

THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM

OF THE

NEWPORT HEIGHTS CONDOMINIUMS

A UTAH CONDOMINIUM PROJECT

01-159-0009-0012
Units 9-12, 15-18
Common Area Newport Heights

Units 1-8 + Common Area
Newport Heights Sec 1
01-155-0001-0009

SE-6-17-1E 01-021-0047

This Third Amendment to Declaration of Condominium, hereinafter referred to as the "Third Amended Declaration," is made and executed this 21st day of August, 1987, by Leon Peterson and Karen F. Peterson, and FPSA INVESTMENT, LTD. hereinafter referred to jointly as the "Declarant."

RECITALS

A. Amendment to Previously Recorded Original Document. This Document modifies, relates to and refers to the previously recorded original Declaration of Condominium of the Newport Heights Condominium Project, recorded July 18, 1986 at the Davis County Recorder's Office as Instrument No. 0744643, Book No. 1100, p. 725. In the event of a conflict of terms, this Third Amendment shall supersede the prior original Declaration and shall be the controlling document.

B. Amendment Supersedes and Has Priority Over Previous Amendments. This Third Amendment to Declaration of Condominium of the Newport Heights Condominiums specifically supersedes the previous Amendments to Declaration of Condominium, previously recorded as follows:

- i. Amendment to Declaration of Condominium recorded February 2, 1987 at the Davis County Recorder's Office as Instrument No. 0771265, Book No. 1141, p. 977; and
- ii. Amendment to Declaration of Condominium recorded April 16, 1987 at the Davis County Recorder's Office as Instrument No. 0781774, Book No. 1159, p. 929.

C. Merger of Construction Phases I and II. As further provided in Paragraph 4 herein, Construction Phase II has been annexed and made a part of the Project. Schedule I (Amended) attached hereto, contains the legal description of Phase I and Phase II, which are hereby merged.

In the event of a conflict of terms, this Third Amendment shall supersede the prior Amendments and shall be the controlling document.

AMENDMENTS TO SPECIFIC PROVISIONS

The following Amendments are made to the Declaration of Condominium of the Newport Heights Condominium Project:

- 1. Paragraph 1.08 of Article I shall be deleted in its entirety and shall be amended to read as follows: "Condominium" shall mean a Unit and the undivided interest in Common Areas (expressed as a percent of the entire Ownership as set forth in Amended Exhibit "A", attached hereto and by this reference made a part hereof),

RETURNED

28 AUG 21 1987

RECORDED AT REQUEST OF ASSOCIATED TITLE

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PAGE 611

together with the exclusive right to the use and enjoyment of the following Limited Common Areas and Exclusive Use Areas appurtenant thereto:

- A. Limited Common Areas consisting of (1) ground level patio space, or (2) above ground balcony space, adjacent to the respective unit served by such patio or balcony space, as shown by the following Record of Survey Plat Maps:
 - i. Sheet 1 of 3 of the Record of Survey Plat Map of Newport Heights Condominiums--Phase I, except that Units 5 and 6 and Units 7 and 8 are divided and separated by a common wall (which wall is not shown on the said Record of Survey Plat Map), said wall extending from the rear of the building to the outermost edge of the patio or balcony space, dividing the respective Units as well as the Limited Common Areas serving those respective Units.
 - ii. Sheet 1 of 3 of the Amended Record of Survey Plat Map of the Newport Heights Condominiums--Phase II.
- B. Exclusive Use Area consisting of the concrete driveway located immediately in front of and adjacent to each Unit's garage, said concrete driveway extending from the front of the garage to the curb or roadway.

The above-referenced Limited Common Areas and Exclusive Use Areas are more particularly marked and shown on copies of Record of Survey Plat Maps kept by the Homeowner's Association; certified by Thomas Mabey, Consortium, Inc., project engineer. These copies of Record of Survey Plat Maps shall be kept by the Homeowner's Association and shall continually be available for inspection in accordance with the provisions of Paragraph 15.02 of the Declaration (see Paragraph 19 of this Third Amendment).

- 2. Paragraph 1.12 of Article I shall be deleted in its entirety and shall be amended to read as follows:
 - A. Paragraph 1.12(A) "Limited Common Areas" shall mean those Common Areas designated and reserved for the use of a certain Unit to the exclusion of the other Units in the Project, as shown on the Record of Survey Plat Maps previously referred to in Paragraph 1.08(A) and 1.08(B), above; more particularly marked and shown on copies of the Record of Survey Plat Maps kept by the Homeowner's Association as referred to in Paragraph 1.08, above.

- B. Paragraph 1.12(B) "Exclusive Use Areas" shall mean the concrete driveway area designated and reserved for the use of a certain Unit to the exclusion of the other Units in the Project, as shown on the copies of the Record of Survey Plat Maps kept by the Homeowner's Association, as referenced in Paragraph 1.08, above.
3. A new Paragraph identified as Paragraph 1.13(A) shall be added to Article I as follows: "Map", "Record of Survey Map", "Survey Map", or "Plat Map" shall mean and refer to the Record of Survey Plat Map entitled "NEWPORT HEIGHTS CONDOMINIUMS--PHASE I, Record of Survey Plat", executed and acknowledged by Declarant, consisting of three (3) sheets, and the Record of Survey Plat Map entitled "AMENDED NEWPORT HEIGHTS CONDOMINIUMS--PHASE II, Record of Survey Plat" executed and acknowledged by Declarant, consisting of three (3) sheets, the face pages of which are attached hereto for identification purposes and marked as Exhibits B-1 and B-2, respectively, as both may be hereinafter modified, amended, supplemented or expanded in accordance with the provisions hereof (specifically Article II concerning amendments and supplements to the Survey Map which occur in conjunction with additions to the Project).
 4. Paragraph 1.18 of Article I shall be deleted in its entirety and shall be amended to read as follows: "PHASE I AND II OF THE DECLARATION OF CONDOMINIUM" shall be hereinafter treated as a single legal phase, comprising both Construction "Phase I" and Construction "Phase II"; "Phase II" being hereby annexed and declared and made part of the Project as such.
 5. A new Paragraph identified as Paragraph 1.19(A) shall be added to Article I as follows: "PHASE III" shall mean the real property located in Davis County, State of Utah, and more particularly described in Schedule 2 (Amended), attached hereto and by this reference made a part hereof. Legal descriptions of the respective real property in "Phase III" are set forth in the Schedule solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute a lien, encumbrance, restriction or limitation upon any portion of "Phase III" unless and until such portion is submitted to the Project in accordance with law and the provisions hereof, specifically Paragraphs 2.02 through 2.05 of the original Declaration.
 6. Paragraph 1.20 of Article I shall be deleted in its entirety and shall be amended to read as follows: "Unit" shall mean an individual air space unit, consisting of enclosed rooms and attached garage space, occupying part of a building and bounded by the unfinished interior surface of the walls, floors, ceilings, windows, and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be part of the Unit. 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 for the use and enjoyment of another Unit: Bearing walls, floors, ceilings and roof (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, shoots, conduits, wires, and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the point at which such surfaces are located when the window or door is closed.

7. Paragraph 2.03 of Article II shall be deleted in its entirety and shall be amended to read as follows: Submission of Phase III. Declarant hereby reserves the absolute right and option to expand the Project at any time by adding to the Project the lands described as Phase III, any portion or portions thereof in any order or sequence, to a maximum of twelve (12) additional residential units. Notwithstanding any provision of the Act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner, Mortgagee, Eligible Mortgagee or Eligible Insurer or Guarantor). Any such portion of land shall be deemed added to the Project at such time as the supplement to this Declaration and to the Survey Map containing the information required by the Condominium Act has been recorded with respect to the portion of the additional land concerned.
8. Paragraph 2.04 of Article II shall be deleted in its entirety and shall be amended to read as follows: Rights and Statements Respecting Phase III. No assurances are made as to the location of improvements or the creation of Limited Common Areas and Exclusive Use Areas in the additional Phase. Assuming the entirety of Phase III is added to the Project, the maximum number of Units for the entire Project shall be twenty-eight (28) (16 Units total for Phase I and II, and 12 Units for Phase III, which may be added in the future). Each Unit created on any portion of Phase III shall be subject to each and every requirement set forth in this Declaration respecting Units initially covered by this Declaration and shall be compatible with existing structures including design, appearance, size and quality of construction. No additional recreational facilities shall be included in Phase III. All land, buildings, improvements and equipment which are submitted with Phase III as shown on the Survey Map shall be subject to the provisions of this Declaration respecting Common Areas.
9. Paragraph 2.05 of Article II shall be deleted in its entirety and shall be amended to read as follows: Procedure for Expansion. The supplements to this Declaration and to the Survey Map by which additions to the Project of the Phase III lands shall be accomplished shall be executed by the Declarant, shall be in recordable form, must be filed for record in the office of the Davis County Recorder, State of Utah, on or before five (5) years

from the date this Declaration is recorded, and when taken together shall contain the following information for Phase III:

- (a) data sufficient to identify this Declaration and the Record of Survey Map;
- (b) the legal description of the portions of Phase III being added;
- (c) a description of the buildings located on the land and of all other significant improvements;
- (d) the unit number of each Unit being created;
- (e) a description of any Limited Common Areas and Exclusive Use Areas being created within Phase III;
- (f) a Second Amended Exhibit "A" to this Declaration setting forth the percentage of undivided ownership interest which, after the addition of Phase III, shall appertain to each Unit in the Project, computed as set forth in paragraph 4.04 of this Declaration.

Upon the recordation of the Second Amended Exhibit "A" contemplated above, the revised schedule of the undivided interest contained therein shall automatically become effective for all purposes and shall completely supersede any similar schedule. At any point in time, the Declaration and Survey Map for the Project shall consist of this Declaration and the Survey Map initially effective hereunder as amended and expanded by all supplements thereafter recorded pursuant to the terms hereof.

- 10. Paragraph 3.01 of Article III shall be deleted in its entirety and shall be amended to read as follows: Buildings and Improvements. The buildings and other improvements constructed on the land are described on the Map. The following information regarding the Buildings is also contained on the Map: (i) the number of floors and basements in a Building; and (ii) the number of units in a Building.
- 11. Paragraph 3.02 of Article III shall be deleted in its entirety and shall be amended to read as follows: Description of Units. The Map contains the Unit number, location, and dimensions of each Unit in the Project and all other information necessary to identify each such Unit.
- 12. Paragraph 3.03 of Article III shall be deleted in its entirety and shall be amended to read as follows: Description of Common Areas. The Map contains a description of the Common Areas of the Project, including the dimensions of such Common Areas and pertinent information necessary to identify such Common Areas. This Amendment supplements the Map and is the controlling document in identifying the Limited Common Areas and Exclusive Use Areas appurtenant to each Unit and lying within the Common Areas. Accordingly, certain Areas designated by the Map as

Common Areas are further designated by this Amendment as Limited Common Areas, or Exclusive Use Areas: respectively, (1) balcony space or patio space and (2) driveway space. In all other respects, the Map is correct and shall be the controlling document.

13. Paragraph 3.04 of Article III shall be deleted in its entirety and shall be amended to read as follows: Description of Limited Common Areas. The Map contains a description of certain space as Limited Common Areas. This Amendment shall supersede the Map in this respect and shall be the controlling document. Accordingly, Limited Common Areas are defined pursuant to the terms of Paragraph 1.12(A) of Article I, above. Limited Common Areas are more particularly marked and shown on the copies of Record of Survey Plat Maps kept by the Homeowner's Association referred to in Paragraph 1.08 of Article I, above.
14. A new Paragraph identified as Paragraph 3.04(A) shall be added to Article III as follows: Description of Exclusive Use Areas. Exclusive Use Areas are defined pursuant to the terms of Paragraph 1.12(B) of Article I, above. These Exclusive Use Areas are more particularly marked and shown on the copies of the Record of Survey Plat Maps kept by the Homeowner's Association, as referenced in Paragraph 1.08 of Article I, above.
15. Paragraph 4.04 of Article IV shall be deleted in its entirety and shall be amended to read as follows: Ownership of Common Areas. The undivided interest of each condominium in the Common Areas in the Project shall be one full equal share for each Unit as shown in Amended Exhibit "A". The percentage owned by each condominium, identified by Unit number in said Exhibit, shall have permanent character and shall not be altered (i) except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded, (ii) except upon the addition of Phase III Units pursuant to Paragraphs 2.02 through 2.05 hereof, or (iii) except as otherwise permitted by the Condominium Act or this Declaration. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to the use and enjoyment of any Limited Common Areas and Exclusive Use Areas that may be designated for exclusive use by such Owner in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association.
16. Paragraph 10.01(a) of Article X is amended by adding the following language: If obtainable, the maximum deductible amount utilized in said master policy of hazard insurance shall be \$10,000.00 or one percent (1%) of the face policy amount, whichever is less.

17. Paragraph 10.01(b) of Article X shall be deleted in its entirety and shall be amended to read as follows: Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance in the minimum single limit amount of one million dollars (\$1,000,000). Said policy shall cover all of the Common Areas and Common Facilities, commercial spaces and public ways (if any) in the project, whether or not they are leased to a third party. Such insurance policy shall contain a Severability of Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner. The scope of coverage and the liability limits under such insurance policy shall be in the kinds and amounts commonly required by private institutional mortgage investors for Projects similar to the Project in construction, location and use. In no event shall the scope of coverage fail to include protection against the legal liability of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of lawsuits related to employment contracts entered into by the Association, and, if applicable, contractual and all-written contracts insurance, employers' liability insurance and comprehensive automobile liability insurance. In no event shall the liability limits of such insurance policy be less than \$1,000,000 per occurrence for personal injury or death, and/or property damage.
18. Paragraph 14.02 of Article XIV shall be amended in that certain language shall be deleted. The entire Paragraph shall remain intact as written, with the exception of the following language, located directly under 14.02(c) (xiii), which shall be deleted entirely:
- (Any First Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within 30 days shall be deemed to have approved such request).
19. A new Paragraph identified as Paragraph 15.02 shall be added to Article XV as follows:

15.02 Availability. The Association shall maintain current copies of the Declaration (including Amendments, Exhibits and Maps referred to therein), Bylaws and Project Rules, as well as its own books, records and financial statements, to be made available for inspection, at reasonable times and with reasonable notice by Condominium Owners and by holders, insurers and guarantors of first mortgages.

IN WITNESS WHEREOF, the undersigned Declarants have executed this Third Amended Declaration the day and year first written above.

Declarants:

Leon Peterson
LEON PETERSON

Karen F. Peterson
KAREN F. PETERSON

FPSA INVESTMENT, LTD.

By: Leon Peterson
LEON PETERSON

STATE OF UTAH)
 : s.s.
County of Davis)

On the 21st day of August, 1987, appeared before me Leon Peterson, personally and on behalf of FPSA INVESTMENT, LTD., and Karen F. Peterson, the signers of the above instrument, who duly acknowledged to me that they executed the same.

[Signature]
Notary Public

Residing at: BEAUTIFUL UTAH

My Commission Expires:

6/6/91

AMENDED EXHIBIT "A"
TO
DECLARATION OF CONDOMINIUM
OF THE
NEWPORT HEIGHTS CONDOMINIUM
(Subject to Amendment Pursuant to the
Provisions of Article II Thereof)

PHASE I

<u>UNIT NO.</u>	<u>OWNERSHIP PERCENTAGE</u>
1	6.25
2	6.25
3	6.25
4	6.25
5	6.25
6	6.25
7	6.25
8	6.25
9	6.25
10	6.25
11	6.25
12	6.25
13	6.25
14	6.25
15	6.25
16	6.25

Total Units, Phase I = 16

Total Percentage Ownership = 100%

CONSTRUCTION PHASE I

Newport Heights Phase I

Located in Davis County, State of Utah, more particularly described as follows:

Beginning at the Southeast corner of Lot 68 of North Cove Subdivision Plat "C", said point being N. 0° 08' 42" W. 23.67 feet along the Section line and West 837.83 feet from the East quarter corner of Section 6, Township 1 North, Range 1 East, Salt Lake Base and Meridian, said point also being on the westerly Right-of-Way line of 400 East Street; and running thence along said Westerly Right-of-Way line the following three courses: S. 4° 00' 00" E. 220.51 feet to a point on a 1000.00 foot radius curve to the left (radius point bears N. 86° 00' 00" E), Southerly along the arc of said curve 218.17 feet, and S. 16° 30' 00" E. 32.68 feet; thence N. 89° 59' 20" W. 150.00 feet; thence N. 23° 46' 42" W. 234.99 feet; thence N. 24° 11' 43" E. 51.48 feet; thence N. 7° 27' 39" W. 192.21 feet to the Southwest Corner of said Lot 68; thence N. 86° 00' 00" E. 185.65 feet along the Southerly line of said Lot 68 to the point of Beginning.

Containing 1.861 Acres

CONSTRUCTION PHASE II (AMENDED)

Newport Heights Phase 2

Located in Davis County, State of Utah, more particularly described as follows:

Beginning at the Northwest corner of Newport Heights condominiums Phase I, said point being N. 0° 08' 42" W. 1072 feet along the Section line and West 1023.06 feet from the East quarter corner of Section 6, Township 1 North, Range 1 East, Salt Lake Base & Meridian, and running thence along the west line of said Newport Heights Condominiums Phase I the following two courses: S. 7° 27' 39" E. 192.21 feet and S. 24° 11' 43" W. 51.48 feet; thence S. 53° 15' 00" W. 155.49 feet to a point on a 165.71 foot radius curve to the right (radius point bears N. 36° 45' 00" W.); thence Southwesterly along the arc of said curve 50.62 feet; thence N. 20° 23' 01" W. 100.07 feet; thence N. 2° 15' 58" E. 73.55 feet to a point on a 214.26 foot radius curve to the right (radius point bears N. 18° 16' 39" E); thence Northwesterly along the arc of said curve 33.55 feet to a point on a 15.00 foot radius reverse curve to the left (radius point bears S. 27° 15' 00" W.); thence westerly along the arc of said curve 13.70 feet to a point on a 30.00 foot radius reverse curve to the right (radius point bears N. 25° 04' 48" W.); thence Northwesterly along the arc of said curve 62.57 feet; thence N. 85° 34' 40" W. 5.00 feet; thence N. 7° 24' 55" E. 133.46 feet; thence N. 70° 00' 00" E. 52.14 feet; thence S. 72° 31' 56" E. 134.98 feet; thence N. 70° 00' 00" E. 100.00 feet to the point of Beginning.

Containing 1.698 Acres

SCHEDULE 2 (AMENDED)

NEWPORT HEIGHTS DECLARATION OF CONDOMINIUM

BOUNDARY DESCRIPTION

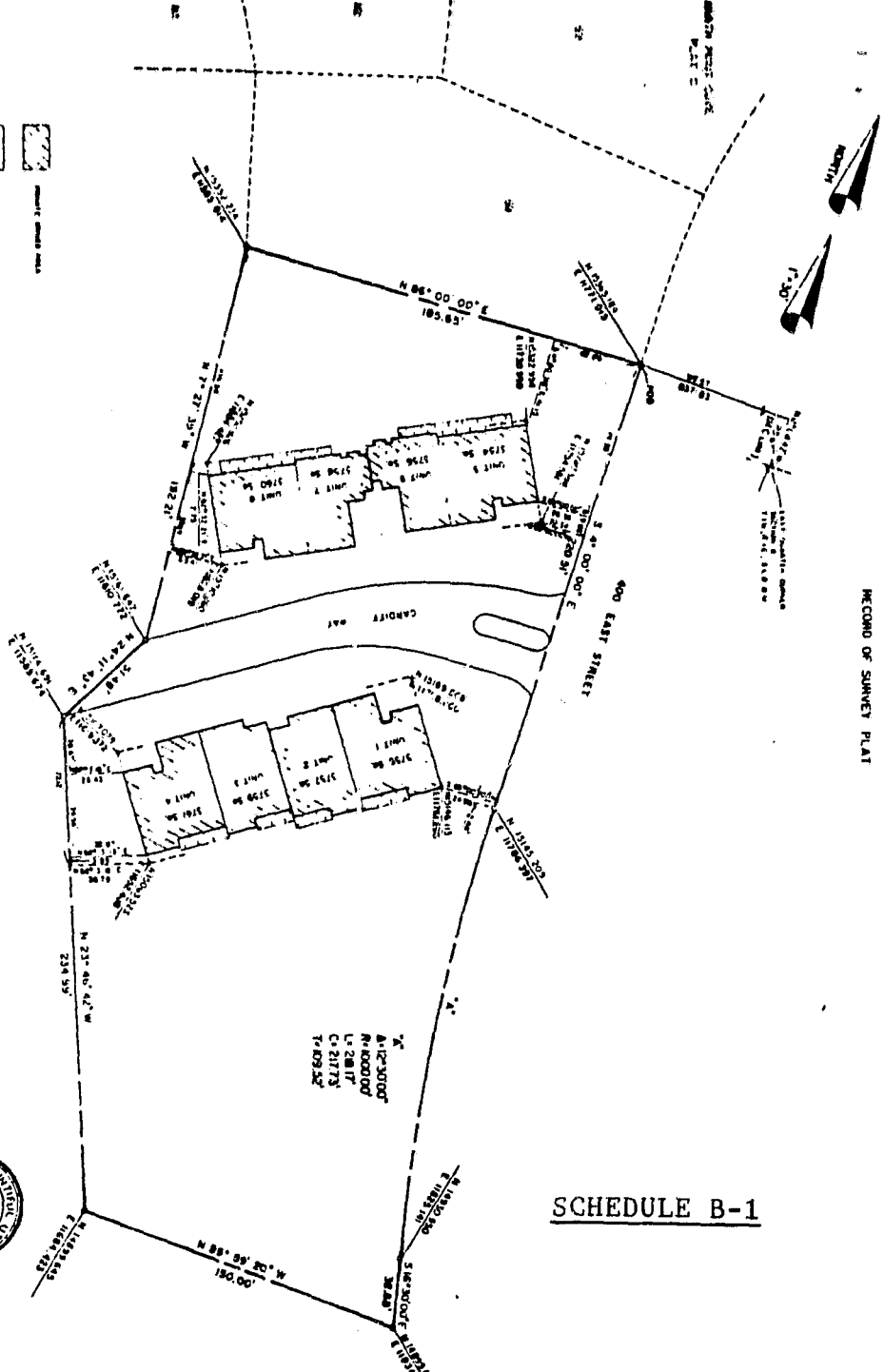
Beginning at the Southwest corner of Newport Heights Condominiums - Phase 1, a record of survey map filed in the Davis County Recorders Office, said point also being S. 0° 08' 42" E. 441.87 feet along the Section line and West 925.60 feet from the East Quarter Corner of Section 6, Township 1 North, Range 1 East, Salt Lake Base & Meridian and running thence N. 89° 59' 20" W. 385.25 feet to a point on the West line of the East half of the Southeast Quarter of said Section 6; thence N. 0° 25' 37" W. 308.66 feet along said West line to a point on the Southerly line of "Amended Newport Heights Condominiums - Phase 2", a record of survey map filed in the Davis County Recorders Office; thence along said Southerly and Southwesterly line of said "Amended Newport Heights Condominiums - Phase 2" the following (8) courses: S. 85° 34' 40" E. 5.00 feet to a point on a 30.00 foot radius curve to the left, (radius bears S. 85° 34' 40" E.), 62.57 feet along the arc of said curve to a point on a 15.00 foot radius curve to the right, (radius bears S. 25° 04' 48" E.), 13.70 feet along the arc of said curve to a point on a 214.26 foot radius curve to the left, (radius bears N. 27° 15' 00" E.), 33.55 feet along the arc of said curve, S. 2° 15' 58" W. 73.55 feet, S. 20° 23' 01" E. 100.07 feet to a point on a 165.71 foot radius curve to the left, (radius bears N. 19° 14' 47" W.), 50.62 feet along the arc of said curve, and N. 53° 15' 00" E. 155.49 feet to a point on the Westerly line of said Newport Heights Condominiums - Phase 1; thence S. 23° 46' 42" E. 234.99 feet to the point of Beginning.

Property Contains
1.507 Acres

SSA
P7-01-021-2047

NEWPORT HEIGHTS CONDOMINIUMS - PHASE I

Being a part of the 1301-1327 on S. East Street, in the City of Newport Heights, Oregon
RECORD OF SURVEY PLAT



SCHEDULE B-1

SURVEYOR'S CERTIFICATE

I, David J. Boyd, do hereby certify that I am a registered land surveyor in the State of Oregon, and that I have surveyed the above described land, and that the same is correctly shown on this plat. I further certify that the description shown on this plat is a true and correct description of the land shown on this plat, and that the same is correctly shown on this plat, and that the same is correctly shown on this plat.



OWNER'S DECLARATION

I, the undersigned, do hereby declare that I am the owner of the above described land, and that I have surveyed the same, and that the same is correctly shown on this plat, and that the same is correctly shown on this plat.

PLAT INSTRUMENT, 1308

[Signature]
 David J. Boyd
 Surveyor

AMENDMENT

STATE OF OREGON
 County of Davis

On this 1st day of July, 1988, I, the undersigned, do hereby declare that I am the owner of the above described land, and that I have surveyed the same, and that the same is correctly shown on this plat, and that the same is correctly shown on this plat.

[Signature]
 David J. Boyd
 Surveyor



CITY COUNCIL APPROVAL

[Signature]
 Mayor

[Signature]
 Council Member



CITY ATTORNEY APPROVAL

[Signature]
 City Attorney

MEGRO-FILM WILL MAKE LEGALITY OF TYPING OR PRINTING UNLAWFUL IN THE DOCUMENT WHEN FILMED

