

CTC # 30743

WHEN RECORDED, MAIL TO:

Shaun L Peck, Esq.  
Bearnson & Peck, L.C.  
74 West 100 North  
Logan, Utah 84321

Ent 820659 Bk 1219 Pg 104  
Date 11-Apr-2003 1:40PM Fee \$35.00  
Michael Glead, Rec. - Filed By SA  
Cache County, UT  
For CACHE TITLE COMPANY

#### DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration") dated as of February 28, 2003, is executed by P&D DEVELOPMENT, LLC, a Utah limited liability company ("P&D"); PROVIDENCE THEATERS, LLC, a Utah limited liability company ("Theater"); and KRISTOPHER G. DAINES TRUST, dated April 2001 ("Trust"). Definitions of certain terms used herein are set forth in Section 1 below.

#### RECITALS:

A. P&D is the owner of the South P&D Parcel. Theater is the owner of the Theater Parcel. P&D is the owner of the North P&D Parcel. Trust is the owner of the Trust Parcel.

B. Declarants desire to create cross-easements in respect of the Parcels to provide for pedestrian and vehicular traffic over the Parcels, for Utility Lines to service the buildings and improvements located on each Parcel and for parking.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Declaration, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarants make the following declarations and hereby create the easements described below, which shall, in accordance with the terms and provisions of this Declaration, apply to, bind, burden, affect, and run with title to each and every Parcel.

1. Definitions. When used in this Declaration (including the portion of this Declaration titled "Recitals") each of the following terms shall have the meaning indicated:

(a) "Benefited Parties" means, with respect to a Parcel, the Declarants, the Interest Holder of such Parcel and the Occupants of such Parcel and their respective employees, customers, guests and invitees.

(b) "Building" means a building or other principal structure on a Parcel intended for use or occupancy by an Interest Holder or Occupant of said Parcel, including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items.

(c) "Declarant" means P&D, Theater or Trust.

(d) "Declarants" means P&D, Theater and Trust.

(e) "Interest Holder" means the Person that, at the time concerned, is the owner of record in the office of the County Recorder of Cache County, Utah of a fee or an undivided fee interest in any Parcel or is the tenant under a recorded lease with a term of at least 30 years. In the event there is more than one "Interest Holder" of the Parcel at the time concerned, the liability of each such "Interest Holder" for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Interest Holder" shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or trustee's sale or any deed or proceeding in lieu thereof.

(f) "Mortgage" means a recorded mortgage, deed of trust or other security instrument or agreement on any Parcel (or portion of any Parcel).

(g) "Mortgagee" means the mortgagee under a recorded mortgage on any Parcel (or portion thereof), the beneficiary under a recorded deed of trust on any Parcel (or portion of any Parcel) and the secured party under any security instrument or agreement on any Parcel (or portion of any Parcel).

(h) "P&D North Parcel" means the North Parcel owned by P&D, as more particularly described on Exhibit "B."

(i) "Occupant" means any party that, by virtue of a contract to purchase, a lease, a rental arrangement, or any other instrument, understanding, arrangement, or transaction, is entitled to occupy, possess or use all or any portion of a Parcel.

(j) "P&D Parcel" means the South Parcel owned by P&D, which is described on Exhibit "A."

(k) "Parcel" means either the P&D Parcel, the Theater Parcel, the P&D North Parcel or the Trust Parcel.

(l) "Parcels" means the P&D Parcel, the Theater Parcel, the P&D North Parcel and the Trust Parcel.

(m) "Parking Areas" means the areas on each Parcel that the Interest Holder of the Parcel designates as available for parking from time to time.

(n) "Parking Stalls" means the striped stalls for parking motor vehicles located in the Parking Areas.

(o) "Person" means a natural person or a legal entity.

(p) "Right-of-Way Improvements" means those driveways, walkways, roadways and other areas, facilities or improvements that are designated as such by the Interest Holder of a Parcel from time to time.

(q) "Theater Parcel" means the Parcel owned by Theater, as more particularly described on Exhibit "C."

(r) "Trust Parcel" means the Parcel owned by Trust, which is described on Exhibit "D".

(s) "Utility Lines" means wires, pipes and other conduits for electricity, gas, telephone, cable, water, sanitary and storm sewers and other services for the benefit of the Buildings and other improvements located on the Parcels.

2. Creation of Easements. Declarants hereby create the following easements across or affecting each of the P&D Parcel and the Theater Parcel for the benefit of each of the Benefited Parties in respect of their respective Parcels:

Ent 820659 Bk 1219 Pg 105

(a) Non-exclusive easements appurtenant to each of the Parcels across each of the P&D Parcel, the Theater Parcel and the Trust Parcel for pedestrians to walk between the respective Parcels on the sidewalks or walkways located on the P&D Parcel or Theater Parcel or Trust Parcel; provided that the foregoing right shall be limited to use for such purposes and to such extent as is related to the use of the Parcels for the respective business purposes of the Benefited Parties.

(b) Non-exclusive easements appurtenant to each of the Parcels across the Right-of-Way Improvements on each of the P&D Parcel, the Theater Parcel and the Trust Parcel for the purpose of furnishing

vehicular and pedestrian access to and across the Parcels and between the parking areas on the respective Parcels; provided that the foregoing right of access shall be limited to use for such purposes and to such extent as is related to the use of the Parcels for the respective business purposes of the Benefited Parties.

(c) Non-exclusive easements appurtenant to each of the Parcels to use the Parking Areas and park vehicles in the Parking Stalls located on each of the P&D Parcel, the Theater Parcel and the Trust Parcel; provided that the foregoing right of access shall be limited to use for such purposes and to such extent as is related to the use of the Parcels for the respective business purposes of the Benefited Parties. Each party acknowledges and agrees that the rights and easements granted herein with respect to parking are intended to satisfy all parking requirements of all applicable laws and regulations, and each Interest Holder of the P&D Parcel and/or the Theater Parcel and/or the Trust Parcel hereby covenants and agrees that sufficient parking shall be maintained on the P&D Parcel, the Theater Parcel and the Trust Parcel as is necessary to satisfy all applicable parking requirements in respect of the improvements located on the Parcels, and there shall be no reduction in the number of Parking Stalls on either the P&D Parcel, the Theater Parcel or the Trust Parcel that would result in any violation of any law or regulation with respect to any improvements located on any Parcel.

(d) Non-exclusive easements appurtenant to each of the Parcels across each of the P&D Parcel, the Theater Parcel and the Trust Parcel to run Utility Lines to the Buildings and other improvements located on each Parcel and the right to enter each Parcel affected by such Utility Lines to construct, service, maintain and reconstruct such Utility Lines; provided, that such Utility Lines shall be located in the area or areas designated by the Interest Holder of each Parcel. Upon reasonable prior written notice, each Interest Holder shall have the right at its cost and expense to relocate the Utility Lines on its Parcel at any time and from time to time to facilitate development or redevelopment of its Parcel; provided, that relocation shall be accomplished in a manner that minimizes disruption of utility service and use of the other easements granted by this Declaration.

3. Interest Holders' Reservation of Rights. Each Interest Holder of a Parcel reserves the right to relocate, at any time and from time to time, the Right-of-Way Improvements on its Parcel at its own cost and expense; provided, the free flow of vehicles and pedestrians between the Parcels and to the public streets shall not be permanently impaired and all commercially reasonable efforts shall be taken to minimize the interruption to vehicle and pedestrian traffic during periods of construction.

4. Parking Areas; Parking Rules and Regulations. Interest Holders of each Parcel shall promulgate commercially reasonable rules and regulations governing the rights of the Benefited Parties of such Parcel to use the Parking Areas, the Parking Stalls, and the Right-of-Way Improvements located on such Parcel, which rules may include designation or earmarking of a reasonable number of Parking Stalls for use by visitors, for limited time use by short-term patrons and a total of ten (10) Parking Stalls for employees. Such rules may be for the purpose of insuring the safety and security of all Persons, and shall not unreasonably impair the free flow of pedestrians and vehicles. Except for such Parking Stalls dedicated for use by visitors, for use by employees or as otherwise required by law, no Interest Holder shall establish "reserved" parking spaces on a Parcel. The Interest Holders shall use reasonable efforts to cause such rules to be uniform across the Parcels.

Ent 820659 Bk 1219 Pg 106

5. Maintenance and Expenses.

(a) The Interest Holder of the P&D Parcel shall keep and maintain the Parking Areas, Parking Stalls and Right-of-Way Improvements on the P&D Parcel and the Theater Parcel (collectively, the "Parking Facilities") and all of the landscaping that is now or hereafter made a part thereof in a good, safe, clean and attractive condition and in good repair and shall make all repairs, replacements, refurbishments and renewals, foreseen and unforeseen, ordinary or extraordinary, as is necessary to maintain the Parking Facilities. The Interest Holders of the Theater Parcel and the P&D North Parcel shall pay to the Interest Holder of the P&D Parcel their Pro-Rata Share (as defined below) of the expenses incurred by the Interest Holder of the P&D Parcel in maintaining, repairing, replacing, renewing, refurbishing and otherwise dealing with the Parking Facilities; provided, that in the event the Interest Holder of the P&D Parcel does not cure any failure to maintain the Parking Facilities and other improvements as required by this Section 5(a) within thirty (30) days

after receipt of written notice of such failure, or, if such cure cannot be made within thirty (30) days, if the Interest Holder of the P&D Parcel fails to commence such cure within thirty (30) days after receipt of written notice thereof and thereafter diligently pursue such cure until completion, either the Interest Holder of the Theater Parcel or the P&D North Parcel shall have the right to cure such failure and the Interest Holder of the P&D Parcel shall reimburse to the Interest Holder of the Theater Parcel or the P&D North Parcel, as the case may be, the Interest Holder of the P&D Parcel's Pro-Rata Share of the expenses incurred in curing such failure plus a fee equal to 10% of such expenses in the manner provided in Section 5(c). Notwithstanding the foregoing, the cure period with respect to snow removal shall be not more than 24 hours. Each Interest Holder's pro-rata share (such Interest Holder's "Pro-Rata Share") shall equal the total of all such expenses incurred, multiplied by a fraction, the numerator of which is the number of Parking Stalls required by all applicable laws and ordinances for all of the buildings located on such Interest Holder's parcel and the denominator of which is the total number of Parking Stalls required by all applicable laws and ordinances for all of the buildings located on all of the Parcels.

(b) The Interest Holder of the P&D Parcel shall keep in effect satisfactory comprehensive general liability insurance covering the Parking Facilities, which shall provide for coverage with maximum limits of liability of not less than one million dollars (\$1,000,000.00) for bodily injury to one Person, one million dollars (\$1,000,000.00) for bodily injury to any group of Persons as a result of one accident, and one million dollars (\$1,000,000.00) for property damage. Each such policy shall name the Interest Holders of the Theater Parcel, the P&D North Parcel and the Trust Parcel as additional insured.

(c) The Interest Holder of the P&D Parcel shall be responsible for maintaining reasonable records of account and shall bill the Interest Holders of the Theater Parcel, the P&D North Parcel and the Trust Parcel for such Interest Holders' Pro-Rata Share (as defined in Section 5(a) above) of expenses required to be incurred in accordance with Section 5(a), and the premiums for the insurance required to be maintained in accordance with Section 5(b), plus a reasonable administrative fee equal to ten percent (10%) of the foregoing costs, on a monthly, quarterly or annual basis. The Interest Holders of the Theater Parcel, the P&D North Parcel and the Trust Parcel shall have the right to review such records of account at the Interest Holder of the P&D Parcel's place of business during business hours upon prior written notice of five (5) business days. The Interest Holders of the Theater Parcel, the P&D North Parcel and the Trust Parcel shall pay their Pro-Rata Share of such expenses and premiums within ten (10) days after being billed therefore by the Interest Holder of the P&D Parcel, provided that the Interest Holders of the Theater Parcel and/or the P&D North Parcel and/or the Trust Parcel do not reasonably object to the amount of such expenses or premiums based on information set forth in or omitted from such records, provided, further, that absent manifest error, such bill shall be deemed accurate. Any balance of the amount billed that remains unpaid after such ten-day period shall bear interest from such date at the rate of twelve percent (12%) per annum and the entire amount (inclusive of interest thereon) shall constitute a lien against the Theater Parcel or the P&D North Parcel or the Trust Parcel, as the case may be. After three (3) consecutive months of non-payment by the Interest Holders of the Theater Parcel or the P&D North Parcel or the Trust Parcel, written notice of such non-payment shall be sent by the Interest Holder of the P&D Parcel to the non-paying Interest Holder and any Mortgagee with respect to the Theater Parcel or the P&D North Parcel or the Trust Parcel, as the case may be, which has notified the Interest Holder of the P&D Parcel of the existence of its Mortgage, and the Interest Holder of the P&D Parcel shall thereafter be entitled to foreclose upon the lien created hereby and to pursue any other remedy to which it may be entitled in accordance with Section 10 of this Declaration.

Ent 820659 Bk 1219 Pg 107

6. Right to Cure. If any Interest Holder fails to perform its obligations under this Declaration, and does not commence to perform such obligations within thirty (30) days after written notice from another Interest Holder or thereafter fails to diligently pursue such completion, the Interest Holder providing the notice may perform in the stead of the defaulting Interest Holder. In the event an Interest Holder fails to perform its obligations under this Declaration and, as a result an emergency occurs which is likely to include a violation of applicable law that could result in criminal prosecution or a civil fine exceeding \$1,000.00, to involve potential injury to individuals or to involve damage to property exceeding \$1,000.00, any other Interest Holder may perform in the stead of the defaulting Interest Holder, but shall notify the defaulting Interest Holder of such emergency and cure as soon as practicable. All amounts incurred by

the curing Interest Holder, together with interest at the rate of twelve percent (12%) per annum shall constitute a lien against the Parcel owned by the defaulting Interest Holder and shall be due and payable immediately.

7. Duration; Amendment or Termination of Declaration. This Declaration and all of the provisions of this Declaration shall be perpetual and shall remain in full force and effect unless earlier terminated as provided in this Section 7. This Declaration may be amended or terminated by, but only by, an instrument filed for record in the office of the County Recorder of Cache County, Utah that is executed by Interest Holders of all of the Parcels at the time said instrument is so filed for record.

8. Title and Mortgage Protection.

(a) No amendment to or termination of this Declaration shall in any way affect the rights, liens or security interests of any Mortgagee interested under a Mortgage that is in effect at the time of the amendment or termination unless such Mortgagee has consented in writing to such amendment or termination.

(b) A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title to or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage now or hereafter executed upon any portion of any Parcel. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Parcel shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration.

9. Covenants to Run with Land. This Declaration and all of the easements, covenants, provisions, and requirements of this Declaration are intended to be and shall constitute covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of each Interest Holder of a Parcel, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and requirements of this Declaration shall also inure to the benefit of each Parcel, and each party owning any right, title or interest in or occupying any such other portion. Each Interest Holder shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration and the provisions of any instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel, the Person so acquiring, coming to have such interest, or occupying, consents to, and agrees to be bound by, each and every provision of this Declaration.

Ent 820659 Bk 1219 Pg 108

10. Enforcement. Each Interest Holder of a Parcel shall have the right to enforce, through any appropriate proceeding at law or in equity, the terms, provisions, restrictions, and requirements of this Declaration. The enforcement of any right or obligation in under this Declaration through injunctive or other equitable relief shall not require the posting of any bond or other security nor the proof of actual damages. Any failure to insist upon the performance of or compliance with any of such terms, provisions, restrictions, and requirements shall not result in or be construed to be an abandonment or termination of the arrangement created by this Declaration or any waiver of the right to insist upon such performance or compliance in the future. If any action is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees and related costs (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

11. Interpretation. The captions that precede the Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision of this Declaration is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. This instrument shall be governed by and construed in accordance with the laws of the State of Utah.

12. Effective Date. This Declaration and any amendment or termination of this Declaration shall take effect upon its being filed for record in the office of the County Recorder of Cache County, Utah.


*[Remainder of page intentionally left blank – Signature page follows]*

Ent **820659** Bk **1219** Pg **109**

IN WITNESS WHEREOF, the Declarants have executed this Declaration on the date first set forth above.

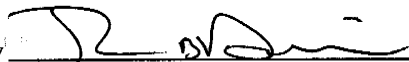
"P&D"

P&D DEVELOPMENT, LLC, a Utah limited liability company

By   
Name Bret R. Peterson  
Title Managing Member

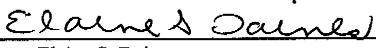
"THEATER"

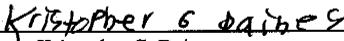
PROVIDENCE THEATERS, LLC, a Utah limited liability company

By   
Name James B. Daines  
Title Managing Member

"Trust"

Kristopher G. Daines Trust, dated April 2001

By   
Name Elaine S. Daines  
Title Trustee

By   
Name Kristopher G. Daines  
Title Trustee

Ent 820659 Bk 1219 Pg 110

STATE OF UTAH )

COUNTY OF CACHE )

: ss.

On this 7 day of March, 2003, personally appeared before me Bret R. Peterson, who being by me duly sworn, did say that he/she is the Managing Member of P&D Development, LLC, a Utah limited liability company, and that said company executed the foregoing document.



Larean Shaffer  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_  
My Commission Expires: 7/23/03

STATE OF UTAH )

COUNTY OF CACHE )

: ss.

On this 10 day of March, 2003, personally appeared before me James B. Daines, who being by me duly sworn, did say that he/she is the Managing Member of Providence Theaters, LLC, a Utah limited liability company, and that said company executed the foregoing document.



Lorie Parker  
NOTARY PUBLIC  
Residing at: Salt Lake County, Utah  
My Commission Expires: 2/25/07

STATE OF UTAH )

COUNTY OF CACHE )

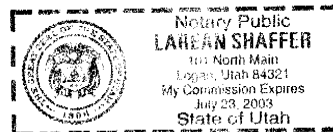
: ss.

Ent **820659** Bk **1219** Pg **111**

On this 7 day of March, 2003, personally appeared before me Elaine S. Daines and Kristopher G. Daines, who being by me duly sworn, did say that he/she are Trustees of Kristopher G. Daines Trust, dated April 2001 and that said trust executed the foregoing document.

My Commission Expires: 7/23/03

Larean Shaffer  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_





**EXHIBIT "A"**

TO

**DECLARATION OF EASEMENTS**

[Legal Description of P&amp;D Parcel]

A part of the Northwest Quarter of Section 10, Township 11 North, Range 1 East of the Salt Lake Base and Meridian. Beginning at the Southeast Corner of Lot 5, Block 34, Plat "A" PROVIDENCE FARM SURVEY, and running thence West 462 feet to a point 198 feet East of the Southwest corner of said lot; thence North 00E09'34" East (North by record) 660 feet; thence East 462 feet to the East line of said lot 5; thence South 00E09'34" West (South by record) 660.0 feet to the point of beginning.

*Tax Parcel No. 02-091-0002*

## EXCEPTING THEREFROM:

Part of Lot 5, Block 34, Plat "A" PROVIDENCE FARM SURVEY, described as follows: Beginning at a point South 89°52'12" East along the South line of said Lot 5, 207.12 feet (198 feet by record) and North 00°09'34" East (North by record) 339.7 feet to the true point of beginning; thence North 00°09'34" East (North by record) 320.72; thence South 89°56'29" East 483.29 feet (462 feet by record) to the East line of Lot 5; thence South 00°09'34" East (South by record) 321.57 feet; thence North 89°52'12" West 483.29 feet (462 feet by record) to the true point of beginning. (*Part of Tax Parcel 02-091-0002*)

*SUBJECT TO AND TOGETHER WITH a right-of-way for ingress and egress over the East 15 feet of Lot 5.*

Ent **820659** Bk **1219** Pg **112**

**EXHIBIT "B"****TO****DECLARATION OF EASEMENTS**

[Legal Description of P&amp;D North Parcel]

A PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 10 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN;  
ALSO, PART OF LOT 1, GATEWAY BUSINESS PARK SUBDIVISION FILED SEPTEMBER 29, 1999 AS FILING NO. 725110. BEGINNING AT A POINT LOCATED NORTH 00°09'34" EAST 66.06 FEET FROM THE NORTHWEST CORNER OF SPRING CREEK SUBDIVISION, PHASE 1; RUNNING THENCE NORTH 0°09'34" EAST 177.63 FEET; THENCE NORTH 90°00'00" WEST 72.81 FEET; THENCE SOUTH 13°05'57" WEST 53.87 FEET; THENCE SOUTH 31°00'45" WEST 49.85 FEET; THENCE NORTH 62°00'10" WEST 121.81 FEET; THENCE SOUTH 37°22'34" WEST 63.47 FEET; THENCE NORTH 78°42'53" WEST 52.89 FEET; THENCE SOUTH 42°26'48" WEST 55.82 FEET; THENCE SOUTH 78°11'09" WEST 105.13 FEET; THENCE NORTH 68°44'18" WEST 62.01 FEET; THENCE SOUTH 83°31'49" WEST 48.47 FEET; THENCE SOUTH 09°00'52" WEST 54.53 FEET; THENCE SOUTH 90°00'00" EAST 563.24 FEET TO THE POINT OF BEGINNING. (PART OF 02-171-0001)

Ent **820659** Bk **1219** Pg **113**

**EXHIBIT "C"****TO****DECLARATION OF EASEMENTS**

[Legal Description of Theater Parcel]

Part of Lot 5, Block 34, Plat "A" PROVIDENCE FARM SURVEY, described as follows: Beginning at a point South 89°52'12" East along the South line of said Lot 5, 207.12 feet (198 feet by record) and North 00°09'34" East (North by record) 339.7 feet to the true point of beginning; thence North 00°09'34" East (North by record) 320.72; thence South 89°56'29" East 483.29 feet (462 feet by record) to the East line of Lot 5; thence South 00°09'34" East (South by record) 321.57 feet; thence North 89°52'12" West 483.29 feet (462 feet by record) to the true point of beginning. (*Part of Tax Parcel 02-091-0002*)

*SUBJECT TO AND TOGETHER WITH a right-of-way for ingress and egress over the East 15 feet of Lot 5.*

Ent **820659** Bk **1219** Pg **114**

**EXHIBIT "D"**

**TO**

**DECLARATION OF EASEMENTS**

[Legal Description of Trust Parcel]

BEG SW CORNER LOT 5 BLOCK 34 PLT A PROVIDENCE FARM SURVEY & THENCE NORTH 660 FEET  
THENCE EAST 198 FEET THENCE SOUTH 660 FEET THENCE WEST 198 FEET TO BEG, CONT 3.0  
ACRES.

Ent **820659** Bk **1219** Pg **115**