

**When Recorded Return to:**

Salt Lake City Corporation  
Attn: Planning Director  
451 South State Street  
Salt Lake City, UT 84111

**DEVELOPMENT AGREEMENT  
AND  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ROWLAND HALL – ST. MARK’S SCHOOL PROPERTY LOCATED  
AT  
1443 EAST SUNNYSIDE AVENUE, SALT LAKE CITY, UTAH**

THIS DEVELOPMENT AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“AGREEMENT”) FOR ROWLAND HALL – ST. MARK’S SCHOOL PROPERTY LOCATED AT 1443 EAST SUNNYSIDE AVENUE, SALT LAKE CITY, UTAH is made as of \_\_\_\_\_, 200\_ (the “**Effective Date**”) between Rowland Hall-St. Mark’s School, a Utah non-profit corporation (the “**Declarant**”) and Salt Lake City Corporation (the “**City**”).

**RECITALS:**

A. The Declarant is the owner of real property located at 1443 East Sunnyside Avenue, Salt Lake City, Utah, more particularly described on **Exhibit A** attached hereto (the “**Property**”).

B. The Declarant desires to restrict use of the portion of the Property described on **Exhibit B** attached hereto (the “**Restricted Portion**”) so that at least 25% of the Restricted Portion will be free of buildings, paved parking areas and paved driveways.

C. The Declarant desires to develop and use a portion of the property described on Exhibit C hereto (the “Open Space Portion”) as a recreation area- independent of any zoning requirement.

D. The Declarant desires that the Property is to be held, conveyed, encumbered, leased, used, occupied and improved subject to the restrictions, rights, conditions and covenants in this Agreement.

E. This Agreement is executed voluntarily by both parties hereto for the mutual benefits set forth herein.

NOW, THEREFORE, the Declarant hereby covenants and declares the Property and every portion or interest therein, is now held and shall hereafter be held, conveyed, encumbered, leased, used, occupied and improved subject to the restrictions, rights, conditions, and covenants herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with the Property and every portion of or interest in the Property, and shall apply to every owner and occupant thereof, and their successors and assigns. All restrictions, rights, conditions and covenants in this Agreement shall run with and burden the Property and shall be binding on and for the benefit of the Property and all other persons having or acquiring any interest in the Property.

## ARTICLE 1 RESTRICTED PORTION USE RESTRICTIONS

1.1 Prohibited Uses. Independent of any zoning requirement, At least twenty-five percent (25%) of the Restricted Portion (the “**25% Portion**”) shall be at all times free of buildings, paved parking areas and paved driveways; provided that the Declarant shall have the right to relocate, move, reposition or adjust from time to time, subject to appropriate City regulation and approval in its sole discretion, the 25% Portion within the Restricted Portion. City acknowledges that the 25% Portion shall be included and counted toward the forty percent (40%) open space requirement applicable to the Institutional zone and will not decrease the developable building square footage under the City ordinances for the Restricted Portion. If City reduces the forty percent (40%) open space requirement for properties in Institutional zones prior to the time that Declarant files for a building permit on the Restricted Portion, then such reduced open space requirement shall be applicable to the Restricted Portion, provided that any such reduction shall not affect the requirement to establish the 25% portion as provided above.

1.2 Permitted Uses. Except as otherwise prohibited in **Section 1.1** of this Agreement, the 25% Portion may be used for any uses allowed in the Institutional zoning classification, which may include and for the following uses (it being understood that the following uses are not exclusive permitted uses):

- (a) Recreational uses, including, without limitation, playing fields, tennis courts, outdoor basketball, track, baseball, soccer, and field facilities;
- (b) Park-like uses including, without limitation, picnic facilities, outdoor stages and amphitheaters, gazebos, and playground equipment;
- (c) Pedestrian landscaped amenities including, without limitation, pathways, sidewalks, walkways, patios, courtyard areas, trails, terraces, benches, patios, water features, decorative walls, and other ornamental features;

(d) Landscaping, including, without limitation, trees, bushes, water sprinkler systems and other utility systems, water features, light poles, and other ornamental features.

(e) Uncovered and but-unenclosed decks and patios; ~~and~~

(f) Uses necessary to secure the stability, safety, and practical use of the ground, such as earth retaining wall terracing or similar improvements which support ground leveling, subject to appropriate City regulation and approval; and

(g) Fencing, subject to applicable City processes

1.3 View Corridor from Transvalley Corridor Trail. At such time as Declarant applies for a building permit for buildings on the Restricted Portion, Declarant shall cooperate in good faith with the City Planning Director to locate such buildings in a manner that reasonably preserves the northwest view corridor from the “Transvalley Corridor Trail” and the “Cemetery Trail” (both defined later).

## **ARTICLE 2 OPEN SPACE PORTION RESTRICTIONS**

2.1 Restriction on Buildings. Declarant agrees to construct, improve and maintain the Open Space Portion for one or more recreation fields and for related improvements. No permanent buildings may be constructed upon the Open Space Portion.

2.2 Access. Declarant agrees to allow public access to and use of the Open Space Portion during daylight hours at times when the Open Space Portion is not used for Declarant’s own activities, subject to reasonable and customary scheduling control, maintenance and upkeep, management and safety regulations of Declarant. Subject to adverse weather conditions and closure of the Open Space Portion during periods of repair and maintenance, such public access shall be made available at least five (5) hours per week.

2.3 Sunnyside Lease. Declarant agrees that upon completion of the recreation field(s) upon the Open Space Portion, Declarant shall modify or relinquish its lease (right to exclusive use) of the City owned recreation field located at the corner of Sunnyside Avenue and Guardsman Way.

2.4 Lighting. Declarant shall not construct or install any lighting for the recreation field(s) on the Open Space Portion. Declarant may install such lighting as may be appropriate for security and to prevent crime.

### ARTICLE 3 TRAILS

3.1 Cemetery Trail. Declarant agrees to designate, develop, dedicate and maintain a public trail easement (the “**Cemetery Trail**”), at least twenty (20) feet in width, to provide public access and passage between Sunnyside Avenue and the Mount Olivet Cemetery across the western portion of the Property. The Cemetery Trail shall be open and available for use by the public during all times that the Mount Olivet Cemetery is open to the public. At Declarant’s option, all or a portion of the Cemetery Trail may be located within the setback applicable to the western boundary of the Property.

3.2 Transvalley Corridor Trail. Declarant also agrees to designate, develop, dedicate and maintain a public trail easement (the “**Transvalley Corridor Trail**”), at least ten (10) ~~eight (8)~~ feet in width, to provide public access and passage along Sunnyside Avenue across the southern portion of the Property. At the Declarant’s option, all or a portion of the Transvalley Corridor Trail may be located within the setback applicable to the southern boundary of the Property.

### ARTICLE 4 GENERAL PROVISIONS

4.1 Maintenance. The Declarant shall be solely responsible for the maintenance of the Property.

4.2 Traffic Mitigation. Declarant acknowledges that its development of the Property will create an impact upon the vehicle traffic in the area. Accordingly, upon Declarant’s application for a building permit for buildings on the Restricted Portion, Declarant shall contribute \$100,000 to the City to be used for traffic calming/pedestrian safety on Sunnyside Avenue.

4.3 Site Plan Approval. Declarant’s site plan for the development of the Property shall be approved through the appropriate City process, as determined by the City Planning Director prior to the issuance of any permits, which approval shall not be unreasonably withheld or delayed. Declarant also expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Declarant from the obligation to comply with all applicable ordinances, resolutions, regulations, policies and procedures of the City in connection with the development of the Property.

4.4 Duration. This Agreement shall continue in full force for a period of one hundred (100) years from the Effective Date (the “**Term**”). Within the last year of the Term, the owner of the Property and Salt Lake City Corporation (the “**City**”) shall review the covenants and restrictions of this Agreement in light of conditions existing at that time, and determine whether and for how long the covenants and restrictions shall remain in effect. If no agreement is reached and recorded within the last year of the Term, then the Term shall extend for another one hundred (100) years.



4.5 Enforcement. Each of Declarant and the City shall have the right to enforce, by any proceeding in law or in equity, all covenants and restrictions now or hereafter imposed by the provisions of this Agreement. Declarant and the City shall retain the right to contest the existence of any alleged violation of this Agreement.

4.6 Amendments. This Agreement may be amended by duly recording an instrument executed and acknowledged by the owner of the Property; provided that this Agreement cannot be amended without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Declarant and City agree that they will cooperate in good faith in making reasonable amendments to this Agreement, subject at all times to City ordinances, in the event such amendments are necessary based on Declarant's eventual development plan for the Property.

4.7 Covenants Run With the Land. This Agreement shall be recorded against the Property with the Salt Lake County Recorder, and all restrictions, rights, conditions and covenants in this Agreement shall run with and bind the Property as covenants running with the land and shall inure with and burden the Property and shall be binding on and for the benefit of the Property and the Declarant and other persons having or acquiring any interest in the Property.

4.8 Persons Bound. This Agreement and the restrictions created hereby shall inure to the benefit of and be binding upon the Declarant, its successors and assigns; all occupants, tenants, licensees and invitees of the Property; and upon any person acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise. The new owner of the Property, including, without limitation, any owner or lienholder~~lien holder~~, who acquires its interest by foreclosure, trustee's sale or otherwise, shall be liable for all obligations arising under this Agreement with respect to the Property after the date of sale and conveyance of title.

4.9 No Public Right or Dedication. Except for the anticipated public use of the trails and the Open Space Portion, nothing in this Agreement is a gift or dedication of all or any part of the Property to the public, or for any public use.

4.10 Attorney's Fees. In the event the Declarant or the City initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

4.11 No Waiver. Failure to enforce any provision of this Agreement does not waive the right to enforce that provision, or any other provision of this Agreement.

4.12 Articles, Sections and Exhibits. The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Agreement to articles, sections or exhibits are to Articles, Sections and Exhibits of this Agreement. **Exhibits A, B and C** attached to this Agreement are each incorporated herein by this reference.

4.13 Notices. All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the Declarant or the City at the address set forth below:

Rowland Hall – St. Mark’s School  
720 Guardsman Way  
Salt Lake City, Utah 84108  
ATTN: Headmaster

Salt Lake City Corporation  
451 South State Street  
Salt Lake City, Utah 84111  
ATTN: Planning Director

4.14 Severability. If any term, condition, or provision of this instrument is held by a court of competent jurisdiction to be invalid, illegal or unenforceable to any reason, all other terms, conditions and provisions of this instrument shall nevertheless remain in full force and effect so long as the primary purposes of the instrument are not thereby affected in any manner materially adverse to any party. Upon such determination that any term, condition or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this instrument so as to effect as closely as possible the original intent of the Parties in a mutually acceptable manner to the fullest extent permitted by applicable law. The provisions of this Agreement are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Agreement by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Agreement.

EXECUTED as of the date first set forth above.

**Rowland Hall – St. Marks School,**  
a Utah non-profit corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by \_\_\_\_\_ as \_\_\_\_\_ of Rowland Hall – St. Mark’s School, a Utah non-profit corporation.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**Salt Lake City Corporation,**  
a municipal corporation

\_\_\_\_\_  
Ross C. Anderson, Mayor

Attest: \_\_\_\_\_  
Christine Meeker  
Deputy Salt Lake City Recorder

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by Ross C. Anderson, Mayor of Salt Lake City Corporation.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by Christine Meeker, Deputy City Record for Salt Lake City Corporation.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_

**Exhibit A**  
**Property Legal Description**

A Parcel of land being in the Northwest Quarter of Section 9, Township 1 South, Range 1 East, Salt Lake Base and Meridian and described as follows:

Beginning at the Southwest corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along the North right of way line of Sunnyside Avenue 543.35 feet; thence North 0° 00' 10" West 1049.71 feet; thence North 89° 59' 50" East 542.78 feet to the Northwest corner of said Armory 4 Lot Minor Subdivision, (said corner is also the Northeast corner of the amended plat of Parcels 2 & 3 of the Armory 4 Lot Minor Subdivision); thence South 0° 02' 01" East along the West line of said Subdivisions 1049.71 feet to the point of beginning.

Contains approximately 13.0867 acres.

**Exhibit B**  
**Legal Description of Restricted Portion**

A Parcel of land being in the Northwest Quarter of Section 9, Township 1 South, Range 1 East, Salt Lake Base and Meridian and described as follows:

Beginning at the Southwest corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along the North right of way line of Sunnyside Avenue 543.35 feet; thence North 0° 00' 10" West 1049.71 feet; thence North 89° 59' 50" East 542.78 feet to the Northwest corner of said Armory 4 Lot Minor Subdivision, (said corner is also the Northeast corner of the amended plat of Parcels 2 & 3 of the Armory 4 Lot Minor Subdivision); thence South 0° 02' 01" East along the West line of said Subdivisions 1049.71 feet to the point of beginning.

Less and excluding the following:

Beginning at a point on the North line of Sunnyside Avenue, said point being South 89° 59' 50" West along said North line 32.00 feet from the Southwest Corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along said North line, 511.35 feet; thence North 0° 00' 10" West 370.50 feet; thence North 89° 59' 50" East 511.15 feet; thence South 0° 02' 01" East 370.50 feet to the point of beginning.

Contains approximately 8.7383 acres.

**Exhibit C**  
**Legal Description of Open Space Portion**

A Parcel of land being in the Northwest Quarter of Section 9, Township 1 South, Range 1 East, Salt Lake Base and Meridian and described as follows:

Beginning at a point on the North line of Sunnyside Avenue, said point being South 89° 59' 50" West along said North line 32.00 feet from the Southwest Corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along said North line, 511.35 feet; thence North 0° 00' 10" West 370.50 feet; thence North 89° 59' 50" East 511.15 feet; thence South 0° 02' 01" East 370.50 feet to the point of beginning.

Contains approximately 4.3484 acres.

**When Recorded Return to:**

Salt Lake City Corporation  
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Salt Lake City, UT 84111

**DEVELOPMENT AGREEMENT  
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FOR  
ROWLAND HALL – ST. MARK’S SCHOOL PROPERTY LOCATED  
AT  
1443 EAST SUNNYSIDE AVENUE, SALT LAKE CITY, UTAH**

THIS DEVELOPMENT AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“AGREEMENT”) FOR ROWLAND HALL – ST. MARK’S SCHOOL PROPERTY LOCATED AT 1443 EAST SUNNYSIDE AVENUE, SALT LAKE CITY, UTAH is made as of \_\_\_\_\_, 200\_ (the “**Effective Date**”) between Rowland Hall-St. Mark’s School, a Utah non-profit corporation (the “**Declarant**”) and Salt Lake City Corporation (the “**City**”).

**RECITALS:**

A. The Declarant is the owner of real property located at 1443 East Sunnyside Avenue, Salt Lake City, Utah, more particularly described on **Exhibit A** attached hereto (the “**Property**”).

B. The Declarant desires to restrict use of the portion of the Property described on **Exhibit B** attached hereto (the “**Restricted Portion**”) so that at least 25% of the Restricted Portion will be free of buildings, paved parking areas and paved driveways.

C. The Declarant desires to develop and use a portion of the property described on Exhibit C hereto (the “Open Space Portion”) as a recreation area- independent of any zoning requirement.

D. The Declarant desires that the Property is to be held, conveyed, encumbered, leased, used, occupied and improved subject to the restrictions, rights, conditions and covenants in this Agreement.

E. This Agreement is executed voluntarily by both parties hereto for the mutual benefits set forth herein.



NOW, THEREFORE, the Declarant hereby covenants and declares the Property and every portion or interest therein, is now held and shall hereafter be held, conveyed, encumbered, leased, used, occupied and improved subject to the restrictions, rights, conditions, and covenants herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with the Property and every portion of or interest in the Property, and shall apply to every owner and occupant thereof, and their successors and assigns. All restrictions, rights, conditions and covenants in this Agreement shall run with and burden the Property and shall be binding on and for the benefit of the Property and all other persons having or acquiring any interest in the Property.

## ARTICLE 1 RESTRICTED PORTION USE RESTRICTIONS

1.1 Prohibited Uses. Independent of any zoning requirement, At least twenty-five percent (25%) of the Restricted Portion (the “**25% Portion**”) shall be at all times free of buildings, paved parking areas and paved driveways; provided that the Declarant shall have the right to relocate, move, reposition or adjust from time to time, subject to appropriate City regulation and approval in its sole discretion, the 25% Portion within the Restricted Portion. City acknowledges that the 25% Portion shall be included and counted toward the forty percent (40%) open space requirement applicable to the Institutional zone and will not decrease the developable building square footage under the City ordinances for the Restricted Portion. If City reduces the forty percent (40%) open space requirement for properties in Institutional zones prior to the time that Declarant files for a building permit on the Restricted Portion, then such reduced open space requirement shall be applicable to the Restricted Portion, provided that any such reduction shall not affect the requirement to establish the 25% portion as provided above.

1.2 Permitted Uses. Except as otherwise prohibited in **Section 1.1** of this Agreement, the 25% Portion may be used for any uses allowed in the Institutional zoning classification, which may include and for the following uses (it being understood that the following uses are not exclusive permitted uses):

(a) Recreational uses, including, without limitation, playing fields, tennis courts, outdoor basketball, track, baseball, soccer, and field facilities;

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(f) Uses necessary to secure the stability, safety, and practical use of the ground, such as earth retaining wall terracing or similar improvements which support ground leveling, subject to appropriate City regulation and approval; and

(g) Fencing, subject to applicable City processes

1.3 View Corridor from Transvalley Corridor Trail. At such time as Declarant applies for a building permit for buildings on the Restricted Portion, Declarant shall cooperate in good faith with the City Planning Director to locate such buildings in a manner that reasonably preserves the northwest view corridor from the “Transvalley Corridor Trail” and the “Cemetery Trail” (both defined later).

## **ARTICLE 2 OPEN SPACE PORTION RESTRICTIONS**

2.1 Restriction on Buildings. Declarant agrees to construct, improve and maintain the Open Space Portion for one or more recreation fields and for related improvements. No permanent buildings may be constructed upon the Open Space Portion.

2.2 Access. Declarant agrees to allow public access to and use of the Open Space Portion during daylight hours at times when the Open Space Portion is not used for Declarant’s own activities, subject to reasonable and customary scheduling control, maintenance and upkeep, management and safety regulations of Declarant. Subject to adverse weather conditions and closure of the Open Space Portion during periods of repair and maintenance, such public access shall be made available at least five (5) hours per week.

2.3 Sunnyside Lease. Declarant agrees that upon completion of the recreation field(s) upon the Open Space Portion, Declarant shall modify or relinquish its lease (right to exclusive use) of the City owned recreation field located at the corner of Sunnyside Avenue and Guardsman Way.

2.4 Lighting. Declarant shall not construct or install any lighting for the recreation field(s) on the Open Space Portion. Declarant may install such lighting as may be appropriate for security and to prevent crime.

### ARTICLE 3 TRAILS

3.1 Cemetery Trail. Declarant agrees to designate, develop, dedicate and maintain a public trail easement (the “**Cemetery Trail**”), at least twenty (20) feet in width, to provide public access and passage between Sunnyside Avenue and the Mount Olivet Cemetery across the western portion of the Property. The Cemetery Trail shall be open and available for use by the public during all times that the Mount Olivet Cemetery is open to the public. At Declarant’s option, all or a portion of the Cemetery Trail may be located within the setback applicable to the western boundary of the Property.

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### ARTICLE 4 GENERAL PROVISIONS

4.1 Maintenance. The Declarant shall be solely responsible for the maintenance of the Property.

4.2 Traffic Mitigation. Declarant acknowledges that its development of the Property will create an impact upon the vehicle traffic in the area. Accordingly, upon Declarant’s application for a building permit for buildings on the Restricted Portion, Declarant shall contribute \$100,000 to the City to be used for traffic calming/pedestrian safety on Sunnyside Avenue.

4.3 Site Plan Approval. Declarant’s site plan for the development of the Property shall be approved through the appropriate City process, as determined by the City Planning Director prior to the issuance of any permits, which approval shall not be unreasonably withheld or delayed. Declarant also expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Declarant from the obligation to comply with all applicable ordinances, resolutions, regulations, policies and procedures of the City in connection with the development of the Property.

4.4 Duration. This Agreement shall continue in full force for a period of one hundred (100) years from the Effective Date (the “**Term**”). Within the last year of the Term, the owner of the Property and Salt Lake City Corporation (the “**City**”) shall review the covenants and restrictions of this Agreement in light of conditions existing at that time, and determine whether and for how long the covenants and restrictions shall remain in effect. If no agreement is reached and recorded within the last year of the Term, then the Term shall extend for another one hundred (100) years.

4.5 Enforcement. Each of Declarant and the City shall have the right to enforce, by any proceeding in law or in equity, all covenants and restrictions now or hereafter imposed by the provisions of this Agreement. Declarant and the City shall retain the right to contest the existence of any alleged violation of this Agreement.

4.6 Amendments. This Agreement may be amended by duly recording an instrument executed and acknowledged by the owner of the Property; provided that this Agreement cannot be amended without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Declarant and City agree that they will cooperate in good faith in making reasonable amendments to this Agreement, subject at all times to City ordinances, in the event such amendments are necessary based on Declarant's eventual development plan for the Property.

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4.8 Persons Bound. This Agreement and the restrictions created hereby shall inure to the benefit of and be binding upon the Declarant, its successors and assigns; all occupants, tenants, licensees and invitees of the Property; and upon any person acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise. The new owner of the Property, including, without limitation, any owner or lienholder~~lien holder~~, who acquires its interest by foreclosure, trustee's sale or otherwise, shall be liable for all obligations arising under this Agreement with respect to the Property after the date of sale and conveyance of title.

4.9 No Public Right or Dedication. Except for the anticipated public use of the trails and the Open Space Portion, nothing in this Agreement is a gift or dedication of all or any part of the Property to the public, or for any public use.

4.10 Attorney's Fees. In the event the Declarant or the City initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

4.11 No Waiver. Failure to enforce any provision of this Agreement does not waive the right to enforce that provision, or any other provision of this Agreement.

4.12 Articles, Sections and Exhibits. The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Agreement to articles, sections or exhibits are to Articles, Sections and Exhibits of this Agreement. **Exhibits A, B and C** attached to this Agreement are each incorporated herein by this reference.

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Rowland Hall – St. Mark’s School  
720 Guardsman Way  
Salt Lake City, Utah 84108  
ATTN: Headmaster

Salt Lake City Corporation  
451 South State Street  
Salt Lake City, Utah 84111  
ATTN: Planning Director

4.14 Severability. If any term, condition, or provision of this instrument is held by a court of competent jurisdiction to be invalid, illegal or unenforceable to any reason, all other terms, conditions and provisions of this instrument shall nevertheless remain in full force and effect so long as the primary purposes of the instrument are not thereby affected in any manner materially adverse to any party. Upon such determination that any term, condition or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this instrument so as to effect as closely as possible the original intent of the Parties in a mutually acceptable manner to the fullest extent permitted by applicable law. ~~The provisions of this Agreement are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Agreement by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Agreement.~~

EXECUTED as of the date first set forth above.

**Rowland Hall – St. Marks School,**  
a Utah non-profit corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by \_\_\_\_\_ as \_\_\_\_\_ of Rowland Hall – St. Mark’s School, a Utah non-profit corporation.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
**Salt Lake City Corporation,**  
a municipal corporation

\_\_\_\_\_  
Ross C. Anderson, Mayor

Attest: \_\_\_\_\_  
Christine Meeker  
Deputy Salt Lake City Recorder

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by Ross C. Anderson, Mayor of Salt Lake City Corporation.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by Christine Meeker, Deputy City Record for Salt Lake City Corporation.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_

**Exhibit A**  
**Property Legal Description**

A Parcel of land being in the Northwest Quarter of Section 9, Township 1 South, Range 1 East, Salt Lake Base and Meridian and described as follows:

Beginning at the Southwest corner of the Armory 4 Lot Minor Subdivision, said corner being located South  $89^{\circ} 59' 50''$  West 775.746 feet from the First Veterans Administration Monument and said corner is also located North  $89^{\circ} 59' 50''$  East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North  $89^{\circ} 59' 50''$  East 89.21 feet and North  $0^{\circ} 02' 01''$  West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South  $89^{\circ} 59' 50''$  West along the North right of way line of Sunnyside Avenue 543.35 feet; thence North  $0^{\circ} 00' 10''$  West 1049.71 feet; thence North  $89^{\circ} 59' 50''$  East 542.78 feet to the Northwest corner of said Armory 4 Lot Minor Subdivision, (said corner is also the Northeast corner of the amended plat of Parcels 2 & 3 of the Armory 4 Lot Minor Subdivision); thence South  $0^{\circ} 02' 01''$  East along the West line of said Subdivisions 1049.71 feet to the point of beginning.

Contains approximately 13.0867 acres.



**Exhibit B**  
**Legal Description of Restricted Portion**

A Parcel of land being in the Northwest Quarter of Section 9, Township 1 South, Range 1 East, Salt Lake Base and Meridian and described as follows:

Beginning at the Southwest corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along the North right of way line of Sunnyside Avenue 543.35 feet; thence North 0° 00' 10" West 1049.71 feet; thence North 89° 59' 50" East 542.78 feet to the Northwest corner of said Armory 4 Lot Minor Subdivision, (said corner is also the Northeast corner of the amended plat of Parcels 2 & 3 of the Armory 4 Lot Minor Subdivision); thence South 0° 02' 01" East along the West line of said Subdivisions 1049.71 feet to the point of beginning.

Less and excluding the following:

Beginning at a point on the North line of Sunnyside Avenue, said point being South 89° 59' 50" West along said North line 32.00 feet from the Southwest Corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along said North line, 511.35 feet; thence North 0° 00' 10" West 370.50 feet; thence North 89° 59' 50" East 511.15 feet; thence South 0° 02' 01" East 370.50 feet to the point of beginning.

Contains approximately 8.7383 acres.

**Exhibit C**  
**Legal Description of Open Space Portion**

A Parcel of land being in the Northwest Quarter of Section 9, Township 1 South, Range 1 East, Salt Lake Base and Meridian and described as follows:

Beginning at a point on the North line of Sunnyside Avenue, said point being South 89° 59' 50" West along said North line 32.00 feet from the Southwest Corner of the Armory 4 Lot Minor Subdivision, said corner being located South 89° 59' 50" West 775.746 feet from the First Veterans Administration Monument and said corner is also located North 89° 59' 50" East 10.60 feet from the U.S.A. Monument No. 3 and said corner is also located North 89° 59' 50" East 89.21 feet and North 0° 02' 01" West 58.20 feet from the Salt Lake City Survey Monument in the intersection of Amanda Avenue and Sunnyside Avenue and running thence South 89° 59' 50" West along said North line, 511.35 feet; thence North 0° 00' 10" West 370.50 feet; thence North 89° 59' 50" East 511.15 feet; thence South 0° 02' 01" East 370.50 feet to the point of beginning.

Contains approximately 4.3484 acres.

MT. OLIVET CEMETERY ASSOCIATION  
1342 EAST 5TH SOUTH  
SALT LAKE CITY, UTAH 84102

APR 17 2006

April 17, 2006

**HAND DELIVERED**


Mayor Ross C. Anderson  
City and County Building  
451 South State Street, #306  
Salt Lake City, Utah 84111

Dear Mayor Anderson:

This letter is to inform you that, when the sale by Mt. Olivet Cemetery Association of part of its property to Rowland Hall/St. Marks is completed, Mt. Olivet Cemetery Association and Rowland Hall/St. Marks will make a contribution of \$250,000 to the Salt Lake City Open Space Fund. Mt. Olivet and Rowland Hall/St. Marks are making this commitment to enable Salt Lake City to acquire additional open space in the future. Mt. Olivet recognizes that both the open space provided by Mt. Olivet and the open space that can be acquired by Salt Lake City in the future are important aspects of the quality of life available in Salt Lake City.

In order that the Mt. Olivet Cemetery will be as accessible to the public as possible, Mt. Olivet will also provide an appropriate walkway into the cemetery from the Rowland Hall/St. Marks property. This walkway will be designed and completed in conjunction with the walkway Rowland Hall/St. Marks is providing from Sunnyside Avenue to the edge of Mt. Olivet's property.

Very truly yours,

  
William H. Adams  
President

ns

cc ~~Dave~~ Buhler, Chairman  
Salt Lake City Council  
(hand delivered)

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## SALT LAKE CITY COUNCIL STAFF REPORT

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**DATE:** March 31, 2006

**SUBJECT:** Petitions 400-05-08 & 400-05-09 – Rowland Hall–St. Mark’s School request to:

- Rezone property located at approximately 1443 East Sunnyside Avenue from Open Space OS to Institutional I
- Amend the East Bench Community Master Plan

**AFFECTED COUNCIL DISTRICTS:** If the ordinance is adopted the rezoning and master plan amendment will affect Council District 6

**STAFF REPORT BY:** Janice Jardine, Land Use Policy Analyst

**ADMINISTRATIVE DEPT. AND CONTACT PERSON:** Community Development Department, Planning Division  
Everett Joyce, Senior Planner

**NOTICE REQUIREMENTS:** Newspaper advertisement and written notification to surrounding property owners 14 days prior to the Public Hearing

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## WORK SESSION SUMMARY AND NEW INFORMATION

### WORK SESSION SUMMARY:

The Council received a briefing on the proposed rezoning and master plan amendment on March 7, 2003. Issues discussed included:

- A. Clarification of the findings of fact and recommendation stated in the Planning staff report and the intent of the Planning Commission motion to deny the request based on the findings of fact. (Please see pgs.13-18 in the Planning staff report and pgs. 5-7 of this staff report for the specific findings and Planning staff recommendation.)
- B. The history of zoning, master plan recommendations, past development proposals for the property and historic use of the property for agricultural purposes.
- C. Potential options that could be considered such as rezoning a portion of the property and/or use of restrictive covenants, a conservation easement held by the City or a third party non-profit organization, or a development agreement..
- D. The history and value of adopted master plans as guiding documents for future development.
- E. The reversionary clause and restrictions established on the property by the federal government in deeding the property to the Mt. Olivet Cemetery Association.
- F. Other potential purchasers of the property.
- G. Whether uses that may be appropriate for the property have been identified or evaluated.
- H. Future use of the Rowland Hall-St. Mark’s property and school at the 800 South and Lincoln Street location.
- I. The current percentage/amount of subsidy from the General Fund used for operation/maintenance for the City cemetery.
- J. Whether long-range planning and analysis (50 to 100 years) has been done to address City cemetery space and long-term needs.

- K. The need for open space and protection of open space and a comprehensive citywide open space policy direction. City open space policies historically addressed general foothill preservation and parks and recreation.
  - L. Planning staff noted that a Critical Open Lands Inventory and Preservation Priority Assessment project is currently underway in the Planning Division. Planning staff is working with a consultant to provide a critical lands inventory and map and a refinement of open space categories and zoning districts.
  - M. Whether the City has an inventory or analysis of natural open space areas within the developed area of the City. Types of uses in non-programmed open space include non-developed trails.
  - N. Whether potential impacts to wildlife habitat in the area has been analyzed.
  - O. Mechanisms available to address City parks and recreation needs such as funding allocation from the Capital Improvement Program and the recent bond election for Open Space and the Salt Lake Regional Sports Complex.
- 

## POTENTIAL OPTIONS AND MOTIONS:

### OPTIONS:

1. Close the public hearing and continue action to a future Council meeting.
2. Adopt an ordinance rezoning the property and amending the East Bench Community Master Plan.
3. Do not adopt an ordinance rezoning the property and amending the East Bench Community Master Plan.
4. Other options that may be identified by Council Members

### POTENTIAL MOTIONS:

1. **["I move that the Council"]** Close the public hearing and continue action to a future Council meeting.
  2. **["I move that the Council"]** Adopt an ordinance rezoning property located at approximately 1443 East Sunnyside Avenue from Open Space OS to Institutional I and amending the East Bench Community Master Plan.
  3. **["I move that the Council"]** Not adopt an ordinance rezoning property located at approximately 1443 East Sunnyside Avenue from Open Space OS to Institutional I and amending the East Bench Community Master Plan.
- 

The following information was provided previously for the Council Work Session on March 7, 2006. It is provided again for your reference.

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## KEY ELEMENTS:

- A. An ordinance has been prepared for Council consideration to:
  1. Rezone approximately 13 acres of property at approximately 1443 E. Sunnyside Avenue (currently owned by Mt. Olivet Cemetery) from Open Space OS to Institutional I. (Note: The property is within the Groundwater Source Protection Overlay District. The overlay district requirements and standards would still apply with the proposed rezoning.)
  2. Amend the East Bench Community Master Plan.

- B. Prior to adoption of the 1995 city-wide Zoning Rewrite, the East Bench Master Plan identified this property for institutional land uses and the property was zoned Residential R-2. The R-2 zoning accommodated a variety of institutional and open space uses such as schools (public & private), churches, public parks, libraries, recreational areas and cemeteries. The City did not have a specific zoning classification for institutional and open space uses.
- C. Between 1874 and 1909 through acts of Congress the Mt. Olivet Cemetery was established. Land was conveyed to the Mt. Olivet Cemetery Association and rules and regulations for the cemetery were established specifically noting that the subject property is to be used permanently as a cemetery. The written documentation from this time period indicates that if the land ceases to be used as a cemetery the property will revert to the United States. In actuality this can be changed through an act of Congress. (Please see Attachment A for additional information.)
- D. The ordinance adopted in 1995 that enacted the city-wide Zoning Rewrite project rezoned property throughout the City and amended the adopted community master plans to maintain consistency with the new zoning. The zoning on this property was changed to Open Space and the East Bench Plan was considered updated consistent with the zoning. (The Institutional Zoning District does not allow cemeteries as a permitted or conditional use. The Open Space Zoning District does allow cemeteries as a permitted use.)
- E. The requested rezoning and master plan amendment would facilitate development of a future private middle and upper school for Rowland Hall-St. Mark's with a soccer field and open space area on the southern two-thirds of the 13-acre parcel and school buildings and parking areas on the northern one-third of the property. The property is currently undeveloped. The Planning staff report notes that the property, if developed as proposed, would have access from Sunnyside Avenue and Guardsman Way through the adjacent property. The adjacent property immediately east of the Mt. Olivet property is the Rowland Hall-St. Mark's McCarthey Lower/Beginning School campus. Surrounding land uses include the Mt. Olivet Cemetery to the north, single-family residences to the south, the East High football field (on property leased from Mt. Olivet to the west), the McCarthey Lower/Beginning School campus and the Carmen Pingree School. (Please see attached maps for details.)
- F. Information submitted by Rowland Hall-St. Mark's notes:
1. On April 10, 2003, Rowland Hall-St. Mark's entered into a contract with the Mt. Olivet Cemetery Association to purchase approximately 13 acres of cemetery property fronting on Sunnyside Avenue.
  2. The Mt. Olivet Association needs to sell the property to have sufficient funds to make needed capital improvements and perpetually maintain the cemetery.
  3. The contract between Rowland Hall-St. Mark's and the Mt. Olivet Cemetery Association is subject to a number of conditions including rezoning the property from Open Space OS to Institutional I zoning classification and removal of the reversionary clause established by the Federal government in the deed held by the Association.
  4. Release of reversionary interest includes Congressional consideration of the following:
    - a. The property is not used for the purpose specified in the reversionary clause.
    - b. The owner of the property no longer needs the property.
    - c. The property is inconvenient or inappropriate for the owner's use.
    - d. The property is needed by another entity that provides some public benefit.
    - e. The U.S. Government does not need the property.
    - f. There would be no significant costs to Federal, State or local governments from a release of the reversionary interest
  5. As part of Rowland Hall-St. Mark's efforts to secure the removal of the reversionary interest and to ensure the support of Utah's congressional representatives and senators, Rowland Hall-St. Mark's needs the support of the City and, if at all possible, the surrounding community.

6. Rowland Hall-St. Mark's needs to obtain the release of the reversionary interest by early 2007 in order to complete the purchase of the property within the terms of the contract.
  7. Rowland Hall-St. Mark's believes that its ownership of the property will deliver a net benefit to the City and the surrounding community, both in the immediate neighborhood and more broadly.
  8. It may be many years before Rowland Hall-St. Mark's could raise the money needed to build a new campus on the property.
  9. It is possible that Rowland Hall-St. Mark's could take the interim step of developing the playing fields in the near term, in a way not to interfere with construction at the north end of the property (proposed school site).
- G. The public process included:
1. Presentation to the Yalecrest Community Council and written notification of the Planning Commission hearing to surrounding property owners. The Administration's transmittal notes the Yalecrest Community Council opposed the proposed master plan and zone change. In addition, other Community Councils - East Central, Bonneville Hills, and Wasatch Hollow - submitted letters regarding the proposal. None of the Community Councils supported the request. (Please see the Planning staff report pgs 6-9 for details.)
  2. The proposal was also presented to and discussed by the Open Space Lands Advisory Board on November 2, 8, and 16, 2005. The Open Space Lands Advisory Board recommended against the request to rezone the Mt. Olivet property from Open Space to Institutional.
- H. The City's Fire, Police, Public Services and Public Utilities Departments and Transportation and Engineering Divisions have reviewed the request. (Please see the Planning staff report pgs. 3-5 for specific comments and detailed discussion.) The development proposal will be required to comply with City standards and regulations and demonstrate that there are adequate services to meet the needs of the project such as, but not limited to, a detailed traffic and parking impact study, adequate infrastructure (water/sewer) capacity, geotechnical report relating to inferred fault line location is at the northwest corner of the property. In addition, the petitioner will be required to apply for subdivision approval from the City.
- I. On November 30, 2005, based on the Planning staff report findings and public hearing input, the Planning Commission voted to forward a recommendation to the City Council to deny the request to rezone the property and amend the East Bench Community Master Plan. (Please see the Planning staff report and Planning Commission minutes for details.)
- J. Issues discussed at the Planning Commission hearing included the following. The Planning Commission minutes note that due to amount of public interest regarding the proposed petition, the general public comments were summarized.
1. Information provided from the Community Councils and the Open Space Lands Advisory Board.
  2. Whether the rezoning and master plan amendment should be considered before the reversionary clause on the property is removed by Congress.
  3. Specific uses and requirements in the Open Space and Institutional zones.
  4. Discussion of specific details of the development plan proposed by Rowland Hall-St. Mark's.
  5. Potential inconsistencies of the City's open space policies, specifically the City's position on the North Salt Lake property and preservation of the Mt. Olivet property.
  6. Those in support of the petition stated the following reasons:
    - Open Space should be defined as a livable area, rather than a field with trash and a barbed wire fence.
    - Care of the land would be maintained in a manner to make the City proud, as Rowland Hall has previously proved itself in the Avenues area.
    - The desire of Rowland Hall for the proposed petition is not to ask for an increase in school population, but rather a request for more space.

- Many other options could be considered by the Mt. Olivet Association to sell the property for financial gain, including federal or state government who are exempt from specific zoning requirements; while Rowland Hall is proposing a petition to enhance the City within the guidelines.
  - An assurance for the land to be maintained as a mechanism for public use will be considered in a deed restriction.
  - Only four of thirteen acres will be used for buildings, lending the remainder to the community.
  - Open Space is a rhetorical term in Utah; given the many options for a specific definition and should consider the terms of being a usable and livable place for the public.
  - The present lease on Mt. Olivet has more impervious area than the proposed petition.
  - Traffic will be decreased as the proposed plan will create a unified school area. (Families with students attending schools on this campus can make single trips to this site, rather than trips to various sites.)
7. Those in opposition of the petition stated the following reasons:
- Open Space is a natural area of land and should be preserved as a legacy.
  - Traffic in the area will increase—reducing the safety of the surrounding area.
  - Mt. Olivet Association has not found enough resources to financially sustain itself, and more time should be allowed for tools to be provided to the association and for the preservation of Open Space.
  - The value of an area of land for the earth to recharge itself is immeasurable and should be considered a premium space for the community.
  - Open Space is found less often as city growth continues.
  - Tools for rating the degree of importance of Open Space are being researched, and given time, will be considered as possible trading options. (This was taken directly from the Planning Commission minutes. Council staff does not have additional information that would clarify the intent of this statement.)
  - The land is irreplaceable.

#### **K. Planning Staff Findings and Recommendation**

1. The Planning staff report provides the following findings for the Zoning Ordinance Section 21A.50.050 - Standards for General Amendments. The standards were evaluated in the Planning staff report and considered by the Planning Commission. (Please see pgs. 13-17 in the Planning staff report for additional details.)
  - a. Whether the proposed amendment is consistent with the purposes, goals, objectives, and policies of the adopted general plan of Salt Lake City.
 

**Findings:** Land use designations in the adopted master plans identify the City’s policy for future land uses. Properties that do not conform to the master plan objectives are either, developed with a nonconforming use or undeveloped. Undeveloped properties do not conflict with the Future Land Use Plan. A zoning amendment to an Institutional zoning classification does not ensure continued open space use of the property. The proposed amendment is not consistent with the purposes, goals, objectives and policies of the adopted general plan of Salt Lake City. Modification of the Open Space zoning boundaries for a portion of the Mt. Olivet Cemetery property would set precedent for removal of additional properties within the Mt. Olivet Cemetery Association boundaries not actively used for burial purposes from the Open Space designation.
  - b. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property.
 

**Findings:** The proposed development plan presented by Rowland Hall St. Mark’s is harmonious with the overall character of existing development. However, the Institutional



- zoning classification allows development intensification that would not be harmonious with the character of existing development.
- c. The extent to which the proposed amendment will adversely affect adjacent properties.  
**Findings:** Rezoning the Mt Olivet parcel to Institutional would permit more intensive development than allowed within the existing Open Space Zoning District. The increased level of potential development could increase traffic generation levels and impact adjacent properties. The traffic generated by the proposed uses of an upper and middle school, soccer field and open space would not adversely affect adjacent properties.
  - d. Whether the proposed amendment is consistent with the provisions of any applicable overlay zoning districts which may impose additional standards.  
**Findings:** The proposed development concept plans through implementation of any necessary site design modifications and operational controls can be consistent with applicable zoning overlay districts.
  - e. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.  
**Findings:** The public facility services and utilities are in place to serve the subject 13-acre parcel. The final intensity of development and needs that the future development would place on services and utilities is unknown. If a specific developments demand exceeds service capacity, then the developer would be required to make system improvements as part of obtaining a building permit. The adjacent arterial streets can absorb the traffic generated by the proposed uses.
2. The Planning staff report provides the following findings for the requested master plan amendment.
    - a. Land use designations in master plans identify the City's policy for future land uses. Developed properties that do not conform to the master plan objectives and existing zoning are nonconforming. Properties that lie in an undeveloped state do not conflict with the Future Land Use Plans. The amended East Bench Community Master Plan land use designation for the Mt. Olivet property is for open space uses.
    - b. Operational financing difficulties could be alleviated by lease or sale of property to land uses that are consistent with the East Bench Master Plan Future Land Use designation and existing Open Space Zoning classification.
  3. **Recommendation:**
    - a. The findings of fact show that the requested master plan amendment and rezoning of the Mt. Olivet property is not consistent with the East Bench Community Master Plan. Rezoning the property from open space to institutional land uses is not consistent with the intent and purpose of the Open Space Zoning District. This purpose is to preserve and protect areas of public and private open space and exert a greater level of control over any potential redevelopment of existing open space areas.
    - b. Potential development intensities of the Institutional Zoning District are greater than permitted uses within the Open Space Zoning District and have potential conflicts with the overall character of development in the immediate vicinity. Minimizing potential intensities and conflicts could occur through restrictive covenants or modification of the zoning request to ensure that the proposed open space areas would remain open in the future.
    - c. Based on the findings of fact, staff recommends that the Planning Commission forward a recommendation to the City Council to deny the requests of Petition 400-05-08 and Petition 400-05-09, to amend the East Bench Master Plan and rezone the 13 acres portion of Mt. Olivet Cemetery property from Open Space to Institutional land use and zoning classifications.

**L. Zoning Information**

1. The purpose of the Open Space Zoning District is to preserve and protect areas of public and private open space and exert a greater level of control over any potential redevelopment of existing open space areas.
  - a. Area requirements:
    - Minimum lot size: 10,000 sq. ft.
    - Maximum building height: 35 ft. provided that for each foot of height over 20 ft. each yard and landscaped yard requirement shall be increased 1 ft.
    - Minimum yard requirements: front – 30 ft., side – 20 ft., rear – 30 ft.
    - Landscaped yard requirements: front – 20 ft., side (interior) – 10 ft., rear – 10 ft.
    - Landscape buffer required when abutting a residential district
  - b. Special conditional use controls over communications towers are required.
  - c. Permitted and conditional uses:  
cemeteries and accessory crematoriums, community/recreation centers, pet cemetery, country clubs, golf courses, natural open space, conservation areas, public/private nature preserves/conservation areas, public parks, private recreational facilities, zoological park, accessory uses, public/private utility buildings/transmission wires/poles/pipes, transportation terminals – bus/rail/trucking
2. The purpose of the Institutional Zoning District is to regulate the development of larger public and semi-public uses in a manner harmonious with surrounding uses. The uses regulated by this district are generally those having multiple buildings on a campus-like site.
  - a. Area requirements:
    - Minimum lot size: 2 acres for places of worship and 20,000 sq. ft. for other uses
    - Maximum building height: 35 ft. and 75 ft. through conditional use provided that for each foot of height over 35 ft. each yard requirement shall be increased 1 ft.
    - Minimum yard requirements: front – 20 ft., side – 20 ft., rear – 25 ft.
    - Landscaped yard requirements: front – 20 ft., side (interior) – 8 ft., rear – 8 ft.
    - Landscape buffer required when abutting a residential district
  - b. Traffic and parking study required. New or expansion of institutional uses shall not be permitted unless the traffic and parking study provides clear and convincing evidence that no significant impacts will occur. The Zoning Administrator may waive this requirement
  - c. Lighting – all uses shall provide adequate lighting to assure safety and security. Lighting installations shall not have an adverse impact on traffic safety or surrounding properties and uses and shall be shielded to minimize light spillover onto adjacent properties.
  - d. Permitted and conditional uses:  
congregate care facility, caretaker/security guard living quarters, government offices, accessory retail sales/services within the principal building operated for employees, adult/child daycare centers, community/recreation centers, conference centers, dental/medical laboratories/research facilities/clinics/offices, medical/nursing schools, emergency response/medical service facilities, nursing care/sanitarium facilities, exhibition hall, hospitals, libraries, meeting halls for membership organizations, philanthropic uses, places of worship, religious assembly with exhibit hall, convents/monasteries, reuse of schools/churches, seminaries/religious institutes, colleges/universities, private schools K-12, professional/vocational schools, arenas, stadiums, fairgrounds, museums, private recreational facilities, heliport, accessory uses, bed and breakfast facilities, communication towers, off-site parking, park and ride parking with existing use, parking structure, public/private utility buildings/transmission wires/poles/pipes, transportation terminals – bus/rail/trucking

## **MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR THE ADMINISTRATION:**

- A. Issues relating to this request have been raised in many different ways and in many different forums throughout the process. The core issues that the Council must weigh include:
1. Whether to amend the zoning and the master plan to allow this project to move forward and seek Congressional action to remove the reversionary clause from the deed and allow Mt. Olivet to sell the property.
  2. Whether to continue the current policy to require the property be maintained as open space consistent with the current zoning and master plan and past legal action taken by the City.
  3. Whether to take in to consideration the potential risk that, should the Council not approve the master plan amendment and rezoning, the University of Utah (not subject to City zoning regulations) could purchase and develop the property at a greater intensity than proposed by Rowland Hall-St. Mark's. The Council may wish to evaluate whether that potential risk is significant enough that it justifies the rezoning for a lower intensity to preclude potential higher intensity use. (Please see Attachments B and C for additional information.)
  4. If the Council does approve the request, the Council could consider the use of a development agreement, restrictive covenant and/or conservation easement to provide assurance to the community that the proposed development would occur as presented at the time of the rezoning request and provide an additional level of control on the property.
    - a. The Planning staff report notes that minimizing potential intensities and conflicts could occur through restrictive covenants or modification of the zoning request to ensure that the proposed open space areas would remain open in the future.
    - b. The petitioner's information notes :
      - It may be many years before Rowland Hall-St. Mark's could raise the money needed to build a new campus on the property.
      - It is possible that Rowland Hall-St. Mark's could take the interim step of developing the playing fields in the near term, in a way not to interfere with construction at the north end of the property (proposed school site).
- B. The Planning staff report notes that a narrow parcel along the northwest corner of the Mt. Olivet Cemetery property is presently zoned RMF-75. Planning staff recommended that the Planning Commission initiate action to have the RMF-75 zoned portion of the Mt. Olivet property for a map amendment as part of a zoning map fine-tuning petition. The Planning Commission minutes do not indicate that this action was initiated by the Commission. Council Members may wish to discuss with the Administration if this issue requires action by the Council or Planning Commission.
- C. Council Members may wish to consider a future discussion to establish a clear policy direction relating to cemeteries and open space. The Planning staff report includes the following information provided by the City Public Services Department.
1. Presently the City has no plans to either expand the (Salt Lake City) cemetery space (the only potential expansion would be into Lindsay Gardens Park) or start a second cemetery in a new location in the City. Any decision to move in this direction would result from a policy discussion and agreement between the Mayor and City Council. If the City fills the cemetery without further expansion or new development, other public or private cemeteries will need to fill the public demand.

2. Development of the Salt Lake City Cemetery started in 1847. The cemetery is approximately 250 acres in size and plotted for 140,823 graves. The entire cemetery space is plotted out and developed. There is no additional space for expansion. To date, approximately 119,000 plots are used. Of the 21,800 remaining, 17,300 have been pre-sold. Only 4,500 burial sites remain for sale. Historically, on an annual basis approximately 600 burials occur each year. If the historical numbers hold, use of all available cemetery sites will occur within 36 years. The historical cemetery sales rate is 350 graves sites each year. Based on the 4,500 available burial sites for sale and historical sale rates, in 13 years there will be no sites available.
3. The present day data suggests that the cemetery will use up its available burial space in 13 years. Within another 23 years, all burial sites will be filled. Beyond that point in time, the City will continue to fulfill its obligation to care for and maintain the cemetery in perpetuity without the offsetting annual revenue generated by property sales and burials.
4. Salt Lake City has one public cemetery, the Salt Lake City Cemetery. Four (4) additional active cemeteries are located within the boundaries of the City: Mt. Olivet, a private cemetery owned by a consortium of local churches; Mt. Calvary, a private cemetery owned by the Catholic Diocese; B'nai Israel Cemetery, a private cemetery owned by the Temple Kol Ami Synagogue; and Larkin Sunset Lawn, a private cemetery owned by the Larkin family. It is my understanding that the public has access to each of these cemeteries regardless of affiliation except B'nai. I also understand that with the exception of Mt. Olivet and Larkin cemeteries, the others face the same capacity challenges as the City's cemetery.
5. Though the City has a municipal cemetery that it must maintain and operate in perpetuity, the City has no legal obligation to maintain an "active" cemetery.
6. The following actions may extend the Cemetery's "active" period:
  - a. The historical consumption numbers may change over time;
  - b. Resale burial plots that have been sold, but have not been used in a 60 year period (this could add a few hundred graves to the inventory over time);
  - c. Develop double deep burials, which means that one burial plot may be used for two burials; and
  - d. The construction of mausoleums, which allow burials to occur above ground in structures.

## **MASTER PLAN AND POLICY CONSIDERATIONS:**

- A. The Administration's transmittal and Planning staff report note:
  1. The East Bench Community Master Plan and the Salt Lake City Open Space Master Plan documents address the land use policy related to the Mt. Olivet Cemetery property. (Note: Amending the Open Space Plan is not required and is not part of Rowland Hall-St. Mark's request.)
  2. Most master plans do not contain specific land use policy regarding cemeteries. The Plans do address a variety of general land use categories such as residential, commercial, open space and institutional land uses.
  3. The East Bench Community Master Plan (April 1987) is the adopted land-use policy document that guides new development in the area surrounding the proposed rezoning and master plan amendment.
  4. Prior to the 1995 Zoning Rewrite project, the Plan designated the Mount Olivet Cemetery property and Sunset Lawns Memorial Cemetery located at 2352 East 1300 South Street for Institutional uses.
  5. In 1995, the Citywide Zoning Rewrite Project amended the land use designation of both these properties from Institutional to Open Space.
  6. The Salt Lake City Open Space Plan (October 1992) defined a comprehensive corridor approach to connecting the City's open space resources to provide a safe, enjoyable experience of the natural features of Salt Lake City. The Open Space Master Plan defines policy for connecting open space amenities and does not provide land use policy. The land use policy of open space for the Mt. Olivet property is defined in the amended East Bench Master Plan.

- B. The Open Space Master Plan identifies a system of non-motorized transportation corridors that would re-establish connections between urban and natural land forms of the City. The Plan discusses the value of open space including recreational opportunities and preservation of wildlife habitat, wetlands, riparian and stream corridors, and the foothills.
1. The Plan identifies the following goals:
    - a. Conservation of the natural environment.
    - b. Enhancement of open space amenities.
    - c. Connecting various parts of the City to natural environments.
    - d. Educating citizens on proper use of open space.
  2. The Open Space Plan identifies Sunnyside Avenue and 800 South as part of the Transvalley Corridor (Foothill Section). A future trail corridor is shown along the north side of Sunnyside/800 South on the sidewalk/right-of-way. Specific reference to Mt. Olivet states “The north side of Sunnyside Avenue is lined with both private and public open space. The south half of the Mt. Olivet Cemetery parcel is vacant and could generate development pressure in the future. This should be monitored to assure the corridor is kept wide enough for adequate walkways and open space. A crosswalk could be developed to connect at the baseball area on the east side of 1300 East to the adjacent trail corridor and residential area.”
- C. Several adopted community master plans and small area plans contain policies and recommendations that emphasize the need for preservation, acquisition, protection, maintenance and management of watershed, foothills, wetlands, wildlife habitat, riparian/stream corridors, and natural open spaces. Implementation strategies include a range of options such as refining zoning regulations relating to open lands.
- D. The City’s recently adopted Open Lands Ordinance notes:
1. The need to protect diminishing open lands within Salt Lake City or its environs.
  2. The City has adopted an Open Space Master Plan to identify, protect and manage open lands.
  3. The City's general plan, zoning ordinance and site development ordinance recognize the need to protect the unique values offered by wetlands, foothills and urban trails.
- E. The Transportation Master Plan contains policy statements that include support of alternative forms of transportation, considering impacts on neighborhoods on at least an equal basis with impacts on transportation systems and giving all neighborhoods equal consideration in transportation decisions.
- F. The City’s Strategic Plan and the Futures Commission Report express concepts such as maintaining a prominent sustainable city, ensuring the City is designed to the highest aesthetic standards and is pedestrian friendly, convenient, and inviting, but not at the expense of minimizing environmental stewardship or neighborhood vitality.
- G. The Council’s growth policy notes that growth in Salt Lake City will be deemed the most desirable if it meets the following criteria:
1. Is aesthetically pleasing;
  2. Contributes to a livable community environment;
  3. Yields no negative net fiscal impact unless an overriding public purpose is served; and
  4. Forestalls negative impacts associated with inactivity.
- H. The City’s 1990 Urban Design Element includes statements that emphasize preserving the City’s image, neighborhood character and maintaining livability while being sensitive to social and economic realities.

## CHRONOLOGY:

The Administration's transmittal provides a chronology of events relating to the proposed rezoning and master plan amendment. Key dates are listed below. Please refer to the Administration's chronology for details.

- April 21, 2005 Applicant presentation to the Yalecrest Community Council
- April 25, 2005 Petitions delivered to Planning office
- June 1, 2005 Petitions reassigned to planner
- June 29, 2005 Additional information received (requested by Planning Division)
- November 2, 8, & 16, 2005 Open Space Lands Advisory Board meetings
- November 30, 2005 Planning Commission hearing
- December 13, 2005 Ordinance requested from City Attorney's office

cc: Sam Guevara, Rocky Fluhart, DJ Baxter, Ed Rutan, Lynn Pace, Rick Graham, Lisa Romney, Louis Zunguze, Brent Wilde, Alex Ikefuna, Doug Wheelwright, Cheri Coffey, Everett Joyce, Jennifer Bruno, Jan Aramaki, Marge Harvey, Sylvia Jones, Lehua Weaver, Annette Daley, Barry Esham, Gwen Springmeyer

File Location: Community Development Dept., Planning Division, Rezoning and Master Plan Amendment, Rowland Hall-St. Mark's School / Mt. Olivet, approximately 1443 E. Sunnyside Avenue