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STATE OF UTAH )  
COUNTY OF CACHE ) SS  
FILED AND RECORDED FOR DECLARATION OF COVENANTS AND RESTRICTIONS  
HICKMAN LAND TITLE CO.  
APR 4 4 09 PM '77

FOR

GRETIA R. SMITH  
COUNTY RECORDER  
DEPUTY

LAKEWOOD HOMEOWNER'S ASSOCIATION, INC.

THIS DECLARATION, made this 30th day of March, 1977,  
by DALLAS J. ELDER and VONDA ELDER dba ELDER INVESTMENTS, here-  
inafter referred to as Developer.

W I T N E S S E T H

WHEREAS, Developer is the owner of the real property  
described in Article II of this declaration and desires to create  
thereon a residential community with open spaces and other common  
facilities for the benefit of the said community; and,

WHEREAS, Developer desires to provide for the  
preservation of the values and amenities in said community  
and for the maintenance of said open spaces and other common  
facilities; and, to this end, desires to subject the real  
property described in Article II together with such additions  
as may hereafter be made thereto (as provided in Article II)  
to the covenants, restrictions, easements, charges and liens,  
hereinafter set forth, each and all of which is and are for the  
benefit of said property and each owner thereof; and,

WHEREAS, Developer has deemed it desirable, for  
the efficient preservation of the values and amenities in said  
community, to create an agency to which should be delegated  
and assigned the powers of maintaining and administering the  
community properties and facilities and administering and  
enforcing the covenants and restrictions and collecting and  
disbursing the assessments and charges hereinafter created; and,

WHEREAS, Developer has incorporated under the laws  
of the State of Utah, as a non-profit corporation, THE LAKEWOOD  
HOMEOWNER'S ASSOCIATION, for the purpose of exercising the  
functions aforesaid;

NOW THEREFORE, the Developer declares that the real  
property described in Article II, and such additions thereto  
as may hereafter be made pursuant to Article II hereof, is and  
shall be held, transferred, sold, conveyed and occupied subject  
to the covenants, restrictions, easements, charges and liens  
(sometimes referred to as "covenants and restrictions") herein-

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after set forth.

ARTICLE I  
DEFINITIONS

SECTION 1. The following words when used in this declaration or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the LAKEWOOD HOMEOWNER'S ASSOCIATION.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this declaration or any supplemental declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.

(f) "Family" shall mean one or more persons related by blood, marriage or adoption, occupying a living unit and living as a single housekeeping unit.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

(h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Articles III, Section 1, hereof.

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## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property: The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this declaration is located in Logan, County of Cache, State of Utah, and is more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY

THIS REFERENCE INCORPORATED HEREIN

all of which real property shall hereinafter be referred to as "Existing Property."

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership: Every person or entity who is a record owner of a fee or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights: The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On July 1, 1978.

From and after the happening of these events, whichever occurs earlier, the



Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership under Section 1.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment: Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Properties: The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its heirs and assigns that it shall convey the Common Properties to the Association, free and clear of all liens and encumbrances, not later than July 1, 1978.

Section 3. Extent of Members' Easements: The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and,
- (c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains

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unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and,

- (d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and
- (e) The right of individual members to the exclusive use of parking spaces as provided in Section 4 hereof; and,
- (f) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

Section 4. Parking Rights: The Association shall maintain upon the Common Properties at least one parking space for each Living Unit. Subject to reasonable rules and conditions, the Association shall designate at least one parking space conveniently located with respect to each Living Unit for the exclusive use of the Members residing therein, their families and guests. The use of such space by any other Member of person may be enjoined by the Association or the Members entitled thereto. The right to the exclusive use of such parking space and to its maintenance and designation by the Association shall be appurtenant to and shall pass with the title to each Living Unit.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Developer for each Lot owned by him within The Properties hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessment-Declaration-page five



ments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments: Until the year beginning January 1980, the annual assessment shall be \$600.00 dollars per lot. From and after January 1, 1980, the annual assessment may be increased by vote of the Members, as hereinafter provided, for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years. The Board of Trustees of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year 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, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related



thereto, provided that any such assessment shall have the assent to two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments: Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the First meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Trustees of the Association to be the date of commencement.

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The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Trustees: The Board of Trustees of the Association shall fix the date of commencement and the amount of the assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association: If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together



with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 18 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event of a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages:

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property: The following property

subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1 hereof;



(c) all properties exempted from taxation by the laws of the State of Utah, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

#### ARTICLE VI

##### PARTY WALLS

Section 1. General Rules of Law to Apply: Each wall which is built as part of the original construction of the homes upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damages by fire or other casualty any Owner who has used the wall may restore it, and if the Owner thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rules of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing: Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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Section 5. Right to Contribution Runs with Land:

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions arising concerning a party wall, or under the provisions of this Article, each party shall choose one one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee: No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance: In addition to maintenance upon the Common Properties, the Association shall



provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot or Living Unit is subject under Article V hereof and, as part of such annual assessments or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof. Provided that the Board of Trustees of the Association, when establishing the annual assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 3. Access at Reasonable Hours: For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Sunday.

#### ARTICLE IX

##### OWNER'S OBLIGATIONS AND LIMITATIONS

Section 1. Owner's Obligation to Repair. Except for those portions which the Association is required to maintain and repair hereunder (if any) each owner shall at the owner's expense keep the interior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition.

The owner shall also, at the owner's own expense, keep the interior of the garage which may belong to his unit and parking spaces reserved to his use as common properties in a clean and orderly condition. The Association and manager shall not, by virtue of their positions, be responsible to the owner for loss or damage by theft, or otherwise of articles which may

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be stored by the owners in the common properties, storage area, garage or unit.

Section 2. Prohibition against structural changes by owner. The owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners. The owner shall not paint or decorate any portion of the exterior of the building or other common area or any portion of the fences, garage, or any other area contained therein without first obtaining written consent of the Association.

Section 3. Limitation of the use of the units and common and limited common areas. The units and common properties shall be occupied and used as follows:

A. No owner shall occupy or use his unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees family and their guests, and no unit may be leased or subleased to any group or individual other than a family.

B. There shall be no obstruction of the common properties except in the case of designated storage areas. Nothing shall be stored in the common properties without the prior consent of the Association.

C. Nothing shall be done or kept in any unit or in the common properties which will increase the rate of insurance thereon, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common properties which will result in the cancellation of insurance of any unit or any part of the common properties, or which would be in violation of any law. No waste will be committed in the common properties.

D. No sign of any kind shall be displayed to the public view on or from any unit or the common properties, without the prior consent of the Association.

E. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any unit or in the common properties except that dogs, cats or other household pets may be kept at



units subject to rules and regulations adopted by the Association.

F. No noxious or offensive activity shall be carried on in any unit in the common properties, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners;

G. Nothing shall be altered or constructed in or removed from the common properties, except upon the written consent of the Association;

H. None of the rights and obligations of the owners created herein or by the deed creating the unit shall be altered in any way by encroachment due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner if said encroachment occurred due to the willfull conduct of said owner.

Section 4. Entry for Repairs. The Association or its agents may enter any unit when necessary in connection with any maintenance, repair, replacement, inspection or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the owners as practicable and any damage caused thereby shall be repaired by the Association.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of the land subject to this Declaration, their respective legal representatives, heirs, successors, assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then-owners of two-thirds of the Lots has been



recorded, agreeing to change said covenants and restrictions in whole or part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

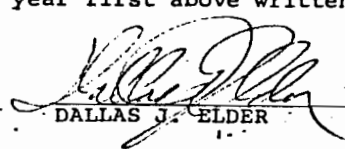
Section 2. Notices: Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

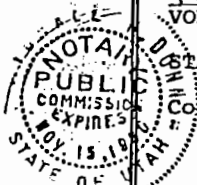
Section 3. Enforcement: Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Dated the day and year first above written.

  
VONDA ELDER

  
DALLAS J. ELDER



STATE OF UTAH )  
: ss.  
County of Cache )

On this 30th day of March, 1977, personally appeared before me, Dallas J. Elder and Vonda Elder, dba Elder Investments, the signers of the foregoing Declaration, who duly acknowledged to me that they executed the same.

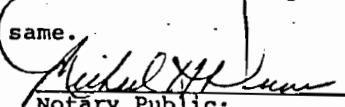
  
Notary Public:



EXHIBIT "A"

Part of the Southeast Quarter of Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian, described as follows:

Beginning at a point of Record at the intersection of the East line of Lot 6, Block 22, Plat "A" Logan Farm Survey with the North line of Second North Street, Logan city, Utah, said point being 182.7 feet South of the Northeast corner of said Lot 6, Block 22, and running thence North  $88^{\circ} 10'$  West 305.9 feet more or less to the Southeasterly bank of the Logan-Hyde Park Canal; thence Northeasterly following said Bank of canal 401.5 feet more or less to a point in the projected East line of said Lot 6, said point being by measure 182.7 feet North of the point of beginning; thence Southeasterly continuing in said bank of canal 222.0 feet more or less to said North line of Second North Street; thence West 5 chains (by record) North  $88^{\circ} 10'$  West 124.3 feet (Measured) to the place of beginning. Containing 1.26 acres.