

APPROVED FOR RECORDING  
BY J. Levey  
DATE 12/22/81

AFTER RECORDING, MAIL TO:

Salt Lake City Recorder  
311 City & County Building  
Salt Lake City, Utah 84111

**3641815**

DEED OF PRESERVATION EASEMENT

This Deed of Preservation Easement is granted this 23<sup>rd</sup> day of December, 1981, by John E. Pace and Nancy K. Pace, hereinafter collectively known as the "Owner" of the below-described property, Owner hereby conveys to Salt Lake City Corporation, a municipal corporation of the State of Utah, hereinafter "Holder" for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, a Preservation Easement, as described in Section 63-18A-1, et seq., Utah Code Annotated, 1953, as amended. This Easement shall govern the future use and alteration of property located at 1135 East South Temple and 15 "R" Street, in Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

PROPERTY LOCATION: 1135 East South Temple

Beginning at the Southeast corner of Lot 1, Block 5, Plat "G", Salt Lake City Survey; thence running West 5 rods; thence North 117 feet; thence East 5 rods; thence South 117 feet to the point of beginning.

PROPERTY LOCATION: 15 "R" Street

Beginning at the Northeast corner of Lot 1, Block 5, Plat "G", Salt Lake City Survey; thence running South 48 feet; thence West 5 rods; thence North 48 feet; thence East 5 rods to the point of beginning.

Said premises, including the real property and improvements thereon, are hereinafter referred to as the "Property".

WHEREAS, the Property owned by the Owner, is a property which is eligible for placement or has been placed upon the National Register of Historic Sites and/or has been found to be of contributing or significant historical significance within a historical district of Salt Lake City; and

WHEREAS, by virtue of said placement and designation, the Property becomes entitled to certain protections and privileges

BOOK 5333 PAGE 1266

available only to historical buildings; and

WHEREAS, it is the desire of the parties hereto to preserve and to protect the historical, cultural, and architectural characteristics of the restricted Property and to govern any future alteration, demolition, or construction which may detract from those attributes, the parties do hereby establish and agree to the following terms, conditions and restrictions:

1. Conveyance of Easement. In consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner does hereby grant and convey unto the Holder, its assigns and successors-in-interest, a Preservation Easement in the real property improvements thereon of the Owner located in Salt Lake City, Salt Lake County, State of Utah, commonly known by street address at 1135 East South Temple and 15 "R" Street, Salt Lake City, Utah, more particularly described above, hereinafter referred to as "Property".

2. Perpetual Easement. This Preservation Easement is granted in perpetuity, and the burdens and restrictions imposed hereby upon the above-described Property are deemed to run with the land and be binding upon the Owner, and all successors-in-interest to said Property.

3. Restriction on Alterations, etc., Duty to Maintain. Without the advance written permission of Holder, Owner agrees to allow or undertake no construction, alteration or change, other than that required for normal maintenance, that would change the exterior appearance of the Property. There shall be no changes in the facades, no additions thereto, no new structures erected on the Property, and no demolition of any structures located upon the Property; nor shall there be any changes of the historical appearance of the structure. Approval of proposed improvements shall not be withheld unreasonably by the Holder if the proposed changes will protect, preserve, or enhance the historical value of the site and improvements thereon and comply with guidelines for restoration established by the City. Owner will allow no

BOOK 5333  
PAGE 1267

deterioration of the Property or the structures located thereon, either through neglect, lack of maintenance, or through any other means reasonable within its control, including necessary measures to protect against the elements. Detailed descriptions of the Property as it now exists are included in exhibits which are attached to an original copy of this Easement which shall be retained in the possession of the Holder. These exhibits, being 9 pages in number, are hereby incorporated by reference into this Easement and referred to as "Exhibit 1". While these exhibits are meant to describe the present condition of the Property, they are not meant to include all information about the building site's existing attributes, nor to illustrate all of the characteristics this Easement is designed to protect. Loss or destruction of these exhibits will not affect the validity of this Easement and archaeological, historical, documentary, or other valid methods may be used to determine the present condition of the Property for the purposes of this Easement. Owner covenants to keep and maintain the Property and the structures in good repair so that no deterioration from the present condition shall take place.

4. Owner's Duty to Complete Proposed Renovation, Etc.

Owner has proposed to complete the following work upon the Property, at Owner's expense, which proposal has been submitted for approval and authorization by the City, pursuant to a certificate of appropriateness. Notwithstanding anything to the contrary herein, it is hereby expressly agreed that the grant of this Easement, and all other obligations of Owner herein, are conditioned upon the grant by the City of said approval and authorization of the conditional use. Owner agrees to complete said work within a specified time frame. The description of said work and the construction schedule which forms a part of the consideration for said agreement is attached as "Exhibit 2" and is incorporated herein by reference.

BOOK 5333 PAGE 1268

5. Owner's Duty to Repair or Replace. In the event that through casualty, vandalism, loss, wear and tear, or other normal and/or natural events, the repair, replacement or refinishing of presently-existing parts or elements of the structures on the Property are required, the Owner shall be responsible to complete such necessary work. However, the Owner may conduct such work under appropriate permit without Holder's approval, so long as the appearance and quality of the original parts of the building, in the elements of its appearance, are not altered. This provision shall not, however, allow the Owner to sandblast, nor waterblast the exterior surfaces of the structure without prior written approval of the Holder. Notwithstanding the foregoing, complete destruction of improvements upon the Property by fire, or total structural failure through earthquake would not require reconstruction. However, new construction following total destruction, would require approval of the Holder.

6. Inspection. Owner will permit Holder or Holder's authorized agents to come upon the Property to inspect for compliance with this Preservation Agreement, provided that such visits are made at reasonable times established in advance by reasonable notice, which shall not be less than three (3) days.

7. Assignability by Holder. Each and every right possessed herein by the Holder may be exercised, released or assigned by deed or appointment executed by the Holder, to any person, organization, or governmental unit which seeks to protect, preserve, or enhance the cultural and historical value of the Property and the improvements thereon. Provided, however, that Holder may transfer this Easement only to a transferee that qualifies as a "qualified organization" as defined in Internal Revenue Code §170(h)(3), and only in a transfer exclusively for "conservation purposes" as defined in Internal Revenue Code §170(h)(4). Any party so assigned may sue for specific performance or other enforcement of this Easement. However, Holder agrees that the consent of the Owner must be obtained if

BOOK 5333  
PAGE 1269

Holder desires to assign to any party other than the Utah State Historical Society or Utah Heritage Foundation.

8. Successors-in-Interest. This Preservation Easement shall run with the Property and be binding in perpetuity to cause the Owner and/or possessor of the premises or anyone acting as agent or successor thereto, to do and refrain from doing each of the actions provided for herein. This continuance of the Easement shall occur whether transfers of any interests occur by assignment, inheritance, sale, or other means of transfer.

9. Conditions Inserted in Subsequent Conveyances. Owner further agrees that this Deed of Preservation Easement or a reference to the fact that the Property is burdened by a recorded "Deed of Preservation Easement" will be inserted in any subsequent deed, will, lease, or other legal instrument by which the Owner or any person claiming an interest therein attempts to divest themselves of any interest in the Property.

10. Enforcement, Specific Performance, Damages. Owner, at Owner's expense, herein agrees to cure or correct violation of the terms of this Deed of Preservation Easement within fourteen (14) days after receiving written notice or knowledge thereof, or within any such longer period as may be agreed upon by Holder as may be reasonably required to cure such breach or violation. In the event Owner fails to cure said violation, Holder may bring suit to enjoin the violation and shall be entitled to specific performance to require the restoration of the Property to its present state, or whatever the state of the condition the Property may have been in subsequent to this date, which was judged to be better than it now is, and may enter upon the premises to correct any such violation or accomplish such restoration and hold Owner responsible for the costs thereof. In such event, Holder shall be entitled to be awarded and recover its costs, including reasonable attorney's fees and/or damages, based upon the historical and cultural loss sustained by the community as a whole, due to the actions of the Owner.

BOOK 5333  
PAGE 1270

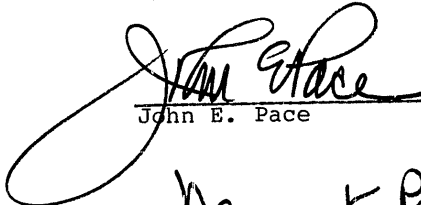
11. Waiver. No failure on the part of the Holder to enforce any provisions herein, nor the waiver of any right hereunder by the Holder, shall invalidate said provisions, nor shall the same operate to affect the right of the Holder to enforce the terms and conditions hereof in the event of a subsequent breach or default.

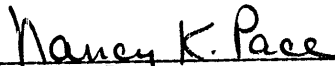
12. Severability. Should any part of this instrument be declared void or otherwise unenforceable, the remainder shall nevertheless continue to be binding and in full force and effect.

13. Amendment. This Agreement constitutes the entire agreement between the parties and shall not be amended, except by written agreement of the parties hereto.

IN WITNESS WHEREOF, the Owner has hereunto set its hand this 21<sup>ST</sup> day of DECEMBER, 1981.

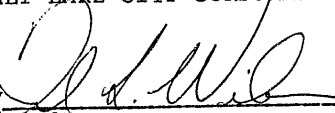
OWNER:

  
\_\_\_\_\_  
John E. Pace

  
\_\_\_\_\_  
Nancy K. Pace

HOLDER:

SALT LAKE CITY CORPORATION

  
\_\_\_\_\_  
BY  
MAYOR

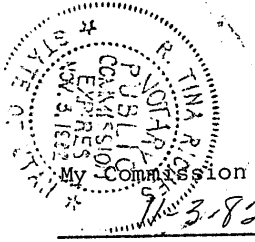


  
\_\_\_\_\_  
CITY RECORDER

BOOK 5333 PAGE 1271

STATE OF UTAH )  
: ss.  
County of Salt Lake)

On the 21 day of December, 1981, personally appeared before me John E. Pace and Nancy K. Pace, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

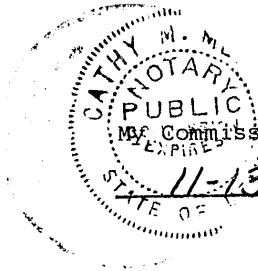


R. Tina Ruckes  
NOTARY PUBLIC, residing in Salt  
Lake County, Utah

My Commission Expires:

STATE OF UTAH )  
: ss.  
County of Salt Lake)

On the 29<sup>th</sup> day of December, 1981, personally appeared before me TED L. WILSON and KATHRYN MARSHALL, who being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, and said persons acknowledged to me that said corporation executed the same.



Cathy M. Metzger  
NOTARY PUBLIC, residing in Salt  
Lake County, Utah

My Commission Expires:

11-13-85

BOOK 5333 PAGE 1272

CONSENT TO DEDICATION OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned Owner of certain equitable and/or legal (including security) interests in portions of the previously herein described land, do hereby consent to dedication by the attached Deed of Preservation Easement executed by John and Nancy Pace in favor of Salt Lake City Corporation and further consent for the use of the same property as required under aforesaid Deed of Preservation Easement for conservation purposes not inconsistent with the exercising by the undersigned of their rights in and to such land.

IN WITNESS WHEREOF we hereunto set our hands this 21 day of December, 1981.

UTAH BANK & TRUST, as Trustee  
and Beneficiary

DAVID T. HALFORD

BY: David T. Halford  
Title Assistant Vice President

LANDSMAN CORPORATION, a Utah  
Corporation

BY: \_\_\_\_\_

Its:

\_\_\_\_\_  
Nola S. Deardon

\_\_\_\_\_  
Sharon S. Robinson

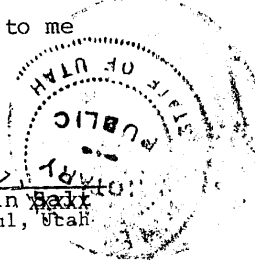
BOOK 5333 PAGE 1273



STATE OF UTAH )  
DAVIS : ss.  
County of ~~SALT LAKE~~)

On the 21 day of December, 1981, personally  
appeared before me DAVID T. HALFORD  
and \_\_\_\_\_, who being by me duly sworn, did  
say that they are the ASSISTANT VICE PRESIDENT and \_\_\_\_\_  
of UTAH BANK & TRUST, and that the foregoing instrument was  
signed in behalf of said corporation by authority of a resolution  
of its board of directors; and said persons acknowledged to me  
that said corporation executed the same.

Amos J. Bell  
NOTARY PUBLIC, residing in ~~Bedd~~  
~~XXXXXX~~ Bountiful, Utah



My Commission Expires:  
10-6-84

BOOK **5333** PAGE **1274**  
KATIE L. JOHNSON  
RECORDER  
SALT LAKE COUNTY,  
UTAH  
JAN 21 9 32 AM '82  
SL City Finance & Administration  
RECU OF [initials]  
Services  
No fee  
Amos J. Bell

PRESERVATION EASEMENT

Address: 1135 East South Temple and 15 "R" Street

Owner: John E. Pace, Nancy K. Pace, and BFD Associates

The photographs on the following pages constitute Exhibit 1 as specified in the "Deed of Preservation Easement" and serves as documentation of the property as it now exists.

\*Note: For recording purposes, the pictures (Exhibit 1) are on file in the City Planning and Zoning Department.

BOOK 5333 PAGE 1275

PRESERVATION EASEMENT

Address: 1135 East South Temple and 15 "R" Street

Owner: John E. Pace, Nancy K. Pace, and BFD Associates

The proposed work to be completed by the owner has been approved by the Historical Landmark Committee in Case No. 293 on file in the Salt Lake City Planning and Zoning Department. The minutes and drawings from that case are attached as Exhibit 2.

In addition, this work and any future proposed work shall be guided by the attached U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Applying Standards of Rehabilitation.

\*Note: For recording purposes, Exhibit 2 is on file in the City Planning and Zoning Department.

BOOK 5333 PAGE 1276

Mr. Smith felt that he could sympathize with the problem but felt Mr. Williams should try and tie in with the building more. Adding this to the building with a different material would detract from the appearance of the building. Mr. Williams said this was a temporary structure because they plan on major remodeling and additions in the future. Mr. Loosli suggested making the area for the garbage dumpsters smaller and compacting the garbage so that they would need less space. It was pointed out that the foundation for the addition had already been constructed without a permit. Mr. Bliss said that the problem is the different material, if they used the same material as the original building it would be more appropriate.

Mr. Beers made a motion to approve the request with the condition that the addition be faced with the same material (transite) as the previous elevator addition and that a landscape plan be approved. Final approval of the elevation and drawings of the addition and the landscape plan is to be made by the Architectural Subcommittee. The motion was seconded by Mr. Smith, with all members voting "Aye".

Case No. 291 by Key Investment Company to construct an addition to the front of a residential building at 425-427 Fourth Avenue.

The applicant was not present so the case was not heard. Ms. Edeiken reported that the applicant, Mr. Ray Phillips, had called her and requested that this case be postponed until the next meeting.

Case No. 292 by Charles Marson and Linda Edeiken to restore facade detailing, the porch, and the dormer in the front of the house at 70 "P" Street.

Mr. Mark Hafey presented this case to the Committee. He explained that the house had been covered with aluminum siding and the owners were proposing to restore the front of the building. Ms. Edeiken explained that the aluminum siding has been removed on the front. An original deck on the front has been removed and they are proposing to rebuild it as well as restore the detailing on the front that was removed to install the siding. A new porch frieze and railing will be added. The restoration is based on two pictures of the house which were shown to the Committee indicating the original appearance.

Mr. Flandro moved to approve the request. The motion was seconded by Mr. Beers, with all members voting "Aye".

Case No. 293 by John and Nancy Pace for a conditional use to convert a house at 1135 East South Temple and a Carriage House at 15 "R" Street into a bed-and-breakfast facility in an R-5 zone. This application includes the site plan changes and remodeling proposals discussed in HLC Case No. 284 and 285.

Ms. Edeiken explained that at the last meeting the Committee reviewed the exterior changes to the building including additions to the Lyne House on

BOOK 5333 PAGE 1277

South Temple, the site changes to the property, demolition of the small house at 15 "R" Street, and the addition to the Carriage House. The applicant has gone to the Board of Adjustment for some variances that they needed. There has been a question brought up whether the use is allowable in the R-5 zoning. The Board of Adjustment asked for the attorney's opinion as to whether a bed-and-breakfast facility could be defined under a boarding house use, which is allowed in an R-5 zone, or if it related more to a motel use, which is not allowed in an R-5 zone. The applicant has filed for a conditional use at this time so that if the Board of Adjustment makes a determination that the R-5 would not allow a bed-and-breakfast facility; they will not have wasted time in beginning the conditional use request. Mr. Pace then responded to each point of the Committee's "Guidelines for Conditional Use Approval in a Historic Structure." Two previous owners requested a conditional use for this property for offices which were denied. Mrs. Churchill explained that the two properties were separated and the Pace's have put them together as one property again. Ms. Edeiken explained that in the previous HLC cases discussed at the last meeting, the Committee approved the exterior changes to the property as being compatible but required final approval of the sign and landscape plan proposed. In response to Mr. Flandro's question, a completion bond could be required. Mr. Pace explained that when they first purchased the property the bed-and-breakfast use that had come before the city previously had been interpreted as a lodging house and it was a permitted use in the neighborhood. They proceeded on the basis of that information. Then a question was raised about how it should be classified. There is nothing in the Planning and Zoning Ordinance that defines it. One definition in the Uniform Building Code makes a distinction between lodging house/boarding house and hotels on the basis of number of rooms. A point of concern was the precedent for this type of use in the R-5 zone and the potential proliferation along South Temple in the historic district if it were decided this was an allowable use. A conditional use would allow the bed-and-breakfast facility as a special exception, not as an as-of-right use. Mr. Pace explained that there have been some other proposals before the Committee prior to their involvement, all have required a rezoning or a conditional use. The building sat empty for three years. They have done significant amounts of work on the interior of the building; rewiring, painting, etc. The building was appraised and put up for sale and did not sell. They are not proposing to change the interior significantly except for adding bathrooms to the bedrooms on the second floor. Mrs. Pace said that with the changes they are going to make, the house could always be used as a single family dwelling again. Mr. Flandro brought up the school across the street and the safety of the children. Mrs. Pace said that they have presented their plan to the Board of Education, and they were happy to see the home upgraded. Mrs. Pace said that even though the home is single family residential in character, it is in a part of the neighborhood that is particularly not single family dwelling units. There are many apartment buildings, the Town Club, and Sisters of the Holy Cross. Single family residential occurs further east. She felt an apartment use can have more of a negative impact on the building and area than the bed-and-breakfast facility. Some neighbors that have single family homes have sent in letters of approval. Ms. Jonna Smith, an Avenues resident and realtor, was present for this case. She explained that there

BOOK 5333 PAGE 1278

was a great amount of interest to buy this home as a single family residence except that it was very over priced. The appraisal Mr. Pace referred to was based on the house's highest and best use under the previous zoning before the downzoning went into effect; it was not a proper appraisal to base the selling price on. She personally had some clients that were interested in the home as a single family residence. She asked for a new appraisal which was not done. She also felt the cost to stay in this bed-and-breakfast inn (judging from San Francisco) would be too highly priced for people in Salt Lake City. Mrs. Churchill explained that a conditional use approval would mean that the proposed use is a special exception to the area's zoning allowed because of the significance of the building. Ms. Smith said that the area was downzoned for a reason, not to have spot zoning approval for certain cases. Grace Sperry, a member of the Heritage Foundation, was also present for this case. She is a real estate agent and a history major. In 1976 she worked for Jerry Mooney, who was going to buy the property to do something similar to what the Paces' are suggesting but decided he could not pay that much for the property; the only way to save this home is to make it either commercial or multi-residential units. Following these comments, there was some discussion about the preservation easement. Mr. Pace said that he was not against the concept of a preservation easement but wished to get some counsel on the matter before any definite decision was made about donating an easement. Mr. Smith explained the donation of the easement was to insure the preservation of the building. Ms. Edeiken asked about the possibility of hiring a manager for the building who would live in the building. Mr. Pace said that they do not want to be required to have a live-in manager because they want the best person for the job; if they feel that someone is the most qualified for the manager position but they do not want to live in the home, he would still want them to be the manager. Mr. Smith felt that this was a good concept and plan for a conditional use; he felt it would have less impact on the house than an apartment use. Mrs. Pace explained if they moved the Carriage House to a different location on the same property, they would not need any yard variances to build the addition they are proposing. She asked the Committee their feeling about this because they did not want to move this from its original location. Mrs. Churchill felt where it is now is its historic place and should remain in that location. Mr. Smith said the conditional use reinforces the historic placement of the original structures.

Mr. Beers moved to approve the request with the conditions of a completion bond and a preservation easement with the City. Also the conditions placed on the previous request at the last meeting (Cases #284 and 285) be upheld (that a landscape plan and design of the permanent sign be given final approval by the Committee). The motion was seconded by Mr. Smith, with all members voting "Aye". Mr. Smith made a motion that the Carriage House should not be moved. The motion was seconded by Mr. Beers, with all members voting "Aye".