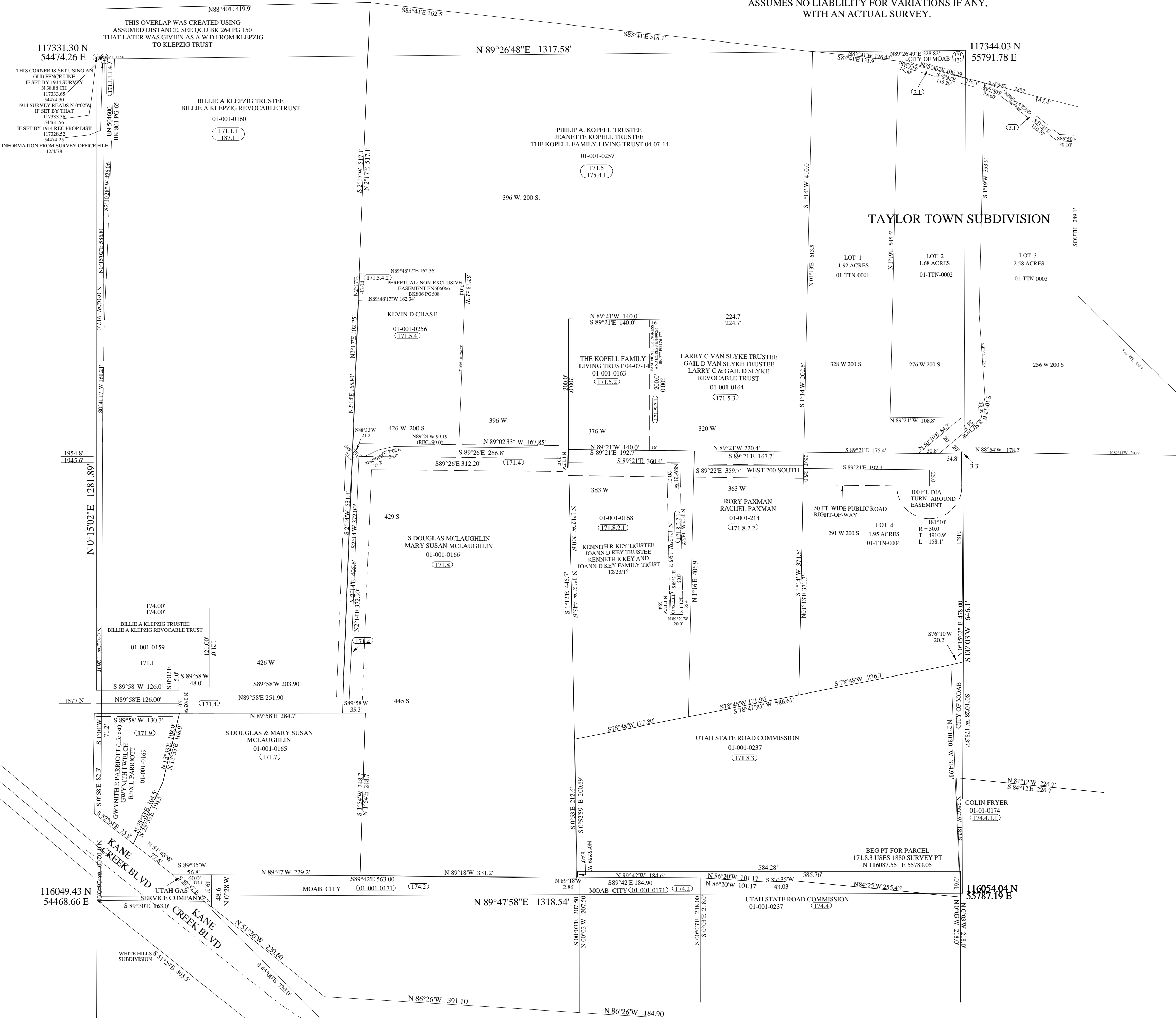
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S 90°00'00" W 49.50'
11.0'
THIS PLAT IS MADE SOLELY FOR THE
PURPOSES OF ASSISTING IN LOCATING
THE LAND, AND THE RECORDER'S OFFICE
ASSUMES NO LIABILITY FOR VARIATIONS IF ANY,
WITH AN ACTUAL SURVEY.

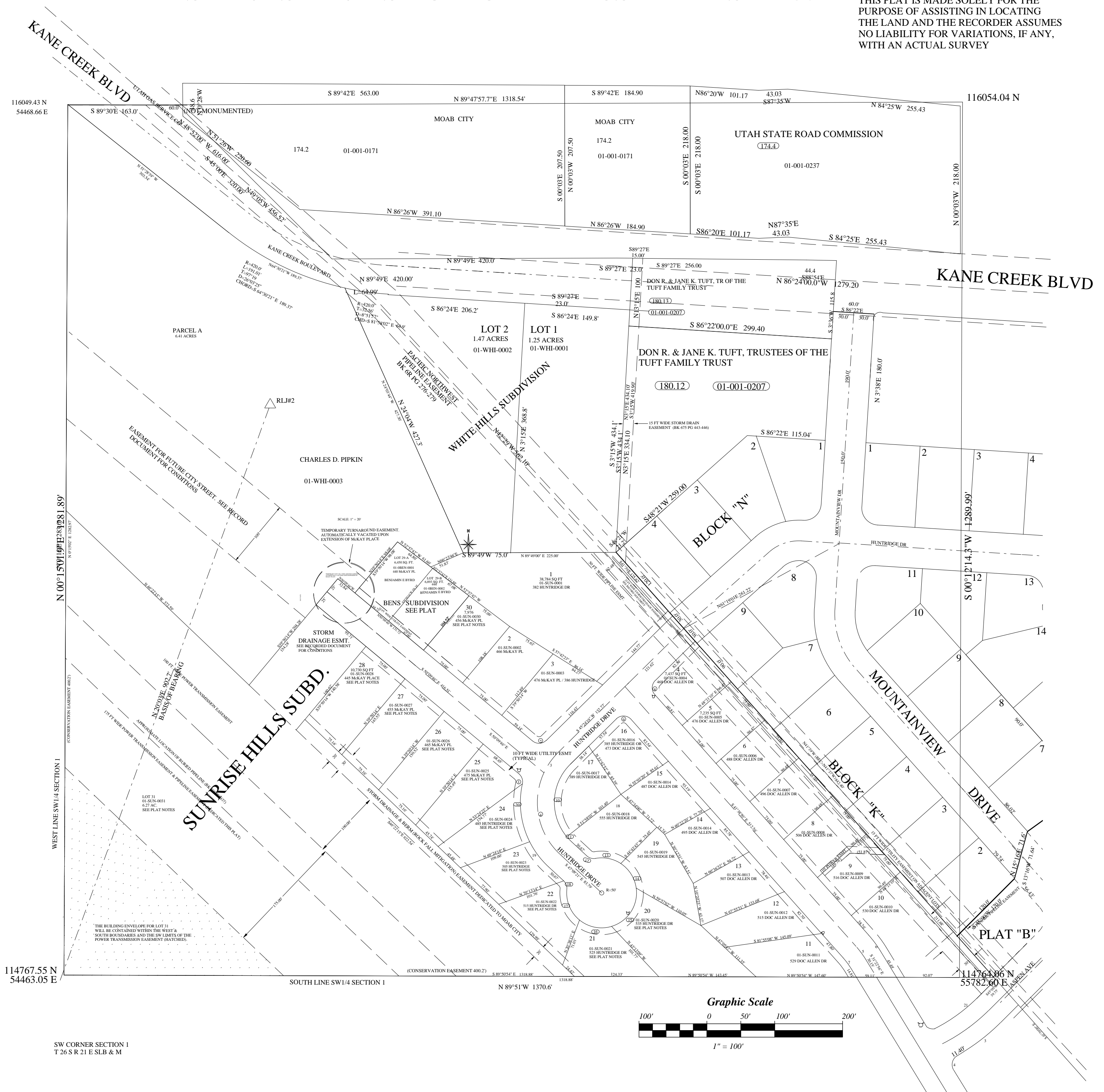


NW1/4SW1/4 SECTION 1 T26S R21E SLB&M

THIS PLAT IS MADE SOLELY FOR THE PURPOSES OF ASSISTING IN LOCATING THE LAND, AND THE RECORDER'S OFFICE ASSUMES NO LIABILITY FOR VARIATIONS IF ANY, WITH AN ACTUAL SURVEY.

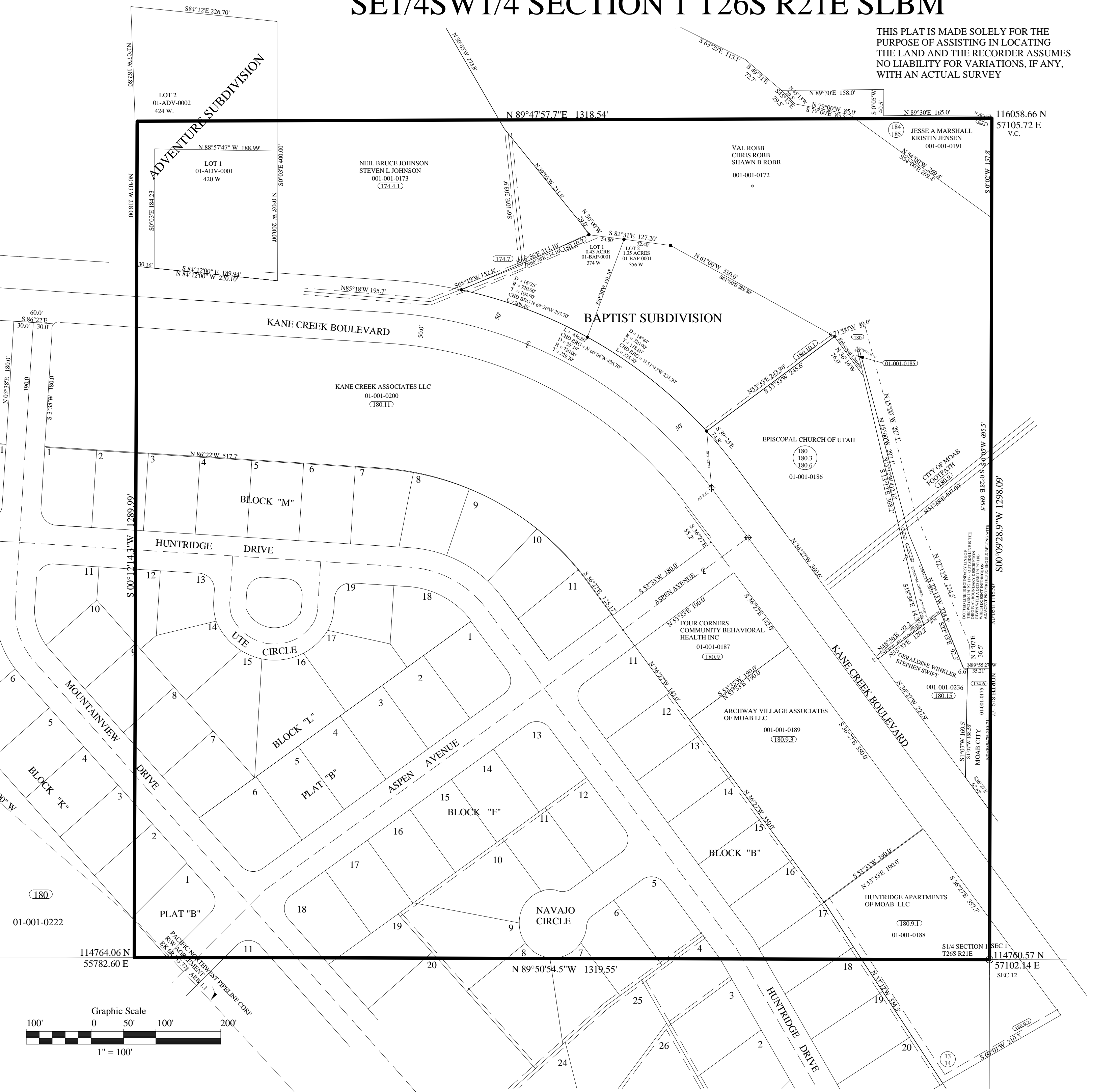


THIS PLAT IS MADE SOLELY FOR THE
PURPOSE OF ASSISTING IN LOCATING
THE LAND AND THE RECORDER ASSUMES
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WITH AN ACTUAL SURVEY



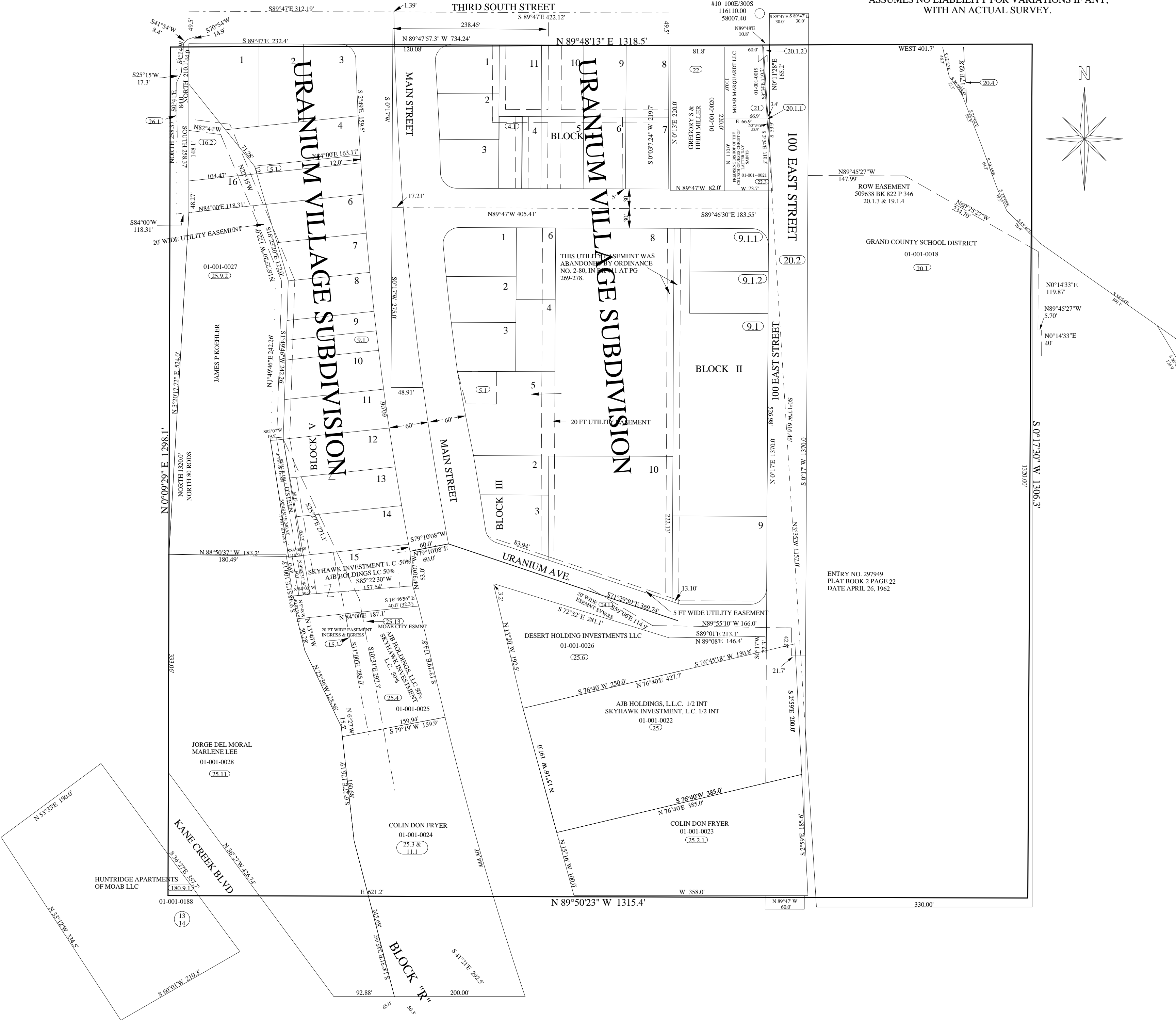
SE1/4SW1/4 SECTION 1 T26S R21E SLBM

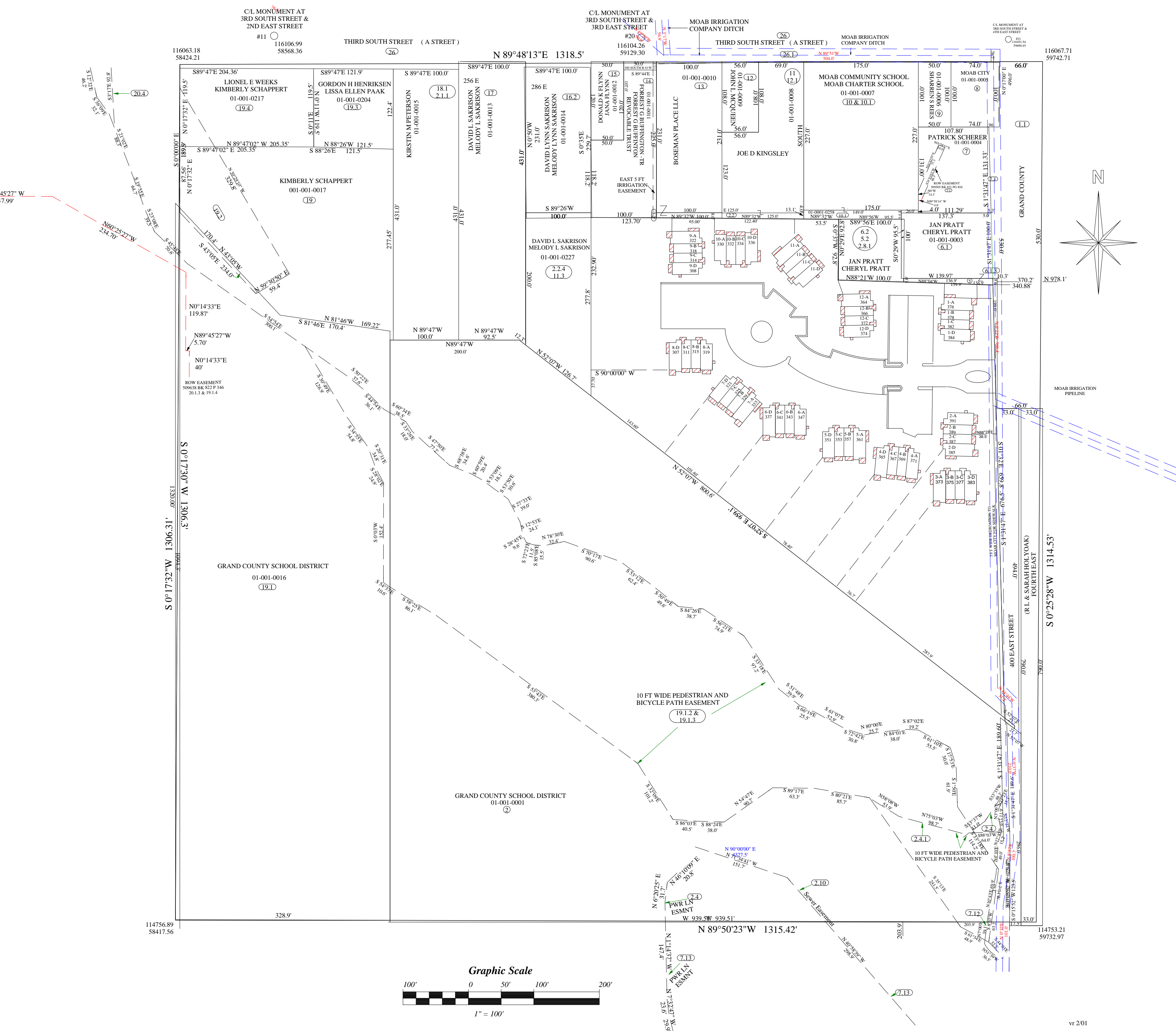
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SW1/4SE1/4 SECTION 1 T26S R21E

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SE¹/₄ SE¹/₄ SECTION 1 T26S R21E

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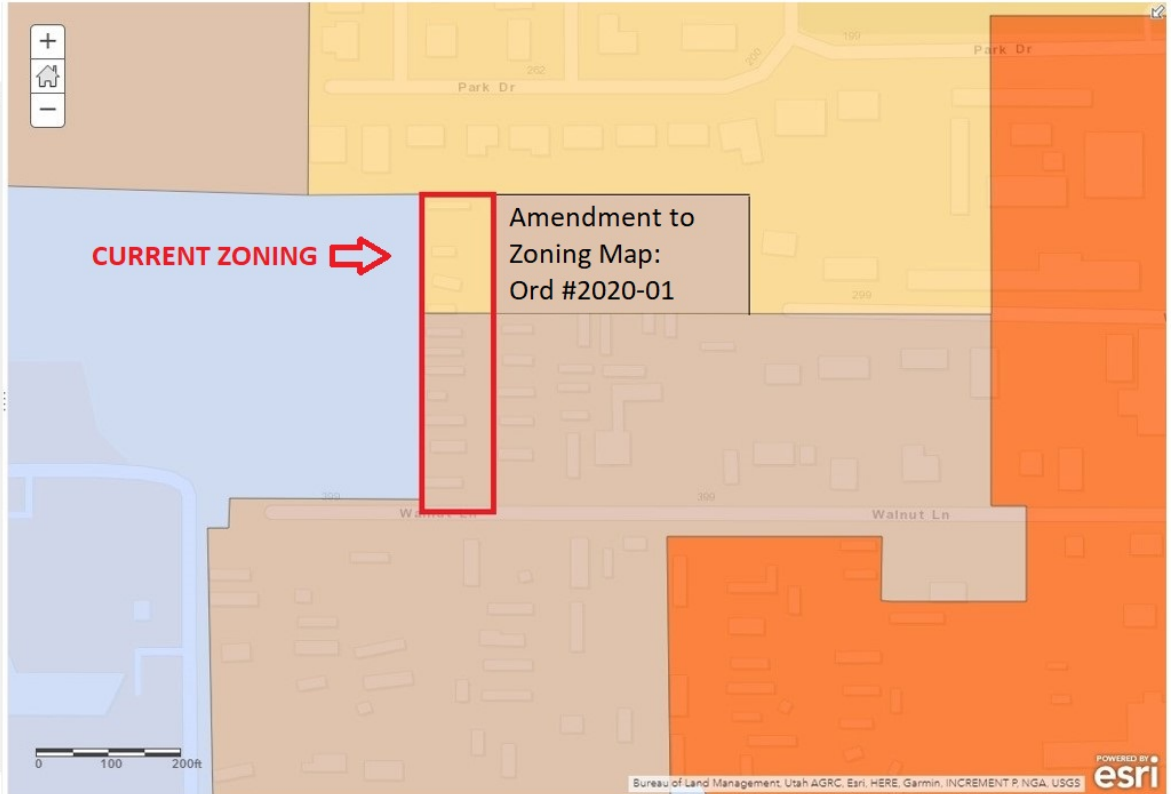
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Moab City Limits

Moab City Zoning

- R-1
- R-2
- R-3
- R-4
- MH/RV-1
- RA-1
- A-2
- C-1
- C-2
- C-3
- C-4
- C-5
- I-1
- RC
- SAR
- FC-1
- County

[Trust Center](#) [Legal](#) [Contact Esri](#) [Report Abuse](#)



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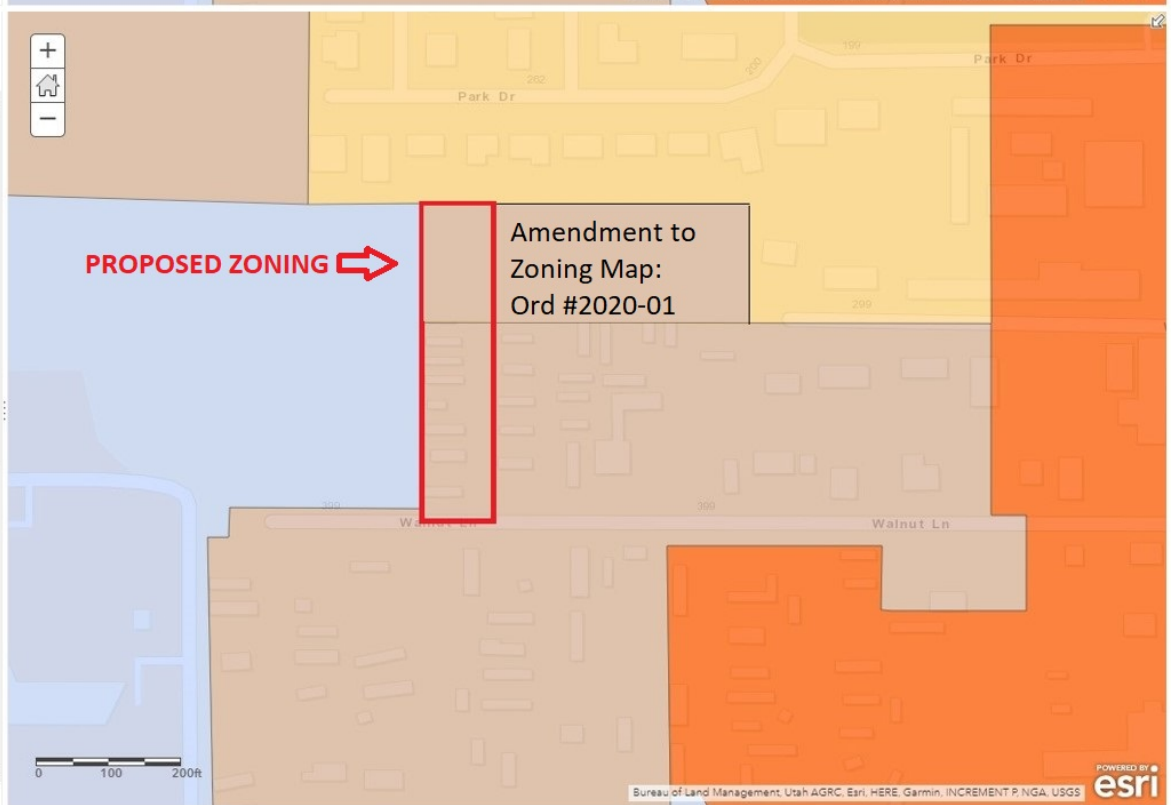
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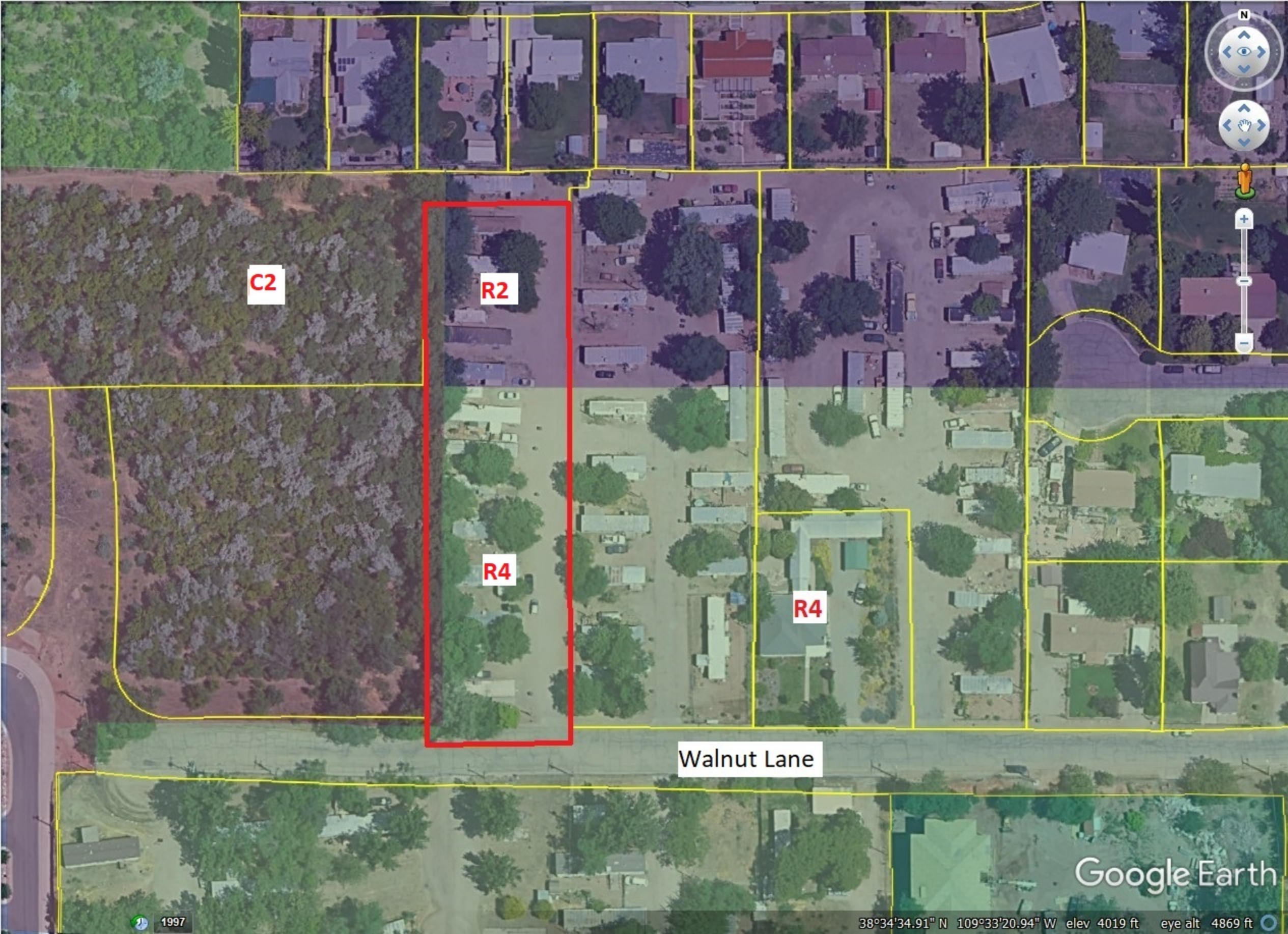
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C2

R2

R4

R4

Walnut Lane

Google Earth

1997

38°34'34.91" N 109°33'20.94" W elev 4019 ft eye alt 4869 ft

Moab Planning Commission Agenda Item

Meeting Date: April 23, 2020

Title: Planning Commission Resolution 03-2020 – A Resolution Approving the Condominium Conversion of the Bungalows at 200 North located at 53 East 200 North, 55 East 200 North, 57 East 200 North, 59 East 200 North.

Disposition: Discussion and possible action

Staff Presenter: Nora Shepard, Planning Director

Attachment(s):

- Exhibit 1: Proposed Planning Commission Resolution 03-2020 – A Resolution Approving the Condominium Conversion of the Bungalows at 220 North.
- Exhibit 2: Location Map
- Exhibit 3: Aerial Photo of property
- Exhibit 4: Application
- Exhibit 5: Letters to Tenants
- Exhibit 6: Proposed Plat
- Exhibit 7: Proposed Declarations
- Exhibit 8: Condo Conversion Requirements
-

Recommended Motion: I move to approve Planning Commission Resolution 03-2020 – A Resolution Approving the Condominium Conversion of the Bungalows at 200 North located at 53 East 200 North, 55 East 200 North, 57 East 200 North, 59 East 200 North.

Summary:

Applicant:	John Knight
Address:	53 East, 55 East, 59 East and 57 East 200 North Moab, Ut
Existing Use:	Approved Court Apartments
Proposed Use:	Condominium with common open space
Zoning:	R-3 Multihousehold Residential Zone

Background Information:

The properties at 53, 55, 57, 59 East 200 North is currently being used as rental housing. A Site Plan was approved for the Knight Bungalows as a Court Apartment complex, with 4 units and common open space. The units are all just under 1,000 sq. ft. The plat also designates 10, 455 sq. ft. of common area. The common area includes a central courtyard and required parking and setbacks. At this time, the property owner, John Knight, proposes to convert the units to condominiums so that the individual units can be sold to the tenants, or others, at an affordable price. The units would continue to be used for long term residents only. No nightly rental would be permitted since it is in the R-3 Zone.

Code Compliance:

The Moab Municipal Code specifically addresses a conversion of existing units to condominiums in Sections 17.79.030 through 17.79.060 (Exhibit 8). This section of the code grants the Planning Commission the approval authority for Condominium Conversions.

While no public hearing is required, there is a requirement that all tenants a sixty-day notice of the conversion. Those notices went out on February 13, 2020 (attachment 5).

The property has been inspected by the City Building Inspector and has been determined to comply with building requirements.

The project complies with the Zoning provision of the R-3 Zone as to setbacks, density, building height and parking.

No major improvements are proposed on the site at this time.

CITY OF MOAB PLANNING RESOLUTION NO. 03-2020

A Resolution Approving the Condominium Conversion of the Bungalows at 200 North located at 53 East 200 North, 55 East 200 North, 57 East 200 North, 59 East 200 North.

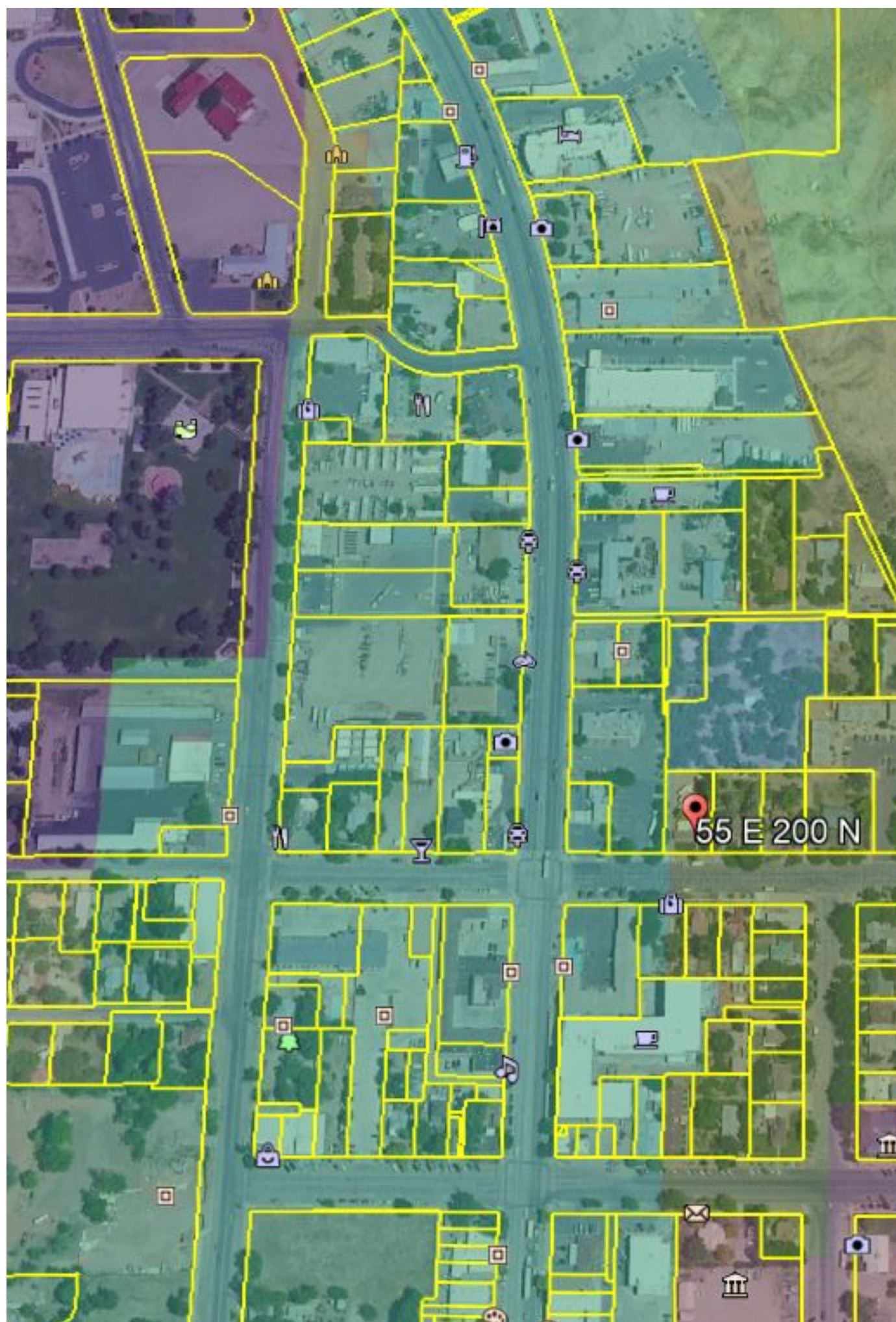
WHEREAS, the following describes the intent and purpose of this resolution:

- a. Property Owner John Knight filed an application with the City of Moab to convert the existing bungalow apartments he owns on 200 North to condominiums.
- b. The owner has assured that the units will remain long term rental units.
- c. Notices to the tenants as required in MMC 17.79.050 were sent on February 13, 2020. The 60-day notice period has been completed.
- d. MMC 17.79.030 requires review and approval of condominium conversions by the Planning Commission.
- e. Applicant has furnished a Condominium Plat and Declarations, consistent with Utah State Law and Local Municipal Ordinances.
- f. The property is Zoned R-3 Multihousehold Residential and meets the zoning requirements of that zone.
- g. Following the consideration of the technical aspects of the pertinent code sections, the Moab Planning Commission, pursuant to Moab Planning Commission Resolution #03-2020, hereby finds, that all applicable provisions of the Moab Municipal Code have or can be met.

NOW, THEREFORE, BE IT RESOLVED BY THE MOAB PLANNING COMMISSION, the application for condominium conversion of the Bungalows at 200 North be Approved

PASSED AND APPROVED in an open meeting of the Planning Commission by a majority vote of the Governing Body of Moab Planning Commission on April 23, 2020.

SIGNED: _____
Kya Marienfeld, Chair





CITY OF MOAB

CONDOMINIUM CONVERSION APPLICATION

2 PAGES - FORM MUST BE COMPLETED IN INK

CITY OF

MOAB
UTAH

DATE STAMP FOR CITY USE ONLY	TO BE FILLED OUT BY APPLICANT
	PROJECT NAME (if any): <u>The Bungalows at 200 N</u>
	PROJECT STREET ADDRESS OR ACCESS STREET: <u>53 E 200 N</u>
	FOR CITY USE ONLY
	APPLICATION NUMBER: <u>20-004</u>
	DATE RECEIVED: <u>2/19/2020</u> #74943363
	APPLICATION FEE: \$200.00 PLUS \$25.00 PER UNIT <u>\$300 + \$7500 = \$7800</u>
	TREASURER'S RECEIPT NUMBER: <u>\$700</u>

All applications are subject to review by city staff for completeness. Staff will notify the applicant of deficiencies or completeness within fifteen days.

I. GENERAL INFORMATION

Project Name (if any) The Bungalows at 200 N

Address/Location 53 E, 55 E, 59 E & 57 E, 200 N, Moab UT

Brief Description of proposal: Conversion of existing units to condominium to provide affordable housing to the citizens of Moab

II. APPLICANT

Please check one of the following: ☒ owner ☐ agent ☐ other

Name: Sohn Knight

Mailing Address: 285 S 400 E
Moab, UT 84532

Phone #: 503-860-8703 Fax #: _____ E-mail Sohn@AmastAdvisory.com

III. SUBMITTAL REQUIREMENTS

- ☒ 2 Copies of complete record of survey plat set (18" x 24" or 24" x 36")
- ☒ 1 Copy of reduced record or survey plat set (8.5" x 11" or 11" x 17")
- ☒ 2 Copies (each) of Declarations, By-Laws, and any other Covenants or Restrictions
- ☒ Completed & Signed: City of Moab, Condominium Conversion Application
- ☒ 2 Copies of any independent inspection reports or other reports if available
- ☒ Narrative describing the project
- ☒ Applicable Fees

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
217 EAST CENTER STREET • MOAB, UTAH • 84532
Phone: (435) 259-5129 • Fax: (435) 259-4135 • E-mail: info@moabcity.org
Website: www.moabcity.org



John Knight <john@amasaadvisory.com>

59 E 200 N

1 message

John Knight <john@amasaadvisory.com>

Thu, Feb 13, 2020 at 11:16 AM

To: chelsea.jensen@outlook.com, jhjensen365@gmail.com

Hello Josh and Chelsea

My name is John Knight and I am the owner of the property that you currently live in. I appreciate being able to provide this housing to you and I hope that it works well for you. I am writing this email to let you know that I am moving forward with a Condominium Conversion of the property. This will allow each one of the units on the property to be individually owned, if we decide to move down that path. If I decide to move forward with selling the units, I would like to talk with you about working with you to purchase the duplex that you currently live in. Since you are providing a huge service for our community, I would be interested in trying to work with you to selling the property to you in a manner that works for your needs. Let me know if you would like to discuss this further.

As part of the process for the conversion to a condominium, I am required to provide you with 60 days notice before it can be approved with the city. This email provides the required notice.

If you have any questions, please do not hesitate to contact myself or Mat Niesen.

All the best,

John Knight
(503) 860-8903



John Knight <john@amasaadvisory.com>

55 E 200 N1 message

John Knight <john@amasaadvisory.com>

Thu, Feb 13, 2020 at 11:14 AM

To: qcchippers@gmail.com

Hello Quincy,

My name is John Knight and I am the owner of the property that you currently live in. I appreciate being able to provide this housing to you and I hope that it works well for you. I am writing this email to let you know that I am moving forward with a Condominium Conversion of the property. This will allow each one of the units on the property to be individually owned, if we decide to move down that path.

As part of the process for the conversion to a condominium, I am required to provide you with 60 days notice before it can be approved with the city. This email provides the required notice.

If you have any questions, please do not hesitate to contact myself or Mat Niesen.

All the best,

John Knight
(503) 860-8903



John Knight <john@amasaadvisory.com>

200 N 53 E

1 message

John Knight <john@amasaadvisory.com>

Thu, Feb 13, 2020 at 11:13 AM

To: kirsten020b@yahoo.com, morganator111@gmail.com, trevorwilliams0@yahoo.com

Cc: Mathew Niesen <broham4444@yahoo.com>

Hello -

My name is John Knight and I am the owner of the property that you currently live in. I appreciate being able to provide this housing to you and I hope that it works well for you. I am writing this email to let you know that I am moving forward with a Condominium Conversion of the property. This will allow each one of the units on the property to be individually owned, if we decide to move down that path.

As part of the process for the conversion to a condominium, I am required to provide you with 60 days notice before it can be approved with the city. This email provides the required notice.

If you have any questions, please do not hesitate to contact myself or Mat Niesen.

All the best,

John Knight
(503) 860-8903



30 South 100 East #2
Moab, UT 84532
435.259.8171

NOT VALID WITHOUT
ORIGINAL SIGNATURE

PROJECT TYPE:
PRELIMINARY PLAT

PROJECT ADDRESS:
53 East 200 North
Moab, Utah 84532

PROJECT LOCATION:
GRAND COUNTY, STATE OF UTAH

PREPARED FOR:
JOHN KNIGHT

SHEET 1 OF 1

DATE:
1/17/20

JOB NUMBER:
169-19

APPROVAL BY MOAB CITY PUBLIC WORKS

APPROVED THIS _____ DAY OF _____ AD, 20____

DIRECTOR

APPROVAL BY MOAB CITY ATTORNEY

APPROVED THIS _____ DAY OF _____ AD, 20____

CITY ATTORNEY

APPROVAL BY MOAB CITY ENGINEER

APPROVED THIS _____ DAY OF _____ AD, 20____

CITY ENGINEER

APPROVAL BY MOAB CITY PLANNING COMMISSION

APPROVED THIS _____ DAY OF _____ AD, 20____

CHAIR

APPROVAL BY MOAB CITY COUNCIL

APPROVED THIS _____ DAY OF _____ AD, 20____

MOAB CITY MAYOR

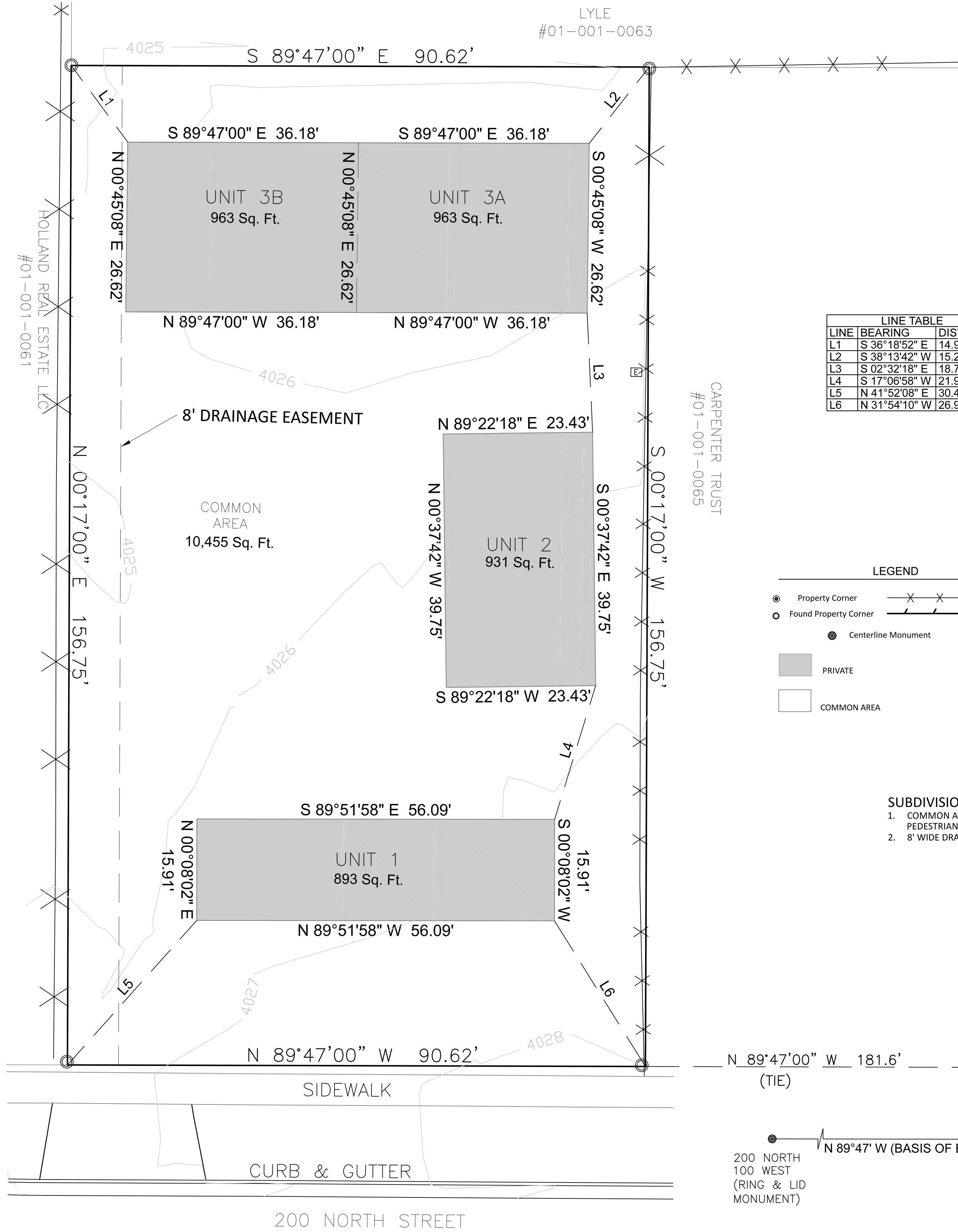
ATTEST:

COUNTY RECORDER NO. _____

STATE OF UTAH, GRAND COUNTY, RECORDED AT THE REQUEST OF _____

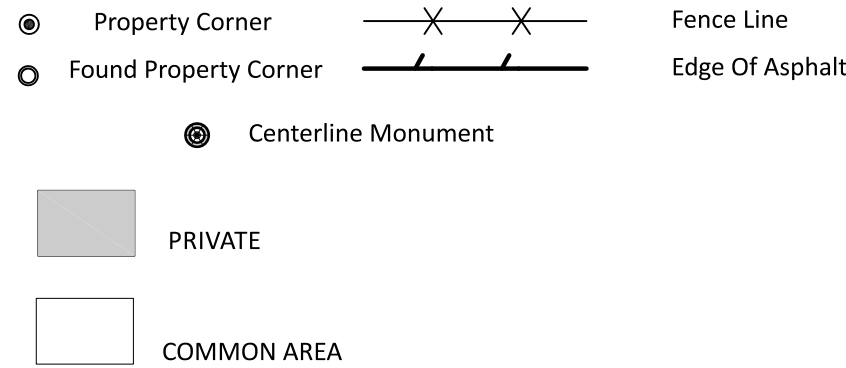
DATE _____ BOOK _____ PAGE _____ FEE _____

COUNTY RECORDER



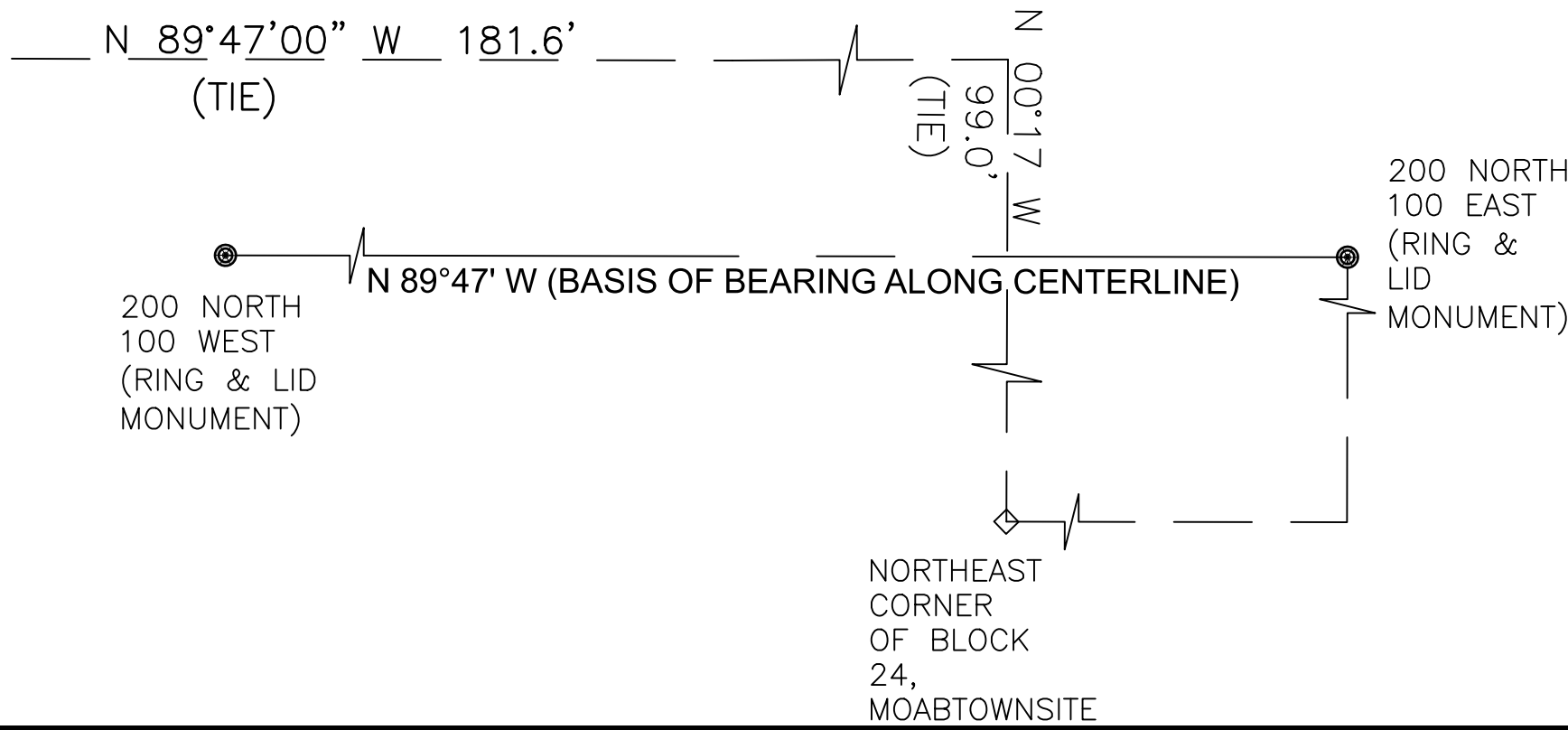
LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 36°18'52" E	14.93'
L2	S 38°13'42" W	15.23'
L3	S 02°32'18" E	18.70'
L4	S 17°06'58" W	21.94'
L5	N 41°52'08" E	30.41'
L6	N 31°54'10" W	26.92'

LEGEND

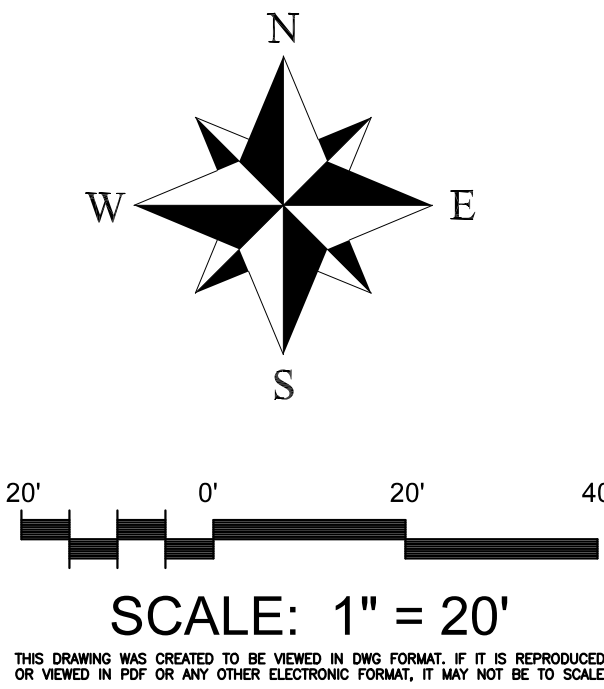


SUBDIVISION NOTES:

- COMMON AREA IS HEREBY BLANKET WITH PUBLIC UTILITY, PUBLIC ACCESS, PRIVATE PEDESTRIAN AND PRIVATE LANDSCAPING EASEMENT.
- 8' WIDE DRAINAGE EASEMENT TO REMAIN FREE AND CLEAR OF AN ENCUMBRANCE.



FINAL PLAT OF
KNIGHT BUNGALOWS
A SUBDIVISION LOCATED WITHIN
SECTION 1, TOWNSHIP 26 SOUTH, RANGE 21 EAST
SALT LAKE BASE AND MERIDIAN



VICINITY MAP

NOT TO SCALE

SURVEYORS CERTIFICATE

I, Lucas Blake, do hereby certify that I am a Professional Land Surveyor, and that I hold License No. 7540504, as prescribed under the laws of the State of Utah. I further certify that by authority of the owners, I have made a survey of the tract of land shown on this plat and described hereon, and have subdivided said tract of land into lots and streets, together with easements, hereafter to be known as KNIGHT BUNGALOWS

and that the same has been correctly surveyed and monumented on the ground as shown on this plat.

Lucas Blake License No. 7540504

LEGAL DESCRIPTION

Beginning at point which bears N 0 Deg. 17' E 99.00 feet thence N 89 Deg. 47' W 181.6 feet from the NE corner of Block 24, Moab Townsite, and proceeding thence N 89 Deg. 47' W 90.62 feet, thence N 0 Deg. 17' E 156.75 feet, thence S 89 Deg. 47' E 90.62 feet, thence S 0 Deg. 17' W 156.75 feet to the point of beginning.

Tax Parcel No. 01-0001-0228

OWNER'S DEDICATION

Know all men by these presents that the undersigned are the owners of the above described tract of land, and hereby cause the same to be divided into lots, parcels and streets, together with easements as set forth to be hereafter known as

KNIGHT BUNGALOWS

and do hereby dedicate for the perpetual use of the public all roads and other areas shown on this plat as intended for public use. The undersigned owners also hereby convey to any and all public utility companies a perpetual, non-exclusive easement over the public utility easements shown on this plat, the same to be used for the installation, maintenance and operation of utility lines and facilities. The undersigned owners also hereby convey any other easements as shown on this plat to the parties indicated and for the purposes shown hereon.

ACKNOWLEDGMENT

STATE OF _____ } S.S.
COUNTY OF _____ }

ON THE ____ DAY OF _____, 20____, PERSONALLY APPEARED BEFORE ME,

WHOM DID ACKNOWLEDGE

TO ME THAT THEY SIGNED THE FOREGOING OWNER'S DEDICATION FREELY AND VOLUNTARILY AND FOR THE USES AND PURPOSES STATED THEREIN.

NOTARY PUBLIC
NOTARY PUBLIC FULL NAME: _____
COMMISSION NUMBER: _____
MY COMMISSION EXPIRES: _____

SURVEY NARRATIVE

The property has been accurately surveyed with the intent to subdivide land. The basis of bearing is N 89°47' W along the centerline of 200 North Street. 5/8" x 24" rebar with survey cap to be placed at all lot corners or rights of way. Off-set pins to be placed in the back of the curb where applicable, in lieu of rebar and cap at front corners.

From Moab Municipal Code

17.79.030 Condominium conversions.



Existing structures shall not be converted to condominium ownership without first receiving review and recommendation of the City planning staff. The Planning Commission shall review all staff recommendations and approve, deny, or approve subject to conditions all condominium conversion applications. (Ord. 06-10 (part), 2006)

17.79.040 Required compliance with existing codes.



All structures subject to condominium conversion shall be brought into compliance with all building and zoning requirements prior to condominium plat approval, except that the Planning Commission shall have discretionary authority to grant special exceptions to compliance with zoning code requirements where the applicant demonstrates that: a) site constraints prevent full compliance; and b) public health and safety is not jeopardized; and c) and appropriate mitigation measures are provided by the applicant. (Ord. 06-10 (part), 2006)

17.79.050 Notice requirement for tenants in buildings to be converted.



Before proceeding with the conversion of any apartment or other long-term rental unit in a project, the owner shall notify all existing tenants in such project, in writing, of the owners' intent to convert, and the proposed date thereof. Such notice shall provide, at a minimum, a sixty day review and relocation period, wherein no conversion may be approved by the City until such period has expired. Any tenant may waive any required notice period; provided that such waiver be executed in writing after the date of the notice; provided that all existing tenants waive the required notice period, an owner may proceed with a conversion before the expiration of the sixty-day period. Nothing in this chapter shall prevent an owner from preparing materials and submitting an application for conversion, as required by the City. Nothing in this chapter obligates an owner to proceed with a conversion after notice has been given. All condominium conversion applications shall provide a written report outlining the status of each existing unit as vacant or occupied and copies of all required notices. (Ord. 06-10 (part), 2006)

17.79.060 Plat and declaration approval.



All condominium developments shall include a condominium plat and condominium declaration complying with the provisions of the Utah Condominium Ownership Act. The proposed plat and declaration shall be submitted with the application for staff review prior to any applicable decision by the body having land use authority. The final plat for all condominium conversions shall include a signature block for the Planning Commission, City Planner, City

Engineer, and City Attorney which must be executed prior to recording. Except where the applicant posts a performance guarantee under Section 16.20.060 (subdivisions) or Section 17.66.180(C) (planned unit developments), the condominium plat and declaration shall not be recorded until all approvals required under by city code have been obtained and all required improvements have been completed. (Ord. 06-10 (part), 2006)

When Recorded, Return to:

Rose Tree Properties, LLC
Attn: John Knight
285 South 400 East
Moab, Utah 84532

**DECLARATION
OF
CONDOMINIUM
FOR
KNIGHT BUNGALOW CONDOMINIUMS**

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**DECLARATION OF CONDOMINIUM
FOR KNIGHT BUNGALOW CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM FOR KNIGHT BUNGALOW CONDOMINIUMS (this “**Declaration**”) is executed as of February _____, 2020, by ROSE TREE PROPERTIES, LLC, a Utah limited liability company (the “**Declarant**”).

RECITALS:

A. The Declarant owns certain real property located in Grand County, State of Utah, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the “**Land**”).

B. The Declarant has constructed several buildings on the Land and intends to convert the buildings into a condominium development (the “**Project**”) on the Land, and desires to subject the Project to certain easements, restrictions, covenants and conditions for the purpose of protecting the value and desirability of the Project.

NOW, THEREFORE, the Declarant does hereby make the following declaration:

ARTICLE 1. DEFINITIONS. As used in this Declaration, the following terms shall have the meanings given them below:

“**Act**” means the Utah Condominium Ownership Act, Utah Code Annotated, Title 57, Chapter 8, as in effect on, and as amended after, the date of this Declaration, and any successor or substitute provisions.

“**Annual Assessment**” means an assessment levied pursuant to Section 6.3(a) hereof.

“**Annual Budget**” means a budget that sets forth an itemization of the anticipated Common Expenses for the calendar year to which such Annual Budget pertains.

“**Articles of Incorporation**” means the Articles of Incorporation of the Association on file or to be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

“**Assessment**” means Annual Assessments, Special Assessments, Individual Assessments, and any other charge imposed or levied by the Association against an Owner, including but not limited to those related to Common Expenses as well as miscellaneous assessments for capital improvements and for the purpose of restoring and reconstructing the Project in the event of casualty, all as provided in this Declaration.

“**Association**” means Knight Bungalow Owner’s Association, a Utah nonprofit corporation.

“**Board of Directors**” or “**Board**” means the board of directors of the Association appointed or elected in accordance with the Governing Documents, which shall serve as the “management committee” (as defined in the Act) of the Association.

“Building” means any of the buildings constructed or to be constructed on the Land.

“Bylaws” means the Bylaws of the Association, as they may be amended from time to time. A copy of the initial Bylaws is attached hereto as Exhibit D.

“Common Elements” means all parts of the Project that are not Units, including but not limited to the Land; all portions of the Buildings not contained within the Units, including but not limited to the foundation, columns, girders, beams, supports, perimeter and supporting walls, roofs, patios, balconies, entrances and exits; the mechanical installations of the Project consisting of the equipment and materials making up any central services which exist one or to serve more of the Units, including but not limited to pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith, whether outside or inside a Building); yards, outdoor lighting, fences, landscaping and sidewalks; and areas used for common disposal of trash and recycling.

“Common Expenses” means all expenses of operation (including common utilities and services), management, maintenance, repair or replacement of the Common Elements, including a reasonable reserve for the periodic maintenance, repair and replacement of the Common Elements, including but not limited to premiums for the insurance obtained by the Board pursuant to this Declaration or the Act, and any other cost, expense or fee properly incurred by the Association in connection with the performance of its obligations under the Governing Documents.

“Condominium Unit” means a Unit together with the Undivided Interest appurtenant to such Unit.

“County Records” means the official records of the Grand County recorder.

“Declarant” means Rose Tree Properties, LLC, a Utah limited liability company, and its successors and assigns.

“Declarant Control Period” means the period commencing on the date hereof and ending on the date which is the earliest of (a) the date on which Declarant no longer owns a Unit, (b) ten years from the date of recording of this Declaration, and (c) the date on which Declarant executes and records a document terminating the Declarant Control Period.

“Eligible Mortgagee” means a mortgagee or beneficiary under a mortgage or deed of trust encumbering a Unit who has requested notice in writing of certain matters from the Association in accordance with Section 11.1.

“Emergency Repairs” means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to property, including but not limited to any Common Elements or a Unit or Units, or imminent danger to persons.

“Family” means a group of natural persons residing in the same Unit and maintaining a common household.

“Governing Documents” means this Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations.

“Guest” means a temporary visitor, invitee or person whose presence within the Project is approved by or is at the request of a Resident.

“Individual Assessment” means an Assessment levied pursuant to Section 6.6.

“Land” means that certain real property that is located in Salt Lake County, Utah and that is described on Exhibit A attached hereto. The Land includes any easements that benefit the Land from time to time including any easements that are set forth on the Plat.

“Limited Common Elements” means those portions of the Common Elements designated in this Declaration or the Plat as reserved for the use of a certain Unit or Units to the exclusion of the other Units. Without limiting the generality of the foregoing, any balcony, patio, or deck serving one Unit shall be a Limited Common Element appurtenant to that Unit.

“Majority of the Owners” means, with respect to any matter presented to the Owners for a vote, the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests held by Owners entitled to vote at the time such vote is taken.

“Majority” means more than fifty percent (50%) of the total Eligible Votes.

“Manager” means a person or entity engaged to manage and operate the Project.

“Mortgage” means either a mortgage or deed of trust encumbering a Unit, but shall not mean or refer to an executory contract of sale.

“Mortgagee” means a mortgagee or a beneficiary under a Mortgage encumbering a Unit, but shall not mean or refer to a seller under an executory contract of sale.

“Owner” means the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a Unit. The term “Owner” does not mean or include a Mortgagee or a trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

“Plat” means the condominium plat entitled _____, recorded in the office of the County Recorder of Grand County concurrently with this Declaration, as such plat may be amended from time to time. The Plat will show the location of the Units, Common Elements, and Limited Common Elements.

“Project” means the Land, the Units, and the Common Elements, collectively.

“Proportionate Share” means, as to any Owner, the percentage shown on Exhibit C attached hereto as the Proportionate Share attributable to such Owner’s Unit. The Proportionate Shares are determined on the basis of the relative Sizes of the Units.

“Reserve Fund” shall have the meaning given it in Section 6.6.

“Resident” means an Owner or a tenant or Family member of an Owner who is residing in a Unit.

“Rules and Regulations” means the rules and regulations established by the Board of Directors to control, regulate or establish guidelines for the conduct of Owners, Residents, Guests, and others in the Project.

“Size” means the approximate number of square feet of floor space within each Unit (including garages) as computed by reference to the Plat and rounded off to a whole number. The Size of each Unit is set forth in the attached Exhibit B.

“Special Assessment” means an Assessment levied pursuant to Section 6.3.

“Total Votes” means the total voting rights attributable to all the Units, as set forth on Exhibit C attached hereto.

“Undivided Interest” means an undivided interest, expressed as a percentage, in the Common Elements made appurtenant to each Unit by the provisions of this Declaration, as set forth in Exhibit C.

“Unit” means each separate physical part of the Project intended for independent use, including one or more rooms or spaces located or to be located in one or more floors or part or parts of floors in a Building, as depicted on the Plat. Each Unit comprises enclosed rooms occupying part of the Building and interior non-supporting, non-bearing walls and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of such air space, together with all fixtures and improvements contained within such air space. The interior portion of a garage shown on the Plat as part of a Unit, whether or not contiguous to the remainder of the Unit, constitutes part of the Unit. Paint and other wall, ceiling and floor coverings on interior surfaces shall be deemed to be a part of the Unit concerned. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or the use and enjoyment of another Unit, and shall be part of the Common Elements: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and another Common Element (except for the interior surfaces of walls, floors and ceilings, which interior surfaces shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations and Utility Equipment, except the outlets of any of the foregoing when located within a Unit. The interior surface of a window or door means the location of such surface when such window or door is closed.

“Utility Equipment” means pipes, sprinklers, wires, ducts, flues, cables, conduits, public utility lines, transformers, switch gear vaults, and other utility equipment serving the Project.

ARTICLE 2. PURPOSE; SUBMISSION TO ACT; GENERAL PROVISIONS

2.1 Purpose; Submission to Act. Declarant intends, by recording this Declaration and the Plat, to create a Utah residential condominium project containing four Units, to be known as Knight Bungalow Condominiums. The Land and all improvements now or hereafter constructed thereon are hereby submitted to the Act. The Project is not an expandable condominium. The Project: (a) does not contain any convertible space; (b) is not a contractible condominium; (c) is not a leasehold condominium; and (d) does not contain time period units, as all of such terms are defined in the Act.

2.2 Description of Buildings. The Project includes three Buildings and other improvements related thereto. Building 1 as shown on the Plat is a single-story building containing one Unit which includes an attached carport. Building 2 as shown on the Plat is a single-story building containing one Unit which includes an attached carport. Building 3 as shown on the Plat is a one story building containing two separate units, as indicated on the Plat. Each Building is constructed principally of wood framing with vinyl siding exteriors. There are no basements in the Project.

2.3 Presumed Boundaries. In interpreting the Plat or any deed or other instrument affecting the Building or a Unit, the boundaries of the Building or such Unit constructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building or any minor variance between the boundaries shown on the Plat and those of the Building or such Unit.

2.4 Covenants Run with Land. This Declaration and all of the provisions herein shall run with the land and may be enforced by Declarant, the Management Committee and any Owner and their respective successors in interest. Any Mortgage or other encumbrance of any Condominium Unit shall be subject and subordinate to all of the provisions of this Declaration, and in the event of foreclosure of any Mortgage or other encumbrance, the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure. All Owners, Residents, Guests, and any other person who uses or occupies the Project shall be subject to the Governing Documents. All decisions and determinations made by the Board in accordance with the Act or other Governing Documents shall be binding on all the Owners and occupants of the Project.

ARTICLE 3. UNITS

3.1 Subdivision of Property. The Project is hereby subdivided into Condominium Units, with each such Condominium Unit consisting of a Unit, the right to use appurtenant Limited Common Elements, if any, and an appurtenant Undivided Interest, as set forth on Exhibit C attached to this Declaration.

3.2 Nature of Units. Each Condominium Unit shall for all purposes constitute real property and may be individually conveyed, leased, encumbered, inherited or devised by will. Any Condominium Unit may be held and owned by more than one person as joint tenants, as tenants in common or in any other real property tenancy relationship recognized under the laws of the State of Utah. Each Owner shall be entitled to the exclusive ownership and possession of its Unit and, to the extent applicable, the exclusive use of any Limited Common Elements appurtenant only to its Unit subject to the provisions of this Declaration. Each Owner may separately mortgage or otherwise encumber its Condominium Unit, provided that each Mortgage of any Condominium Unit shall be subordinate to this Declaration. No Owner may mortgage or otherwise encumber the Common Elements, except to the extent of the Undivided Interest appurtenant to its Unit.

3.3 Nature of Undivided Interests. Each Owner shall be entitled to an Undivided Interest in the percentage expressed in the attached Exhibit C. Each Owner may use the Common Elements on a nonexclusive basis, but only in accordance with the purposes for which they were

intended, subject to the Governing Documents. Neither any Undivided Interest nor the right of exclusive use of any Limited Common Elements shall be separated from the Unit to which it is appurtenant. The Common Expenses shall be charged to, and the voting rights shall be available to, the Owners according to their respective Undivided Interests.

3.4 Conveyance of Units. Every contract for the sale of a Unit, every deed conveying a Unit, and every other instrument affecting title to a Unit may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit number as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to a Unit, and to incorporate all the rights incident to ownership of a Unit and all of the limitations on such ownership as described in this Declaration.

3.5 Improvement of Units. Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet and otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the perimeter boundaries of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner may also construct partition walls, fixtures and improvements within the boundaries of that Owner's Unit; provided, however, that such walls, fixtures and improvements shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project; impair the structural integrity of the Building; or encroach on or interfere with any Common Elements. No Owner shall remove or alter any interior bearing walls within a Unit without first providing to the Management Committee (at the Owner's expense) a structural analysis from a structural engineer (which engineer is reasonably satisfactory to the Management Committee) affirming that the removal and alterations (and the reinforcement beams and supports) will not adversely impact the structural integrity of the Building and then providing structural reinforcement beams or supports for the modified bearing walls. No Owner shall do any work on or make any alterations or changes to the Common Elements without the prior written consent of the Management Committee.

3.6 Maintenance of Units and Limited Common Elements.

(a) *Maintenance of Units.* Each Owner, at its sole cost and expense, shall keep the interior of its Unit, including, without limitation, interior walls, window glass, ceilings, floors and fixtures and other improvements, in good condition and repair and in a clean and sanitary condition.

(b) *Maintenance of Limited Common Elements.* Notwithstanding anything herein regarding maintenance of Common Elements, each Owner, at its sole cost and expense, shall maintain in good condition and repair all Limited Common Elements appurtenant to such Owner's Unit. Without limiting the generality of the foregoing, (i) each Owner shall maintain the exterior walls, window glass and doors forming or situated at the exterior boundary of its Unit and shall immediately repair or replace any such exterior surface, window glass or door on removal, breakage or other damage.

(c) *Failure to Maintain.* If any Owner fails to maintain its Unit or the Limited Common Elements for which such Owner is responsible, or if any Unit or appurtenant Limited Common Elements develops an unsanitary or unclean condition or falls into a state

of disrepair and the responsible Owner fails to correct such condition promptly following written notice from the Board, or if any removed, broken or damaged window glass or door referred to in the preceding subsection (b) is not immediately repaired or replaced by the Owner obligated to do so, then the Board may (but is not obligated to), at the expense of such Owner and without liability to such Owner for trespass or otherwise, enter the Unit concerned and correct or eliminate such unsanitary or unclean condition or such state of disrepair or repair or replace such window glass or door, as the case may be. Any funds expended by the Board pursuant to this Section, together with interest at the rate of eighteen percent (18%) per annum, both before and after judgment, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall constitute an Individual Assessment.

3.7 No Division of Units. No Unit may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to joint tenancy, tenancy in common, or other form of joint undivided ownership). No Owner may lease less than all of its Unit.

3.8 Separate Taxation. Each Condominium Unit (comprising a Unit and an appurtenant Undivided Interest) shall be deemed to be a separate parcel for purpose of assessment and taxation and shall be subject to separate assessment and taxation. Neither the Project, any Building, nor any of the Common Elements may be considered as a separate parcel for purposes of assessment or taxation.

ARTICLE 4. THE ASSOCIATION.

4.1 Association.

(a) *Association.* On or before conveying the first Unit to a purchaser, Declarant shall cause the Association to be incorporated. Each Owner shall automatically be a member of the Association. The Board shall act as the board of directors and the management committee of the Association.

(b) *Registration with the State.* In compliance with, and to the extent required by, Utah Code Ann. § 57-8-13.1 or any successor provision, the Association shall be registered with the state Department of Commerce, Division of Real Estate and shall update its registration as required by law.

(c) *Bylaws.* The Bylaws of the Association are attached to this Declaration as Exhibit D. The provisions of the Utah Revised Nonprofit Corporation Act, as in effect on, and as amended after, the date of this Declaration, shall supplement the Bylaws to the extent that such statutory provisions are not inconsistent with this Declaration or the express provisions of the Bylaws.

4.2 Membership. Each Owner shall be required to be a member of the Association. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. Ownership of a Unit cannot be separated from membership in the Association; each membership shall be appurtenant to the Unit to which it relates and shall be

transferred automatically by conveyance of that Unit. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner.

ARTICLE 5. BOARD

5.1 Establishment. Subject to the provisions of this Declaration, the Project shall be operated, managed and maintained by the Board. The Board, acting on behalf of the Association, shall be vested with, and shall have all rights, powers and authority given to a management committee or an association of unit owners under the Act and all rights, powers and authority as are necessary to perform its duties under the Governing Documents, which shall include, but not be limited to, the rights, powers and authority to:

- (a) administer and enforce the covenants, conditions, restrictions, easements, and other provisions of the Governing Documents;

- (b) maintain and keep in good order, condition and repair all the Common Elements;

- (c) without the vote or consent of the Owners, Mortgagees, or of any other person, grant or create (and/or to relocate), on such terms as it deems advisable, reasonable licenses, rights-of-way and easements over, under, across and through the Common Elements for utilities and other purposes reasonably necessary or useful for the proper operation and maintenance of the Project;

- (d) sue and be sued on behalf of the Association;

- (e) enter into contracts that are within the scope of the powers and duties of the Board;

- (f) promulgate such Rules and Regulations as may be necessary or desirable to ensure that the Project is maintained and used in a manner consistent with this Declaration and the interests of the Owners and to establish penalties for the infraction of such Rules and Regulations;

- (g) levy and collect Assessments for the payment of Common Expenses;

- (h) perform any other acts and to enter into any other transactions authorized by the Governing Documents or the Act or which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

5.2 Composition .

- (a) During the Declarant Control Period, the Board shall have three members who shall be appointed by the Declarant.

(b) After the expiration of the Declarant Control Period, the Board shall consist of three natural persons elected by the Members in accordance with the Bylaws. Only Owners (and officers, partners, managers, members and agents of Owners who are not natural persons) shall be eligible for Board membership.

5.3 Officers and Agents. The Board shall perform its functions through those members who are elected as officers by the Board in accordance with the Bylaws and through such agents or employees as the Board may appoint or employ.

5.4 Records.

(a) The Board shall keep detailed, accurate records in chronological order of the receipts and expenditures of the Association. Such records shall be available for examination by the Owners at convenient hours on weekdays. The Board shall maintain up-to-date records showing (a) the name of each person who is an Owner, the address of the Unit owned by such Owner, and the mailing address and electronic mail address (if any) of such Owner; and (b) the name and address of each Eligible Mortgagee and the Unit that is encumbered by such Eligible Mortgagee.

(b) Upon any transfer of a fee interest in a Condominium Unit, the transferee shall provide to the Association evidence that the transfer has occurred and that the deed or instrument of conveyance is of record in the County Records. The Association may rely on such information or, at its option, on current ownership information that is obtained from the County Records. The mailing address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless such Owner provides written notice to the Association of a different mailing address.

(c) The Board shall make available for inspection on request during normal business hours or under other reasonable circumstances to Owners and Mortgagees, current copies of this Declaration, the Plat, the Rules and Regulations, and the books, records and financial statements of the Association to the extent required under the Act or other applicable law.

5.5 Professional Management. The Board may (but is not obligated to) engage a professional manager to perform any functions that are properly the subject of delegation. The manager shall be an independent contractor and not an agent or employee of the Board, shall be responsible for managing the Project for the benefit of the Association and the Owners and shall, to the extent permitted by law and by the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any such management agreement shall run for a reasonable period not to exceed three years.

5.6 Liability. No member of the Board or any officer of the Association shall be liable to the Owners for any mistake of judgment, for negligence or on other grounds, except for such member's own willful misconduct, gross negligence, bad faith or more culpable conduct, subject to the following:

(a) *General.* Members of the Board and officers of the Association: (a) shall have no personal liability in contract to an Owner or any other person or entity under any

agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (b) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them in their capacity as such, except for their own willful misconduct, gross negligence, bad faith or more culpable conduct, nor for acts performed for them in their capacity as such; and (c) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

(b) *Specific Listing.* Without limiting the generality of subsection (a) above, and notwithstanding any provision of the Governing Documents to the contrary, neither the Board, the Association, nor any member of the Board shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of Utility Equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of the Project or other cause beyond such person's reasonable control.

(c) *Indemnity.* Each Owner and the Association shall indemnify each member of the Board and each officer of the Association against all claims made by third parties arising out of any contract made by the Board on behalf of the Owners, unless such contract was made in bad faith. The liability of any Owner arising out of any contract made by the Board or an officer of the Association or out of the indemnification provision set forth in the immediately preceding sentence shall be limited to the total liability concerned multiplied by such Owner's Undivided Interest.

5.7 Initial Agent for Service of Process. The following shall be the initial person to receive service of process on behalf of the Project, the Board and the Association:

The Board shall have the right to appoint a successor or substitute process agent at any time and from time to time. The name and address of any such successor or substitute agent shall be specified by an appropriate instrument recorded in the Salt Lake County Recorder's office, a copy of which shall be delivered to each Owner. Service of process on two or more Owners in any action relating to the Common Elements or more than one Unit may be made on the agent designated above.

5.8 General Standard. Notwithstanding any provision in this Declaration to the contrary, the Board shall act fairly and reasonably in discharging its duties under this Declaration.

ARTICLE 6. COMMON ELEMENTS; COMMON EXPENSES; ASSESSMENTS.

6.1 **Common Elements.** The Association shall be responsible for the operation, management, maintenance, repair and replacement of the Common Elements and the making of any additions or improvements to the Common Elements as may be reasonably necessary to keep them clean, safe, functional, attractive and generally in good condition and repair. The maintenance of the outdoor portions of the Common Elements shall include but not be limited to the removal of weeds and debris and periodic cleaning, sweeping, and removal of ice and snow. Without limiting the generality of the foregoing, the Association shall be responsible for maintenance of the water and sewer connections servicing the Project, except for those water and sewer connections which constitute a portion of a Unit.

6.2 **Annual Budget.** Before November 1st of each year the Board shall prepare an Annual Budget for the next following calendar year. In preparing such Annual Budget, the Board shall take into account any deficit or surplus anticipated to be realized during the then-current calendar year. After the expiration of the Declarant Control Period, such Annual Budget shall be subject to the approval of a majority of the votes present at a meeting of the Members at which such Annual Budget is presented and voted on..

6.3 **Assessments.** Each Owner shall pay Assessments in accordance with the following:

(a) *Annual Assessments.* Prior to the first day of January of each calendar year, the Association shall notify each Owner of the amount of such Owner's share of the Common Expenses for that calendar year as set forth in the Annual Budget for such year (the Owner's "**Annual Assessment**"). Each Annual Assessment shall be paid in monthly installments, each in an amount equal to one-twelfth of the Annual Assessment, which each such installment due on the first day of each calendar month.

(b) *Special Assessments.* The Board of Directors may levy in any calendar year one or more special assessments (each, a "**Special Assessment**"), applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement within the Property or any facilities located in the Property, including the necessary fixtures and personal property related to it, or to make up any shortfall in the current Annual Budget. Notice of the amount and due dates for any Special Assessment shall be sent to each Owner at least 30 days prior to the due date. If any Special Assessment is to be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities in the Property), and if the total amount of the Special Assessment levied for such construction exceeds 10% of the total Annual Budget for that year, then the Special Assessment shall require the approval of a Majority of Owners.

(c) *Late Payments and Assessments.* The Board may establish and assess reasonable charges for delinquent payments of any Assessment or any installment thereof. A late fee equal to 5% of the delinquent amount and interest at the rate of 18% per annum on the delinquent amount shall be deemed to be reasonable. All payments made by an Owner under this Declaration shall be applied first to pay any costs of collection, next to

outstanding Fines and late charges, next to interest, and finally to Assessments or other amounts due from the Owner.

(d) *Individual Assessments.* All Fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, and any expense (including without limitation attorneys' fees) incurred by the Association as a result of the failure of an Owner to comply with the Governing Documents, shall constitute an **"Individual Assessment."**

(e) *No Exemption.* No Owner may exempt itself from liability for its Assessment obligations by waiver of the use or enjoyment of any of the Common Elements or abandonment of its Unit. No diminution or abatement of any Assessments under this Declaration shall be claimed or allowed for any action or inaction of the Board or the Association.

6.4 Collection of Assessments.

(a) *Personal Obligation of Owner.* Every Owner shall pay Assessments in the amounts and at the times determined by the Board in accordance with this Declaration and the Act. Each Assessment assessed against a Unit is a personal debt and obligation of the Owner of the Unit at the time the Assessment is made. In any voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. Suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it.

(b) *Cessation of Services.* If an Owner shall be in default for the period of one month in the payment of Assessments, then the Association may, at its option, and for so long as such default shall continue, cease to provide any or all services that would otherwise be provided by the Association to such Owner's Unit, to the extent such services pertain to such Unit.

(c) *Collection of Rent.* If an Owner shall at any time lease or rent its Unit and shall default for a period of one month in the payment of Assessments, then the Association may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, in compliance with applicable provisions of the Act and the Governing Documents.

(d) *Lien.* Each Assessment shall constitute a lien on the applicable Owner's Condominium Unit, which lien may be foreclosed in the manner of the foreclosure of a deed of trust or by any other method available under applicable law for the foreclosure of liens. For the purpose of foreclosure by trustee's sale, the Declarant appoints Anderson Oliver Title Company, 94 Grand Avenue, Moab, Utah 84532, to have and exercise the power of the trustee and the power to bid on a Unit at a foreclosure or other sale and to

acquire, hold, lease, mortgage and convey such Unit. Pursuant to Utah Code §§ 57-1-20 and 57-8-45, the Declarant hereby conveys and warrants to such trustee, with power of sale, the Condominium Units and all improvements to the Units for the purpose of securing payment of Assessments under the terms of this Declaration. An Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the designated trustee. The Association may appoint another qualified trustee by executing a substitution of trustee form. In any foreclosure of a lien for Assessments, the Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the same lien. The Association may bid on such Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Unit.

6.5 Estoppel Statement. The Board shall, on the written request of any Owner or any Mortgagee or prospective Mortgagee or prospective purchaser of a Condominium Unit, and on payment of a reasonable fee in an amount to be determined by the Board subject to any limitations imposed by the Act, issue to the requesting person or persons a written statement setting forth the amount of any unpaid Assessments for such Condominium Unit. Such written statement shall be conclusive on the remaining Owners and the Association in favor of all persons who rely on such written statement in good faith.

6.6 Reserve Fund.

(a) *Reserve Fund.* The Board shall establish and maintain a reserve fund (the "**Reserve Fund**") to cover the cost of repairing, replacing, or restoring Common Elements that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the Association, as determined by the Owners annually. Reserve funds may be collected as part of Annual Assessments or Special Assessments. If there are surplus monies after payment of all Common Expenses for any fiscal year, the Board may, in its discretion, (i) retain surplus Association money and credit it against the Assessments for the following fiscal year, or (ii) deposit such surplus in the Reserve Fund. The Association shall segregate money held in the Reserve Fund from regular operating accounts.

(b) *Reserve Analysis.* The Association shall, every five years, conduct an analysis (a "**Reserve Analysis**") to determine the appropriate amount needed in the Reserve Fund to satisfy the purposes for which the Reserve Fund is maintained. The Board shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every two (2) years. The Reserve Analysis report shall be prepared by a person or persons with (i) experience in current building technologies, (ii) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (iii) the tools and knowledge to prepare a report.

(c) *Disclosure and Approval at Annual Meeting.* Annually, at the annual meeting of the Owners or a special meeting of Owners, the Board shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss the Reserve Fund and to vote on how to fund the Reserve Fund and in what amount.

ARTICLE 7. EASEMENTS

7.1 Easements for Encroachments. If on or after the date of this Declaration: (a) any part of the Common Elements encroaches on any part of a Unit; or (b) any part of a Unit encroaches on a part of the Common Elements, then a non-exclusive easement for each such encroachment and for the maintenance of the same shall exist immediately and automatically, and Declarant reserves such easement for the benefit of each Unit and each Common Element. Such encroachments shall not be considered to be encumbrances on any Unit or the Common Elements. Such encroachments may include, without limitation, encroachments caused by error in the original construction of a Building or any other improvements, error in the Plat, settling, rising or shifting of the earth or changes in position caused by repair or reconstruction of the Project.

7.2 Easements for Maintenance. Some of the Common Elements may be located within the Units or may be conveniently accessible only through the Units. Declarant grants the Association and its agents and representatives a non-exclusive easement and the irrevocable right to have access to each Unit and to all Common Elements at reasonable times and under reasonable circumstances as may be necessary for: (a) the maintenance, repair, replacement and cleaning of the Common Elements; or (b) making Emergency Repairs, provided that the Board shall make a reasonable effort to provide notice to the occupant of the Unit prior to entry. Such entry shall be made so as to minimize the inconvenience caused thereby, and the cost to repair any resulting damage shall be a Common Expense.

7.3 Easements for Units.

(a) Declarant reserves for each Unit:

(i) a non-exclusive easement for, and the right of, ingress and egress on, over and across the Common Elements as necessary for access to and from such Unit;

(ii) a non-exclusive easement for, and the right to, horizontal, vertical and lateral support from all surrounding Building elements;

(iii) a non-exclusive easement in common with all other Units for Utility Equipment and other Common Elements from time to time and at any time located in any other Units and serving the benefitted Unit.

(b) Declarant subjects each Unit to a non-exclusive easement in favor of all other Units for the installation, maintenance, repair and replacement of Utility Equipment and other Common Elements from time to time and at any time located in such Unit and serving any other Unit.

7.4 Easement for Completion of Development. The Declarant shall have a transferable easement over and on the Common Elements for the purpose of doing all things necessary or appropriate to complete construction of the Project and to make improvements as shown on the Plat. To the extent that damage is inflicted on any part of the Project by any person utilizing this easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

7.5 **General Provisions.** Each easement and right created by this Article is an appurtenance to the real property benefitted thereby and is a burden on the real property burdened thereby. All conveyances of a Condominium Unit shall be deemed to be made together with and subject to the easements set forth in this Article. The easements created under this Article shall terminate upon the termination of the Declaration. The use of any easement granted under this Declaration shall not disturb unreasonably the quiet enjoyment of any other Unit by its Owner and occupants.

ARTICLE 8. USE RESTRICTIONS.

8.1 **Use.** Each Unit shall be used only for single-family residential purposes. No Building or other structure of any kind shall be erected, altered, placed or permitted to remain on any portion of the Project except with the prior written approval of the Board. The use of the Units and the Common Elements shall comply with all applicable laws, ordinances and governmental regulations and with the Governing Documents.

8.2 **Nuisance.** No Owner, Resident, or Guest shall create or maintain, or engage in any activity which would constitute, a nuisance in, on or about the Project. A “nuisance” includes but is not limited to the following:

- (a) the development of any unclean, unhealthy, unsightly, or unkempt condition on, in, or about a Unit or the Common Elements;

- (b) the storage of any item or property that will cause any Unit or the Common Elements to appear to be in an unclean or untidy condition or that will be noxious to the senses or otherwise disturb the peace, quiet, safety, comfort, or serenity of the other Residents;

- (c) having any devices or items, instruments, equipment, machinery, fixtures, or things the possession of which is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project by other Residents or Guests.

- (d) unreasonable noise in, on or about any Unit or the Common Elements; provided, that the threshold for what constitutes unreasonable noise shall be lower after 10:00 p.m. and before 7:00 a.m.

- (e) any activity which creates or causes an unreasonable amount of traffic in, on or about the Project; provided, that the threshold for what constitutes unreasonable traffic shall be lower after 10:00 p.m. and before 7:00 a.m.

8.3 **Unsightly Work, Hobbies or Unkempt Conditions.** The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Project.

8.4 **Garbage, Refuse and Debris.** Each Owner and Resident shall regularly remove from the Unit owned or occupied by such Owner or Resident all rubbish, trash, refuse, waste, dust,

debris, and garbage. All containers for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be stored out of the view of the general public provided, however, that such containers may appropriately be placed for collection not more than twenty-four (24) hours prior to any scheduled collection date and shall be removed from the view of the general public within a reasonable time (not to exceed 24 hours) after being emptied.

8.5 Subdivision of a Unit. No Unit shall be subdivided or partitioned.

8.6 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board, with consent may be withheld in the Board's sole discretion. Anything to the contrary notwithstanding and until the expiration of the Declarant Control Period, Declarant may install and use temporary structures in the construction and development of the Project and the marketing of Units.

8.7 Landscaping. No Owner shall install any landscaping on any portion of the Common Elements without the prior written consent of the Board of Directors, which consent may be withheld in the Board's sole discretion. The Declarant shall install landscaping in the Common Elements, and such landscaping shall be maintained by the Association.

8.8 Exterior Alteration. No Owner shall make any alterations or modifications to the exterior of any Buildings, fences, railings, or walls situated within the Project without the prior written consent of the Board, which consent may be withheld in the Board's sole discretion.

8.9 Business Use. No business or other commercial activity may be conducted in or from any Unit unless: (a) the existence or operation of the business or commercial activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business or commercial activity conforms to all zoning requirements for the Project and is properly licensed; (c) the business or commercial activity does not involve customers or clients coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business or commercial activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents, as may be determined in the sole discretion of the Board of Directors. Notwithstanding the foregoing, the leasing of a Unit in compliance with applicable provisions of the Governing Documents shall not be considered a business or commercial activity.

8.10 Parking and Vehicles. No vehicles, trailers, or other equipment shall be parked or stored on the Common Elements within the Project, except in designated parking stalls. No inoperative or unlicensed vehicle shall be parked or stored on any portion of the Project. No recreational vehicles, including without limitation motor homes, tractors, golf carts, mobile homes or trailers (either with or without wheels), campers, camper trailers, boats or other watercraft, and boat trailers shall be parked or stored in the Project except enclosed within a garage. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Common Area in the Project, except that these restrictions shall not apply to emergency repairs. The Board may promulgate further Rules and Regulations regulating parking and provide for enforcement of parking restrictions in the Project.

8.11 **Windows and Window Coverings.** No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover any exterior window of any Unit. Sun shades and tinted windows are allowed.

8.12 **Animals.**

(a) No animals, livestock, birds, insects, or poultry of any kind (each, an “**animal**” and collectively, “**animals**”) shall be raised or bred on any portion of the Project.

(b) Not more than two domesticated dogs and/or cats or other small household pets may be kept in any Unit. No animal of any kind shall be kept in any Unit for any commercial purpose.

(c) The keeping of animals and their ingress and egress to the Common Elements shall be subject to such Rules and Regulations as may be adopted by the Board. All animals kept within the Project shall be licensed and inoculated as required by law. All animals shall be on a leash at all times when outside a Unit. No animal shall be permitted on any portion of the Common Elements except for orderly domestic animals on a leash and accompanied by a person who can control the animal, and the owner of an animal shall immediately remove droppings left upon the Common Elements or any other portion of the Project by the animal.

(d) If the owner of any animal fails to comply with the requirements of this Section or any Rules and Regulations applicable to pets, the Board of Directors may, after notice and an opportunity for a hearing in accordance with Section 12.7, bar such animal from use of or travel upon the Common Elements and may impose fines or costs in accordance with Section 12.5. In addition, if an animal’s owner does not remove droppings left by the animal on the Common Elements, or if an animal endangers the health or welfare of any Owner or Resident or creates a nuisance (*e.g.*, unreasonable barking, howling, whining or scratching) or an unreasonable disturbance, all as may be determined in the sole discretion of the Board, then the animal may be permanently removed from the Project upon fourteen (14) days prior written notice to the Owner from the Association. An Owner or Resident who receives such a notice may, within such fourteen (14) day period, request a hearing in accordance with Section 12.7, in which event such Owner or Resident may keep the animal in the Project until such hearing has been held and a determination made by the Board, except that if an animal presents a foreseeable danger to persons in the Project, the Board may require the animal to be removed before the hearing.

(e) Any Owner or Resident who keeps an animal within the Project shall be deemed to have indemnified and agreed to hold harmless the Association, each other Owner and Resident, and the Declarant from and against any loss, claim, or liability of any kind or character arising out of or resulting from the keeping of such animal within the Project.

(f) Nothing contained in this Section shall prohibit the keeping within the Project of any assistance animal or any other animal if such prohibition would constitute a

violation of the Fair Housing Act or any similar law. The Board may promulgate Rules and Regulations regarding assistance animals consistent with applicable law.

8.13 **Insurance.** Nothing shall be done or kept in, on or about any Unit or the Common Elements which may result in the cancellation of any insurance on the Project or an increase in the rate of the insurance on the Common Elements over what the Board of Directors, but for such activity, would pay.

8.14 **Laws.** Nothing shall be done or kept in, on or about any Unit or Common Elements, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

8.15 **Damage or Waste.** No Owner, Resident, or Guest shall cause damage or waste to or on the Common Elements, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or Resident or that Owner's or Resident's Guest.

8.16 **Mail Boxes.** Mail boxes shall be installed by Declarant. Any replacement mail boxes must be approved in writing by the Board prior to installation.

ARTICLE 9. INSURANCE

9.1 **Insurance.** The Association shall obtain insurance as required in this Declaration and as required by the Act. In addition, the Association may, as the Board considers appropriate, obtain additional types of insurance, or greater coverage, than the insurance and coverages required below.

(a) *Property Insurance.* The Association shall obtain and maintain at all times blanket property insurance or guaranteed replacement cost insurance on the physical structures in the Property, including the Common Elements and the Units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, with total coverage not less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding only items normally excluded from property insurance policies. Such property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a Unit or to a Limited Common Element, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Element. Each Owner shall be an insured person under such property insurance policy.

(b) *Liability Insurance.* The Association shall obtain and maintain at all times liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, in an amount determined by the Board but not less than Two Million Dollars (\$2,000,000.00) for any single occurrence. Each Owner shall be an insured person under such liability insurance policy, but only for liability arising from

(i) the Owner's ownership interest in the Common Elements; (ii) maintenance, repair, or replacement of Common Elements; and (iii) the Owner's membership in the Association.

(c) *Flood Insurance.* If any part of the Property is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Property located within the Special Flood Hazard Area, in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Property located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Property.

(d) *Directors and Officers Insurance; Theft and Embezzlement Insurance.* The Board may, but shall not be obligated to, obtain (i) Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and/or breach of contract, and (ii) insurance covering the theft or embezzlement of funds from the Association.

9.2 Waiver of Subrogation against Owners and Association. All property and liability policies shall contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

9.3 Loss; Deductibles.

(a) If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, then the Association's policy provides primary insurance coverage, the Owner is responsible for the Association's policy deductible, and the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(b) An Owner that has suffered damage to a Unit ("**Unit Damage**") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy (a "**Covered Loss**") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to the Unit Damage ("**Unit Damage Percentage**") for that Unit to the amount of the deductible under the Association's property insurance policy.

(c) If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Element appurtenant to the Unit, the Association may levy an Individual Assessment against the Owner for that amount.

(d) The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

(f) The Association shall provide notice to each Owner of the Owner's obligation under this Section for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

9.4 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the Undivided Interests, the Board shall hire and appoint an insurance trustee with whom the Association shall enter into an insurance trust agreement (an "**Insurance Trustee**"), for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.

9.5 **Association's Right to Negotiate Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee, if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

9.6 **Amendments to this Section to Comply with Applicable Law.** These insurance provisions are intended to comply with current Utah law. It is further intended that any future changes to the insurance law applicable to condominium associations shall apply to this Association. Notwithstanding anything contrary in this Declaration, the Board may unilaterally, without approval of the Owners, amend this Article to comply with future changes to applicable law.

ARTICLE 10. DESTRUCTION; CONDEMNATION; RESTORATION

10.1 **Definitions.** As used herein, each of the following terms shall have the meaning indicated:

“Available Funds” means any proceeds of insurance, Condemnation awards, payments in lieu of Condemnation and other uncommitted funds held by the Board, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Board, including a Mortgagee, or that portion of any Condemnation award or payment in lieu of Condemnation payable to an Owner or its Mortgagee for the Condemnation of the Condominium Unit in which it is interested.

“Condemnation” means any action or proceeding in which any interest in the Property is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.

“Estimated Cost of Restoration” means the estimated cost of Restoration as determined by the Board in its sole discretion.

“Restoration” means restoration of the Property to the extent reasonably possible in accordance with this Declaration, the Plat and the original plans and specifications for the Property and to substantially the same condition in which the Property existed prior to the damage or destruction concerned, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, and to the extent not so possible, **“Restoration”** means restoration of the Property to an attractive, sound and desirable condition. Any Restoration not in accordance with this Declaration, the Plat and the original plans and specifications for the Project shall require the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees.

“Restored Value” means the value of the Property after Restoration.

“Substantial Condemnation” means the occurrence of: (a) the Condemnation of all of the Property; or (b) the Condemnation of part of the Property where the Estimated Costs of Restoration is 75% or more of the estimated Restored Value of the Property. **“Partial Condemnation”** means the occurrence of any Condemnation which is not a Substantial Condemnation.

“Substantial Destruction” means the occurrence of any damage or destruction of the Property where the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. **“Partial Destruction”** means the occurrence of any damage or destruction to the Property which is not a Substantial Destruction.

10.2 **Board Determinations.** On the occurrence of any Condemnation of, or damage or destruction to, the Property, the Board shall make a determination as to whether the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. In making

such determinations the Board may (but is not obligated to) retain and rely on one or more qualified appraisers or other professionals.

10.3 Restoration. Restoration of the Property shall be undertaken by the Board promptly without a vote of the Owners on the occurrence of Partial Condemnation or Partial Destruction, and shall also be undertaken on the occurrence of Substantial Condemnation or Substantial Destruction unless the election to not undertake Restoration is consented to by a Two-Thirds Majority of the Owners and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees. Within 30 days after the Board has determined that Substantial Condemnation or Substantial Destruction has occurred, it shall send to each Owner and Eligible Mortgagee a written description of the Condemnation or the damage or destruction involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. If Condemnation awards, payments in lieu of Condemnation or insurance proceeds actually received by the Board exceed the cost of Restoration when Restoration is undertaken, then the excess shall be paid and distributed to the Owners in proportion to their respective Undivided Interests or, in the discretion of the Board, shall be held to defray future Common Expenses. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, then all of the Units shall be assessed for the deficiency on the basis of their respective Undivided Interests. If all or any portion of one or more Units is damaged or destroyed but is not the subject of Restoration (even through the Property will continue as a condominium project) or is taken in a Condemnation, then the Undivided Interest of such Unit or Units shall immediately be reallocated to the remaining Units in accordance with the method set forth in Section 10.6 below.

10.4 Sale of Property. Unless Restoration is accomplished pursuant to Section 10.3, the Property shall be sold following the occurrence of Substantial Condemnation or Substantial Destruction. On such sale, condominium ownership under this Declaration and the Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board to the Owners in proportion to their respective Undivided Interests. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

10.5 Authority to Represent Owners. The Board, as attorney-in-fact for each Owner, shall represent all of the Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of the Property. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their respective interests may appear. The Board, as attorney-in-fact for each Owner, shall have and is granted full power and authority to restore or to sell the Property and each Unit therein wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

10.6 Reallocation of Interests on Condemnation. If any Unit is taken by Condemnation, then the Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests. The court shall enter a decree reflecting the reallocation of the Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit taken for its Undivided Interest as well as for its Unit. If any portion of any Unit is taken by Condemnation, then the court shall determine the fair market value of the portion of the Unit not taken, and the Undivided Interest appurtenant to such Unit shall be reduced in proportion to the diminution in the fair market value of such Unit resulting from such Condemnation. The Undivided Interest thus divested from the Owner of such Unit shall be reallocated among such Unit and the other Units in proportion to their respective Undivided Interests, with any Unit partially taken in Condemnation participating in the reallocation on the basis of its Undivided Interest as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of the Undivided Interest so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit partially taken for that portion of its Undivided Interest divested from it and not revested in it as well as for that portion of its Unit taken by Condemnation. If, however, the Condemnation of a portion of any Unit makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the entire Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests, and the remaining portion of such Unit shall thereafter be part of the Common Elements. The court shall enter a decree reflecting the reallocation of Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of such Unit for its entire Undivided Interest and for its entire Unit.

10.7 Allocation of Proceeds upon Partial Condemnation. If a portion of the Common Elements is taken by Partial Condemnation, then the award for it shall be allocated to the Owners in proportion to their respective

ARTICLE 11. MORTGAGEE PROTECTION.

11.1 Eligible Mortgagee. Upon written request to the Association by a Mortgagee (which request identifies the name and address of such holder and the Unit number or address of the property encumbered by the Mortgage held by such Mortgagee), such Mortgagee shall be deemed thereafter to be an “**Eligible Mortgagee**” included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(a) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held by such Eligible Mortgagee.

(b) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held by such Eligible Mortgagee, which delinquency remains uncured for a period of sixty (60) days.

(c) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

11.2 Matters Requiring Prior Eligible Mortgagee Approval.

(a) The prior written consent of not less than fifty-one percent (51%) of Eligible Mortgagees shall be required to:

(i) amend any material provision of this Declaration which changes the allocation of responsibility for maintenance and repairs, changes the amounts and other requirements of insurance or fidelity bonds required hereunder or reallocates the responsibility for obtaining such insurance, places additional restrictions on the rights to use the Common Elements, or expressly benefits Mortgagees;

(ii) amend this Declaration to add any provision which would impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey a Unit; or

(iii) terminate this Declaration.

(b) Any addition or amendment shall not be considered material if it is for clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee shall be mailed, postage prepaid, to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

11.3 Availability of Governing Documents and Financial Statements. The Association shall maintain and have current copies of the Governing Documents as well as its own books, records, and financial statements available for inspection, upon reasonable notice and at reasonable hours, by any Eligible Mortgagee.

11.4 Priority of Declaration; Subordination of Lien. Any Mortgage or other encumbrance of any Unit shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding the foregoing, the lien or claim against a Unit for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to a first or second Mortgage affecting such Unit if the first or second Mortgage was recorded before the unpaid Assessment was due, and the Mortgagee thereunder which obtains title to the Unit shall take title free of such lien or claim for unpaid Assessment or charges which accrue prior to foreclosure of the first or second Mortgage by judicial proceedings or power of sale, or taking of a deed in lieu of foreclosure.

ARTICLE 12. ENFORCEMENT; DISPUTE RESOLUTION.

12.1 Agreement to Encourage Resolution of Disputes without Litigation.

(a) Declarant, the Association, and all Owners and Residents (each, a “**Bound Party**”) agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (as defined below), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Section in a good faith effort to resolve such Claim.

(b) As used in this Section, “**Claim**” means any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligation, and duties of any Bound Party under the Governing Documents;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2 below:

- (1) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (2) any suit by the Association against one or more Owners to obtain injunctive relief;
- (3) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (4) any suit in which any indispensable party is not a Bound Party; and
- (5) any suit as to which any applicable statute of limitations would expire within 180 days after the giving of Notice required by Section 12.2 below.

12.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (the “**Claimant**”) against another Bound Party (the “**Respondent**”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises;

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and the Respondent shall make good faith efforts to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days after the date of the Notice (or within such other period as the parties may agree), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Salt Lake County area. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not to third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the Claim to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of a Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportion) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Initiation of Litigation by the Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceedings unless first approved by a vote of not less than sixty percent (60%) of the Eligible Votes cast at an annual or special meeting of the Association; except that no such approval shall be required for actions or proceedings:

(i) initiated during the Declarant Control Period;

- (ii) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;
- (iii) initiated to challenge property tax or condemnation proceedings;
- (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

12.3 Enforcement and Right to Recover Attorney's Fees and Costs. Subject to the provisions of Section 12.2 above, the Association, or any Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Governing Documents. Should the Association or any Owner take action to enforce the Governing Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, the prevailing party in such action may recover all costs incurred in such action, including reasonable attorney's fees. Failure by the Association or any Owner to enforce any provision of this Declaration or the other Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. The provisions of this Section shall be in addition to and not in limitation of any rights or remedies provided in any other Section of this Declaration.

12.4 Self Help Rights of Association.

(a) If an Owner fails properly to perform such Owner's maintenance responsibilities or otherwise fails to comply with any provision of this Declaration, the Association may perform the required maintenance or perform the obligation or otherwise take steps to abate the violation and assess its costs against the Unit and the Owner as an Individual Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(b) If an emergency exists in which failure to act could endanger life or property, the Association may without prior notice to an Owner enter onto or into a Unit and take such action as may be necessary to abate the emergency. If the emergency was caused by or attributable to the negligence or misconduct of the Owner, the costs incurred by the Association in correcting the emergency shall be assessed to the Owner as an Individual Assessment.

(c) The Association may cause to be towed any vehicle which is in violation of parking or other restrictions contained in the Governing Documents, and the owner of the vehicle will be responsible for the towing costs and the costs of any storage of the vehicle after towing.

12.5 Fines.

(a) The Board may assess fines against an Owner, in accordance with this Section 12.5, for a violation of the Governing Documents by the Owner or its tenants or Guests.

(b) If an Owner, Resident, or Guest commits a material violation of the Governing Documents other than a failure to pay an Assessment, then, prior to disciplinary action resulting from such violation, the Board shall provide to the Owner of the applicable Unit written notice (a “**Violation Notice**”) (i) describing the violation and identifying the provision of the Governing Documents violated; (ii) stating that the Board will assess a fine or fines against the Owner if a continuing violation is not cured or if the Owner or its tenants or Guests commit violations of the same provision within one year after the date of the Violation Notice; and (iii) if the violation is a continuing violation, stating a time by which the Owner shall cure the violation, which time shall be not less than 48 hours after the date on which the Violation Notice is given to the Owner.

(c) The Board may assess a fine against an Owner if (i) within one year after the day on which the Board gives an Owner a Violation Notice, the Owner commits another violation of the same rule or provision identified in the Violation Notice, or for a continuing violation, the Owner does not cure the violation within the time period that is stated in the Violation Notice.

(d) After the Board assesses a fine against an Owner under this Section 12.5, the Board may, without further warning and with no right to another hearing, assess an additional fine against the Owner each time the Owner or its tenants or Guests commit a violation of the same rule or provision within one year after the day on which the Board assesses a fine for a violation of the same rule or provision; or allows a violation to continue for ten days or longer after the day on which the Board assesses the fine.

(e) A fine assessed under this Section 12.5 shall be in the amount provided for in the Rules and Regulations, not to exceed the amount allowed by any applicable law, and shall constitute an Individual Assessment against the Owner.

12.6 Suspension of Use Rights. The Board may suspend the voting rights of an Owner who is in violation of any provision of the Governing Documents, and/or suspend the rights of an Owner who is in violation of any provision of the Governing Documents for that Owner and its tenants or Guests to use any recreational portions of the Common Elements; provided, however, that the right of an Owner or its tenants or Guests to access such Owner’s Unit shall not be suspended or denied.

12.7 Notice and Hearing.

(a) An Owner who is assessed a fine may request an informal hearing before the Board to dispute the disciplinary action within thirty days after the day on which the Owner receives notice of the disciplinary action. If a hearing is requested within the time period provided for herein, then a hearing shall be scheduled by the Board and conducted in compliance with procedures included in the Rules and Regulations and with any applicable law.

(b) The determination of the Board of Directors after a hearing held in accordance with this Section 12.7 shall be final, subject to any rights of appeal provided under applicable law.

(c) Nothing herein shall be construed to prevent the Board of Directors from exercising the self-help rights of the Association under Section 12.4 above, and no hearing shall be required in connection with the exercise of such rights.

12.8 Declarant's Rights .

(a) All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. All references in this Declaration to Declarant shall include any successor to Declarant, either by operation of law or through specific assignments of rights under the Declaration.

(b) Anything in this Declaration to the contrary notwithstanding, during the Declarant Control Period:

(i) Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Condominium Unit or any portions thereof. Recordation of such an amendment shall be deemed conclusive proof of the institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Property and all persons having an interest therein.

(ii) This Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant may unilaterally amend or terminate this Declaration prior to the closing of a sale by Declarant of any Unit.

12.9 Initial Development and Construction.

(a) As used in this Section, the following terms shall have the meanings given them below:

“Contractor” shall mean any contractor licensed in the State of Utah that furnished labor, materials, or equipment for the Initial Construction pursuant to a contract with the Declarant.

“Design Professional” shall mean any architect, engineer, or surveyor licensed in the State of Utah that performed professional services for the Initial Construction pursuant to a contract with the Declarant.

“Initial Construction” shall mean the design and construction of the Improvements, including all services, labor, materials, and equipment furnished for the improvement thereof, that achieved Substantial Completion within six (6) years of date of the recording of this Declaration.

“Substantial Completion” shall mean the stage in the progress of the Initial Construction when the Initial Construction or designated portion thereof is sufficiently complete so that it can be put to its intended use.

(b) In all claims and causes of action by the Association, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, a Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall attach as an exhibit to its first Complaint filed with a court of competent jurisdiction an affidavit of a third-party licensed in the State of Utah in the same profession, area of practice, or construction trade as each defendant and who is competent to testify. Each affidavit shall set forth specifically a professional opinion as to each act, error, or omission alleged in the Complaint against the respective defendant that caused the Association’s alleged damages and the factual basis for each such opinion. The Association’s failure to file the affidavit in accordance with this Section 12.9 shall result in dismissal with prejudice of any claim described in this Section 12.9 against the particular defendant for which such affidavit is required and an award of reasonable attorney fees and expenses incurred by the particular defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the allegations of the Complaint.

(c) The Association shall commence all claims and causes of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, a Contractor, any design consultants of a Design Professional, or any subcontractors of a Contractor not more than four (4) years after the respective date of Substantial Completion of each portion of the Initial Construction for which the claim or cause of action is made. The Association waives all claims and causes of action not commenced in accordance with this section.

(d) During the four (4) years following the date of Substantial Completion of the Initial Construction, the Association shall schedule an annual walkthrough of all Common Elements with the Association’s maintenance personnel and a representative of Declarant for the purpose of identifying items potentially in need of repair or maintenance within the next year. The Association shall give at least thirty (30) days prior written notice of the date and time of the walkthrough to Declarant, which time and date shall be during normal business hours. The Association shall conduct each walkthrough and keep a record of the items identified regardless of any lack of participation by Declarant.

(e) As an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall give written notice by United States Postal Service certified mail, return receipt requested, of an alleged defect in the Initial Construction to Declarant, all Design Professionals, and all Contractors within thirty (30) days of first discovering the alleged defect, and Declarant and each Design Professional and Contractor shall then have ninety (90) days from the mailing date of the last written notice to any of them to cure such alleged defect. The Association’s failure to provide notice shall result in dismissal with prejudice of any claim

and an award of reasonable attorney fees and expenses incurred by any defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the alleged defect.

(f) To the extent damages are covered by insurance, the Association waives all rights against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor for damages, except such rights as the Association may have to the proceeds of such insurance.

(g) The Association waives any claim or cause of action for consequential damages arising out of or relating to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor.

(h) A vote in favor of at least 75% of the voting members of the Association is an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor.

ARTICLE 13. MISCELLANEOUS.

13.1 Amendment. This Declaration and/or the Plat may be amended only by a vote of at least sixty-seven percent (67%) of the Total Votes and, if required pursuant to this Declaration, the consent of the required percentage of Eligible Mortgagees. Any amendments so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the required vote for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

13.2 Removal of Property from Act. The Owners may remove the Property from the provisions of the Act by an affirmative vote of Owners holding seventy-five percent (75%) of the Total Votes, at a meeting of Owners duly called for such purpose, provided that all liens affecting the Condominium Units will be transferred to the undivided interest of each Owner in the Property. On removal of the Property from the provisions of the Act, the Property shall be deemed to be owned by the Owners as tenants in common. The undivided interest in the Property owned in common by each Owner shall be equal to the Undivided Interest previously owned by such Owner. Any removal so authorized shall be accomplished through the recordation of an instrument in the County Records executed (solely) by the Board. In such instrument the Board shall certify that the vote required by this Section for removal has occurred. The removal provided for in this Section shall not bar the subsequent resubmission of the Property to the provisions of the Act.

13.3 Sale of Property. The Owners may, by an affirmative vote of a Super Majority of the Owners, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Notwithstanding the foregoing, sale of the Property

in the event of damage, destruction, or condemnation shall be governed by the provisions of Section 10.4 above.

13.4 Declarant's Right to Amend. Notwithstanding anything to the contrary herein, the Declarant reserves the right to amend this Declaration without the consent of any other Owners during the Declarant Control Period or any Eligible Mortgagee (i) if such amendment is necessary to bring this Declaration into compliance with any rule, regulation or requirement of the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any similar federal agency, or any local government having jurisdiction over the Project, or (ii) to make corrective changes.

13.5 Limitation on Improvements by Association. During the Declarant Control Period, neither the Association nor any Owner shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Elements created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant.

13.6 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units in the Project then owned by Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

13.7 Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time elect to relinquish its reserved right to select the Board of Directors and transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "**Transition Date**") at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Board of Directors to take office as of the Transition Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management.

13.8 Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligation of an Owner to pay Assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration.

(a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

(b) No amendment may be made to the Declaration without the written consent of Declarant during the Declarant Control Period.

13.9 Interpretation. The captions which precede the Articles and Sections of the Governing Documents are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The unenforceability or invalidity of any portion of the Governing Documents shall not affect the validity or enforceability of the remainder hereof.

13.10 Covenants to Run with Land. Unless terminated as provided herein, this Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. All Owners, Residents, and Guests shall comply with, and all interests in all Units shall be subject to, the terms of the Governing Documents and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit, the party acquiring such interest consents to, and agrees to be bound by, every provision of the Governing Documents.

13.11 Security. The Association may, but shall not be obligated to, maintain or support any systems, programs or activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association nor the Board of Directors shall in any way be considered insurers or guarantors of security within the Project, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, Residents, and Guests, where applicable, acknowledge by taking occupancy of a Unit or entering the Project that neither the Association nor the Board of Directors represents or warrants that any security measures undertaken will ensure their safety, and further acknowledge that neither the Association nor the Board of Directors are insurers or guarantors of their safety, and they hereby expressly assume all risks for loss or damage to their person or property, and they further acknowledge that neither the Association nor the Board of Directors has made any representations or warranties, nor has such Owner, Resident, or Guest relied upon any representations or warranties, expressed or implied, regarding security in the Project.

13.12 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being recorded in the office of the County Recorder of Salt Lake County, Utah.

[Signature Page Follows]

EXECUTED as of the day and year first above written.

DECLARANT:

ROSE TREE PROPERTIES, LLC,
a Utah limited liability company

By _____

Name:

Title:

STATE OF _____)

:ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____
_____, 2020, by _____, _____ of
Rose Tree Properties, LLC, a Utah limited liability company.

Notary Public

Residing at: _____

My commission expires:

EXHIBIT A
to Declaration of Covenants, Conditions, and Restrictions
for Knight Bungalow Condominiums

[Attach legal description]

EXHIBIT B
to Declaration of Covenants, Conditions, and Restrictions
for Knight Bungalow Condominiums

[Attach Plat]

EXHIBIT C
to Declaration of Covenants, Conditions, and Restrictions
for Knight Bungalow Condominiums

[Attach Description of Proportionate Share, Voting Rights and Undivided Interests]

EXHIBIT D
to Declaration of Covenants, Conditions, and Restrictions
for Knight Bungalow Condominiums

[Attach Bylaws]