

6984

MASTER DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR  
EAST BAY BUSINESS CENTER

UTAH COUNTY REC'D  
1986 MAR 10 PM 1:08  
Provo City  
Provo

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RECORDED AT THE REQUEST OF  
*Provo City*

6984

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAST BAY BUSINESS CENTER, hereinafter referred to as the "Declaration" is made and adopted this 7<sup>th</sup> day of MARCH, 1986, by PROVO CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter referred to as the "Declarant."

Declarant is the owner in fee of real property in Utah County, State of Utah, more particularly described on Exhibit "A," attached hereto and by this reference made a part hereof, hereinafter referred to as the "Entire Property," and which described property is in process of and will be developed as a business and research center with permanent Common Areas, Common Facilities and Parcel Improvements (as herein defined) to assure that the land set apart for and designated as East Bay Business Center, hereinafter referred to as the "Center" or "East Bay," will be developed in a manner consistent with the highest aesthetic and architectural standards, with the declared intention of creating a pleasant and attractive physical environment that will contribute to the activities of the park occupants. Declarant desires to provide for preservation of the values and amenities in said development and to

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establish certain requirements for the maintenance of the Common Areas, Common Facilities and Parcel Improvements. To this end, and for the benefit of the Entire Property and the owners thereof, Provo City desires to subject the Entire Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth. Declarant, through this project, desires to provide for increased economic development activity resulting in direct jobs for local citizens. Consequently Provo City will take the necessary steps to discourage land speculation within the Entire Property.

This Declaration, upon recordation in the office of the Utah County Recorder, shall be binding on all lessees, tenants and successors in interest of Declarant. Declarant desires to develop the Entire Property in individual parcels (hereinafter referred to as "Parcels") each of which shall be subject to this Declaration. Compliance with the covenants, conditions, restrictions and reservations herein set forth may be enforced through appropriate action by Declarant, any successor in interest, the Association (as hereinafter defined) and by any entity having rights to possession of any portion of the property described in Exhibit "A." These conditions, covenants, restrictions and reservations shall run with the land and be binding upon all successors in interest of Declarant and shall inure to the benefit of Declarant, the Association and any occupants of the Center. Specific

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authority to enforce this document is given to the East Bay Business Center Association which will be organized pursuant hereto.

In any legal or equitable proceeding to enforce the provisions hereof or to enjoin their violation, the party or parties against whom judgment is entered shall pay the attorney's fees of the party or parties for whom judgment is entered in such amount as may be fixed by the Court in such proceeding.

This Declaration has been developed pursuant to the standards and conditions of the applicable Provo City Ordinances.

#### ARTICLE I

##### Definitions

The following terms used herein shall have the following meanings:

1. "Board" shall mean the governing board of the East Bay Business Center Association as defined in Article II, Sections 1 and 2 hereof.

2. "Building" shall mean and include, but not be limited to, the main portion of a structure built for permanent use and all projections or extensions thereof, including but not limited to garages, outside platforms and docks, storage tanks, canopies, enclosed malls and porches.

3. "Center" shall mean the Entire Property as from time to time developed and known as East Bay Business Center.

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4. "Common Areas Manager" shall mean the East Bay Business Center Association as described in Article II hereof.

5. "Common Areas" shall mean the following:

(a) Those certain lakes and their environs which may be shown on any recorded Record of Survey Map and/or a Supplemental Declaration relating to a portion of the Entire Property in such location and with such designs as may be shown on such Record of Survey Map or Supplemental Declaration.

(b) Any parcel of land designated as a Common Area on a recorded Record of Survey Map and/or Supplemental Declaration relating to a portion of the Entire Property.

6. "Common Facilities" shall mean all of the following which shall be located within drainage easements and public rights-of-way at such time as such easements are created and such facilities are constructed:

(a) all drainage easements and their drainage systems;

(b) landscaping;

(c) the irrigation system and associated pumps and hardware;

(d) street signs;

(e) street lights;

(f) street furniture; and

(g) any other facility specifically designated in any Supplemental Declaration relating to a portion of the Entire Property as being Common Facilities.

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7. "Declarant" shall mean Provo City Corporation or its successors and assigns, if such successors and assigns are the Owner or Owners of any portion of the Entire Property and/or are designated by Provo City Corporation to perform the obligations of Declarant hereunder.

8. "Developer" shall mean any person who builds upon any Parcel or portion of land within the Center.

9. "Improvements" shall mean and include, but not be limited to, buildings, out buildings, driveways, curbs, gutters, sidewalks, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad trackage, retaining walls, roads, screening walls, signs, utilities, walkways, berms and swales all of which are located on a Parcel. Improvements shall include lakes, ponds and streams or any portions thereof located on or within a Parcel.

10. "Land Areas" shall mean the Entire Property referred to except dedicated rights-of-way and Common Areas and Common Facilities.

11. "Landscaping" shall mean a space of ground covered with lawn, ground cover, shrubbery, trees and the like which may be complemented with earth berms, masonry or similar materials, all harmoniously combined with themselves and with other improvements.

12. "Occupant" shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which has purchased, leased, rented or otherwise legally

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acquired the right to occupy and use any building or Parcel, whether or not such right is exercised.

13. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Parcel or portion of a Parcel which is part of the Entire Property (or in the event of a sale-leaseback transaction involving any Parcel, the lessee or lessees thereunder), but excluding those having such interest solely as security for the performance of an obligation, in which event the equitable owner of such fee simple title shall be deemed to be the Owner thereof.

14. "Parcel" shall mean any parcel of land shown upon any recorded Record of Survey Map of the Entire Property, except dedicated public rights-of-way and Common Areas and Common Facilities.

15. "Parcel Improvements" shall mean the term Improvements as defined in this Declaration, except buildings, out buildings, loading areas, and railroad trackage placed or constructed by an Owner.

16. "Set Back" shall mean the distance from the property line of the Parcel to the improvement that is subject to the Set Back requirement provided in any Supplement Declaration or in the Development Guidelines for the Center.

#### ARTICLE II

##### Architectural and Development Controls

There is hereby established for the purpose of enforcement of this Declaration the East Bay Business Center

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Association hereinafter referred to as the "Association," which shall have and enjoy the following authority and responsibilities:

1. Authority. The Association is established for the purpose of enforcing this Declaration and to assure continuity in the development of the Center, to oversee all architectural design standards, to provide for site development and environmental control within the Center according to established standards.

2. Responsibilities. In addition to other duties described elsewhere in this Declaration, the Association is charged with the responsibility to promptly review any project or development within the Center and to not unreasonably withhold approval if the same conforms to this Declaration. The affairs and business of the Association shall be governed by its board (the "Board") of trustees, which Board shall consist of five persons. Three of these seats shall be occupied by the following persons of Provo City in an ex officio manner: Provo City Mayor or his appointee, Director of Community Development, or his appointee, Director of Parks and Recreation, or his appointee. The remaining two seats shall be appointed by Provo City until such time that fifty percent (50%) of the Center is sold to Owners, at which time those two seats will be elected representatives of the Owners. These elected representatives may in turn appoint alternates in their absence. All elected Board members shall serve for a term of one year.

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3. Ownership Voting. Each Owner within the Center shall exercise voting power equal to one vote for each acre of land, or a fractional vote for any fraction of land owned by such Owner. For purposes of determining the number of votes of an Owner pursuant to the terms of this Declaration, the acreage of all Parcels owned by an Owner will be aggregated to determine total acreage and any fraction thereof. Each Owner may elect either to exercise the voting power referred to above or may in writing authorize one other tenant to act as the Owner's agent for the purpose of elections.

4. Compensation and Assessments. Members of the Board shall serve without compensation but may be reimbursed actual expenses incurred on behalf of the Association or the Board. The Board may assess Owners within the Center on a pro rata basis sufficient funds annually to cover the necessary expenses of the Association and the Board, including all costs and expenses of legal actions necessary to enforce this Declaration. Any assessment made under this section not paid when due shall constitute a lien when notice of delinquency thereof is filed with the County Recorder against the described property of the delinquent Owner.

5. Submission Process. (a) Any improvement of any property within the Center shall be submitted to the Board for approval prior to application for any building permit or zoning approval. Likewise, any landscaping of a Parcel and any alteration of existing facilities shall be submitted. All such

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submissions, both preliminary and final, shall be made in accordance with the Development Guidelines for East Bay Business Center, and with the Environmental Guidelines for East Bay Business Center (collectively the "Guidelines") which Guidelines are incorporated herein by this reference.

(b) Within a reasonable time following submission, the Board shall review the submission and may require additional maps, data or information applicable.

(c) Any failure to submit to the Board anticipated development plans shall constitute a prima facie violation of this Declaration and shall be the proper subject for injunctive relief or other appropriate court action, including the assessment of costs and attorneys' fees.

6. Approval Process. (a) The Developer or Owner shall submit preliminary plans and specifications for its project, together with appropriate plats, maps, dimension drawings and other data sufficient to adequately disclose the scope of the proposed development. Such materials shall be submitted to the Board through the Provo City office of Economic Development. Such designs, plats, drawings and specifications shall comply with the Development Guidelines and Environmental Guidelines adopted by the Board.

(b) The submitted document shall be reviewed by the Board and within thirty (30) working days shall either be approved or disapproved, provided, however, that if additional information is requested by the Board, the approval date will

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be extended accordingly. Upon approval, the Developer or Owner shall then proceed to the final construction drawings stage.

(c) Upon approval of the preliminary plans and specifications, the Developer or Owner shall proceed to prepare final construction plans and specifications in accordance with the Development Guidelines and Environmental Guidelines. At the time the final plans and specifications are presented to the City for building permits, the Owner or Developer shall submit copies of the same to the Board through the Provo City office of Economic Development which shall once again have thirty (30) days to either approve or disapprove the same; provided, however, that if additional data is required, such time period may be extended at the option of the Board.

(d) The Board shall have the right and authority to monitor construction of the project to see that compliance with this Declaration is achieved and shall notify Developer or Owner in writing of any failure to comply in a timely manner.

(e) Within thirty (30) days the Board shall act upon any duly presented Application. Action shall be constituted by approval, denial or continuance of the Application. No developer may proceed to the next phase or stage of the development plan unless approval has been granted for the previous stage.

(f) Notwithstanding any provisions of this Declaration or any Supplemental Declaration to the contrary, the Developer or Owner, in addition to any other requirement otherwise imposed, must comply with any and all applicable city,

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county or state rules, ordinances and regulations to satisfy the approved provisions hereof.

7. Basis for Approval. (a) Approval by the Board shall be based upon compliance with the Development Guidelines, the Environmental Guidelines and any applicable building codes or other regulations.

(b) The Board may take into account aesthetic considerations and may impose necessary conditions to approval based upon the same.

(c) The Board may consider any possible impact of the proposed development on adjacent property and may impose necessary conditions to approval based upon the same.

8. Development Guidelines.

(a) The Board shall adopt such Development Guidelines as it deems necessary to inform Owners of the standards which will be applied in approving or disapproving proposed construction.

(b) Such Development Guidelines may amplify but may not be less restrictive than the regulations and restrictions stated in this Declaration and shall be binding upon all Owners of Parcels within the Entire Property; provided, however, that such Owners may modify such Guidelines as set forth in Article II, Section 26 hereof.

(c) Such Development Guidelines shall specifically state the rules and regulations of the Board with respect to the submission of plans and specifications for approval, the

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time or times within which such plans or specifications must be submitted, and may state such other rules, regulations, policies, and recommendations which the Board will consider in approving or disapproving proposed construction of or alterations to buildings.

9. Liability of the Board. Neither the Board nor any member, agent or employee thereof shall be liable to any Owner, Developer or tenant or to anyone submitting plans for approval or to any other party by reason of mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval, disapproval or failure to approve any development plans or for any other action in connection with the Board's duties hereunder. Likewise, anyone submitting plans to the Board for approval by submitting such plans, and any person when he becomes an Owner, Developer or tenant, agrees not to bring any action or suit to recover any damages against the Board, any member, employee or agent of the Board.

10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Improvements erected by it and all improvements of the Common Areas and Common Facilities made by it shall be architecturally compatible with respect to one another, with this Declaration, and with the Development Guidelines.

11. Design Review. The external appearance and siting of Improvements are of primary concern to the Board. Informal conferences prior to design are strongly recommended and at

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least the following material will be required in connection with any submittal to the Board:

(a) Site plan, including roads, parking, driveways, loading and maneuvering areas, external lighting, utility and utility easements, grading (including a plan showing existing grades), and irrigation and planting plans, proving compliance with the Development Guidelines and the East Bay Environmental Guidelines, which Environmental Guidelines are incorporated herein by this reference.

(b) Floor plan, cross sections and elevations of all sides of the buildings or Improvements including external screening.

(c) Samples of materials proposed for all external surfaces including colors and textures, which will be reviewed by the Board for environmental compatability with the surrounding area and the intent of this Declaration.

(d) An accurate artist's rendering of the project or a scale model. Rendering should show adjacent buildings, landscaping, screening, signs, etc.

(e) Appropriate specification.

12. Prohibited Uses.

(a) Entire Property. No portion of the Entire Property may be occupied by any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any of the Entire Property.

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(b) Prohibited Nuisance Factors and Hazards. In order to protect the interest of all Owners and tenants, no operation may be conducted which emits offensive or objectionable noise, vibration, smoke, odor, dust or gases. No activity within the Center will be allowed which has the potential to subject persons or property to radiation, radioactivity, fire or explosion hazard.

(c) Additional Prohibitions. Individual Parcels will be subject to such additional Prohibited Uses as may be set forth in Supplemental Declaration(s) recorded with respect to such Parcels.

13. Construction of Improvements.

(a) Temporary Structures. No temporary building or other temporary structure shall be permitted on any Parcel; provided, however, that trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period for a permanent building. Such structures shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners, Developers or tenants of other Parcels, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building in connection with which the temporary structure was used.

(b) Completion of Construction. Once begun, any Improvements, constructions, Landscaping, or alterations approved by the Board shall be diligently prosecuted to comple-

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tion. If reasonably necessary for construction of such Improvement, Landscaping or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and Common Facilities and the Parcels owned by Declarant in the vicinity of the activity, which period of time shall be determined by the Board on a project by project basis, provided that, on completion of construction such Common Areas and Common Facilities and Parcels shall be restored at such person's or persons' cost to a condition equal to their condition immediately prior to such use.

(c) Covenant to Construct Improvements. Notwithstanding any other provision hereof to the contrary, the Owner affirmatively covenants to begin construction of improvements, landscaping or alterations approved by the Board within one (1) year following such Owner's purchase of an interest in a Parcel. In the event an Owner fails to comply with the covenant set forth herein, Declarant, upon thirty (30) days prior written notice to such Owner, shall have the right, but not the obligation, to purchase such Owner's Parcel, or interest therein, at the price paid by such Owner for such Parcel, or interest therein. For purposes of this Declaration, the one (1) year period set forth hereinabove shall begin when such Parcel or interest therein is purchased from Declarant. Any subsequent owner of such parcel shall be required to begin construction of improvements, landscaping or alterations

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approved by the Board within one (1) year following such Owner's purchase of an interest in a Parcel.

14. Surface Drainage. A storm drainage system has been developed for use on all Parcels within the Entire Property. It is mandatory that all surface drainage systems be expressly approved in writing by the Board prior to installation thereof.

15. Landscaping, Parcel Improvements. The appearance of yard and grounds will be critical in achieving the atmosphere desired in the Center. Careful attention is required with respect to Landscaping. All Landscaping, site work or Parcel Improvements shall be approved by the Board and shall conform to the East Bay Environmental Guidelines as published by the Board. It is the intention of Declarant that a certain percentage of each Parcel be landscaped. Such percentage of Landscaping shall be set forth in the Supplemental Declaration affecting each Parcel. Owner shall submit to the Board plans for Landscaping and site and Parcel Improvements. The Board shall approve such plans in accordance with the procedures and time periods set forth in Article II, Sections 5 and 6 of this Declaration, and any applicable Supplemental Declaration, and the Development Guidelines.

16. Rights to Common Areas, Common Facilities and Parcel Improvements.

(a) Ownership of Common Areas and Common Facilities.  
The Association shall own all Common Areas and Common Facilities in trust for the use and benefit of the Owners.

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(b) Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to all of the Common Areas and Common Facilities, which right and easement shall be appurtenant to and shall pass with the title to every Parcel. Every Owner may delegate his right and easement to the Common Areas and Common Facilities to his employees, tenants, invitees, lessees, guests or contract purchasers.

(c) Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas and Common Facilities shall be subject to the following:

(1) Such right and easement shall not be exercised in any manner which substantially interferes with the rights and responsibilities of the Board, the purposes for which the Common Areas and Common Facilities are provided or with the right and easement of any other Owner with respect thereto.

(2) The right of the Declarant, Provo City, Utah County, and any other governmental or quasi-governmental body having jurisdiction over the Entire Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Entire Property for purposes of providing police and fire protection, and providing any other governmental or municipal service; and

(3) The right of the Board, in its sole discretion, to grant such utility and right-of-way easements over the Common Areas and Common Facilities as may be necessary or

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convenient to the Entire Property and/or the development of any portion thereof.

(d) Easement in Favor of Board.

(1) Easement for Parcel Improvements. Pursuant to Article II, Sections 13 and 15 hereof, Parcel Owners have certain responsibilities with respect to the Parcel Improvements and the Landscaping of Parcels owned by them. In addition, pursuant to Article II, Section 17 hereof, the Board, at its discretion may undertake certain responsibilities with respect to the maintenance of Parcel Improvements. To facilitate the maintenance of the Parcel Improvements by the Board pursuant to the terms and provisions of this Declaration, each Owner understands and agrees that upon the purchase of a Parcel, or any portion thereof, such Owner receives title to such Parcel or portion thereof, subject to an Easement (the "Parcel Improvement Easement") on the entire Parcel in favor of the Board for the maintenance of the Parcel Improvements.

(2) Assessment for Parcel Improvements. Costs expended or incurred by the Board for the maintenance of Parcel Improvements in accordance herewith shall be assessed as a special assessment pursuant to Article II, Section 17(b)(2) hereof, to the Owner of the Parcel upon which said Parcel Improvements are maintained.

(3) Scope of Easement. Such Parcel Improvement Easement shall be interpreted at all times to give the Board such rights and powers which, in the discretion of the Board,

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may be necessary or desirable for the Board's maintenance of the Parcel Improvements. The rights and powers of the Board pursuant to such Parcel Improvement Easement shall be limited only at such time or times when Improvements, constructions, or alterations approved by the Board, in the opinion of the Board, are being diligently prosecuted by the Owner to completion. Notwithstanding the foregoing, the rights and powers of the Board pursuant to the Parcel Improvement Easement shall be sufficiently broad to allow the Board to meet its responsibilities and duties set forth in the Declaration, any Supplemental Declaration, the Development Guidelines and the Environmental Guidelines.

17. Maintenance of Common Areas, Common Facilities, and Parcel Improvements.

(a) Duty to Maintain. In addition to the other duties or responsibilities of the Board set forth in this Declaration, the Board shall maintain and operate, or provide for the maintenance and operation of the Common Areas and Common Facilities and the Improvements located thereon or related thereto. The Board may as deemed necessary for the appearance and integrity of the Entire Property, maintain and operate, or provide for the maintenance and operation of any or all of the Parcel Improvements. Where it deems necessary or desirable, the Board may construct, reconstruct, repair, or replace any capital improvement related to or located upon Common Areas or Parcels.

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(b) General and Special Assessments.

(1) General Assessments. The Board may assess each Owner for the cost of maintenance and operation of the Common Areas and Common Facilities, and the Improvements located thereon, including the indirect costs thereof. Each Parcel shall be subject to a quarterly assessment equal to the total quarterly cost of maintenance and operation of such Common Areas and Common Facilities and Improvements located thereon, multiplied by a fraction, the numerator of which is the land acreage of each such Parcel and the denominator of which is the total land acreage of all platted Parcels with the Entire Property.

(2) Special Assessments. In addition to the quarterly assessments authorized above, the Board may levy, in any year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of Common Areas, Common Facilities and any Parcel Improvements as may be necessary as determined by the Board. Notwithstanding the foregoing sentence, any and all costs incurred by the Board in connection with the operation and maintenance of any Parcel Improvements pursuant to the Parcel Improvement Easement, will be assessed as special assessments to the Owner of the Parcel or Parcels where such Parcel Improvements are constructed or located.

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(3) Owner's Liability for Payment of Assessments and Liens. The Declarant, for each Parcel owned within the Property, hereby covenants, and each Owner of any Parcel by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Board the assessments described in subsections 17(b)(1) and (2) of this Section. Such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property or Parcel against which each such assessment is made and shall also be the personal obligation of the person who was the Owner of such property or Parcel at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

(4) Date of Commencement and Notice of Quarterly Assessments. The quarterly assessments provided for herein shall commence as to all Parcels on the first day of the month following the date of recording of any Record of Survey map. The first quarterly assessment shall be adjusted according to the number of months remaining in the calendar quarter. The Board shall estimate the amount of the quarterly assessment against each Parcel at least thirty (30) days in advance of each quarterly assessment period and fix the due date for payment thereof. Written notice of the quarterly assessment shall be sent to every Owner subject thereto. At the end of the

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quarterly assessment period, the Board shall determine the exact cost of operation and maintenance described herein and shall charge or credit each Owner in the next quarterly assessment for the difference between the actual expense and the estimated expense.

(5) Certificate of Assessment. The Board shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Board setting forth whether the assessments on a specified Parcel have been paid and said certificate may be conclusively relied upon by the party requesting the same.

(6) Effect of Nonpayment of Assessments, Remedies. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at two percent (2%) over the highest prime interest rate charged by the Provo University Avenue office of First Security Bank of Utah, N.A., during the period such assessment remains unpaid. The Board may bring an action at law against the Owner personally obligated to pay the same, enforce any such judgment against the Owner, and/or foreclose the lien against the property or Parcel. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas, Common Facilities, and Parcel Improvements, or abandonment of a Parcel.

(7) Subordination of the Lien to Mortgages and Deeds of Trust. The lien of the assessments provided for

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herein shall be subordinate to the lien of any first mortgages and Deeds of Trust. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to foreclosure of any first mortgages and Deeds of Trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer but shall not extinguish the liability of the Owner therefor. No other sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

(c) Insurance. The Board shall acquire and maintain insurance against insurable hazards in amounts which reasonably provides coverage against loss and/or liability to that portion of the Project owned, managed or maintained by the Board and arising from the hazards insured against. Such insurance coverage may be written in the name of, and the proceeds thereof payable to, the Board. Such insurance may include, but is not limited to fire insurance, comprehensive liability insurance and Workmen's Compensation Insurance. Premiums for insurance carried by the Board shall be a common expense included in the quarterly assessments or charges made by the Board. The Board shall notify the Owners in writing of the type and amount of any such insurance secured by it and shall immediately advise the Owners in writing of any changes made with respect thereto.

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(d) Replacement or Repair of Property. Damaged or destroyed Common Areas and Common Facilities, or the property used, managed or maintained by the Board in connection with the Common Areas and Common Facilities, shall be repaired or replaced by the Board utilizing insurance proceeds therefor. In the event there are no insurance proceeds or the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Board may make a special assessment under subsection 17(b)(2) hereof to cover such cost.

18. Loading Service and Outside Storage:

(a) Each Parcel development shall provide sufficient on-parcel loading facilities to accommodate site activity. All loading movements, including turn around and maneuvering, shall be made off the public rights-of-way.

(b) Loading docks shall be located and screened so as to minimize visibility from any street, lake, or the golf course.

(c) Open storage shall be allowed only within the area bounded by 1860 South on the north, Kuhni Road on the east, Provo City limits on the south, and I-15 on the west and must be screened from the view of any street, lake or the golf course; provided however, that screen fences or walls over three feet high shall not be located within any building setback area.

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(d) Screening of loading, service and outside storage areas may consist of a combination of earth mounding, landscaping walls and/or fences approved by the Board.

19. Utility Connections. All utility lines, connections and installations must be underground and rise within the building. Any external transformers, meters and similar apparatus must be at ground level or below with approved screening for ground level installations.

20. Buildings.

(a) All Buildings must be designed by licensed architects or engineers and conform to all applicable codes.

(b) Suitable enclosures will be required to screen from view all exposed projections outside of the Building including mechanical and electrical equipment, cooling towers, transformers, ducts, vents, towers, etc. Drawings submitted for review must show the external projections and screens in place and their relationship to the Building, design and materials.

(c) Suitable draperies or window screening devices coordinated for uniformity throughout the Building shall be provided at the time of occupancy.

21. Location of Buildings, Set Back Requirements. All Buildings constructed on any Parcel within the Center shall conform to the set back requirements specified in the Supplemental Declaration relating to such Parcel, and to the Development Guidelines in effect at the time such construction is commenced.

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22. Illumination of Buildings and Grounds. Lighting shall be uniform or compatible within the Center. Coordination with other tenants and the master plan is expected and will be an item of review by the Board. All such lighting shall conform to the Development Guidelines and the sign restrictions contained therein. Each Owner, Developer or tenant shall be required to enter into an Electric Service Agreement For Private Outdoor Lighting Service with Provo City Power for all lighting services required by Owner or tenant on any Parcel. Such agreement shall be in form and substance similar to the form agreement attached hereto as Exhibit "B" and by this reference made a part hereof.

23. Waste and Rubbish. Waste and rubbish must be treated and disposed of as required under city ordinance. Such facilities shall not be visible from all primary streets (as defined in the Development Guidelines) and must be screened or concealed from view to minimize visibility from any other street, or from outside the property on which collection occurs. Where eligible all screening must be approved by the Board and be of a permanent non-wood material and must be well maintained.

24. Roads and Parking.

(a) All roads and parking surfaces must be hard-surfaced and must be striped to designate parking areas, roadways, etc. and must be equipped with bumpers, safety guards and directional markers as required to effectuate the traffic plan submitted to the Board. Each Owner will be required to provide

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on-site parking for its specific business type in accordance with the Supplemental Declaration relating to such Parcel, or in the Development Guidelines in effect at the time such parking is constructed.

(b) Prompt snow removal in private parking areas and private roads is the responsibility of each Owner or tenant in possession.

25. Limitation of Restrictions on Declarant.

(a) Declarant's Work. Declarant is undertaking the work of developing the Center, the Common Areas and Common Facilities and other incidental improvements upon the Parcels included with the Entire Property. The completion of that work and the sale, rental and other disposal of said Parcels is essential to the establishment and welfare of the Entire Property as a business center.

(b) Declarant's Exemptions. In order that said work may be completed and the Entire Property be developed, nothing herein shall:

1. Prevent Declarant, its contractors, or sub-contractors, from doing on the Entire Property or any Parcel thereof, whatever is reasonably necessary or advisable in connection with the completion of said work; or

2. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Entire Property, such structures as may be reasonably necessary for the conduct of its business of completing

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said work and establishing the Entire Property as an industrial/business park and disposing of platted Parcels of the Entire Property in parcel by sale, lease or otherwise; or

3. Prevent Declarant from maintaining such sign or signs on any part of the Entire Property as may be necessary for the sale, lease, or disposition thereof.

26. General Provisions.

(a) Enforcement. Declarant, any Owner or the Board shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of Declarant, any Owner or the Board to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

(c) Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for a successive period of ten (10) years, to a maximum of 99 years unless terminated at the end of any such period by vote of the Owners as set forth in Section (d) of these General Provisions.

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(d) Modifications, Consents, Terminations and Amendments. Any: (1) modification or amendments to the Development Guidelines; (2) termination of this Declaration (as set forth in subsection (c) of this Section, General Provisions); or (3) amendments of this Declaration shall take place only by the affirmative vote of the Declarant for as long as Declarant owns any property within the Center, and thereafter by the affirmative vote of sixty-seven percent (67%) of all votes entitled to be voted. Each Owner shall have the number of votes described in Article II, Section 2 hereof. Any termination of or amendments to this Declaration must be recorded.

(e) Supplemental Declarations. Notwithstanding any other provision of this Declaration to the contrary, Declarant expressly reserves the right to record such Supplemental Declarations with respect to the Entire Property, or any portion thereof, as it deems in its discretion to be necessary or desirable. Such Supplemental Declarations may be more restrictive than this Declaration without otherwise invalidating the application of this Declaration to portions of the Entire Property not otherwise subject to such Supplemental Declarations.

(f) No Severance of Right From Ownership of a Parcel. No purchaser or Owner of any Parcel shall convey his interest under this Declaration in the Association formed pursuant to the provisions hereof, and no member of the Association shall convey, transfer, sell, assign or otherwise dispose of his

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membership rights in said Center without at the same time conveying, selling and transferring his interest in the Parcel to which his membership attaches, and the membership shall be transferred only to a new Owner or purchaser of the Parcel to which membership is attached.

(g) Miscellaneous. The Captions which precede the Articles, Sections, and subsections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof 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. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

DATED at Provo, Utah, this 7<sup>TH</sup> day of MARCH,

1986.



DECLARANT:

PROVO CITY CORPORATION

By Joseph A. Jenkins  
JOSEPH JENKINS, Mayor  
for and on behalf of PROVO CITY CORPORATION

ATTEST:

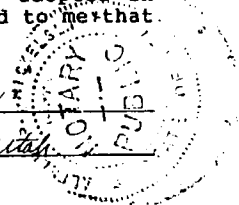
Jean Eklund  
City Recorder  
by Shirley Apple

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STATE OF UTAH )  
 : ss.  
COUNTY OF UTAH )

On this 7<sup>th</sup> day of March, 1986, personally appeared before me JOSEPH JENKINS, who being by me duly sworn did say that he is the Mayor of Provo City Corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution duly adopted in accordance with law and said Mayor duly acknowledged to me that said corporation executed the same.

Alfred S. Mickelson  
NOTARY PUBLIC  
Residing at: Provo, Utah



My Commission Expires:  
9-21-87  
7290L

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EXHIBIT "A"  
LEGAL DESCRIPTION FOR  
ENTIRE PROPERTY  
EAST BAY BUSINESS CENTER  
(Attached)



L E G A L   D E S C R I P T I O N

February 17, 1986    Provo City, East Bay Business Park

Provo City bond description: a part of the existing golf course situated between University Avenue and 350 East Street and 900 South Street and 1860 South Street, approximately.

Beginning at a point on the east line of University Avenue said point also being West 742.84 feet from the Southwest corner of Section 7, Township 7 south, Range 3 east, Salt Lake Meridian (Utah State Plane Coordinate System Basis of Bearings), and running thence;

THENCE North for a distance of 342.17 feet along said east line for the following five courses;

THENCE North 0 degrees 21 minutes 3 seconds East for a distance of 823.92 feet;

THENCE North 4 degrees 2 minutes 44 seconds East for a distance of 98.37 feet;

THENCE along a curve to the right having a radius of 2225.83 feet and an arc length of 281.65 feet, being subtended by a chord of North 3 degrees 56 minutes 7 seconds East for a distance of 281.46 feet;

THENCE North 7 degrees 33 minutes 37 seconds East for a distance of 161.29 feet;

THENCE along a curve to the left having a radius of 2357.83 feet and an arc length of 4.36 feet, being subtended by a chord of North 7 degrees 30 minutes 11 seconds East for a distance of 4.36 feet;

THENCE North 89 degrees 28 minutes 4 seconds East for a distance of 595.71 feet along the south line of 900 South street (a 72 foot wide right-of-way);

THENCE South 0 degrees 10 minutes 11 seconds West for a distance of 400.00 feet leaving the south line of said street;

THENCE North 89 degrees 28 minutes 4 seconds East for a distance of 653.00 feet to the west line of 250 East street (a 60 foot wide right-of-way);

THENCE South 0 degrees 10 minutes 11 seconds West for a distance of 1118.54 feet along said west line to a fenceline;

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February 17, 1986 Provo City, East Bay Business Park  
(continued)

THENCE South 89 degrees 30 minutes 50 seconds East for a distance of 185.49 feet along said fenceline;

THENCE South 0 degrees 3 minutes 10 seconds West for a distance of 311.83 feet;

THENCE South 89 degrees 56 minutes 50 seconds East for a distance of 270.00 feet to the East line of 350 East street (Provo City Industrial Park Plats A and B);

THENCE South 0 degrees 3 minutes 10 seconds West for a distance of 1667.78 feet along last said east line the following four courses;

THENCE along a curve to the left having a radius of 470.00 feet and an arc length of 123.18 feet, being subtended by a chord of South 7 degrees 27 minutes 20 seconds East for a distance of 122.83 feet;

THENCE South 14 degrees 57 minutes 50 seconds East for a distance of 638.85 feet;

THENCE along a curve to the right having a radius of 530.00 feet and an arc length of 144.46 feet, being subtended by a chord of South 7 degrees 9 minutes 20 seconds East for a distance of 144.01 feet;

THENCE South 0 degrees 39 minutes 10 seconds West for a distance of 471.37 feet;

THENCE North 89 degrees 38 minutes 0 seconds West for a distance of 768.30 feet along the north line of the Bureau of Reclamation property;

THENCE North 24 degrees 45 minutes 36 seconds East for a distance of 646.63 feet along the boundary of the proposed golf course the following six courses;

THENCE North 45 degrees 38 minutes 3 seconds West for a distance of 420.00 feet;

THENCE South 86 degrees 40 minutes 24 seconds West for a distance of 597.95 feet;

THENCE South 17 degrees 49 minutes 54 seconds West for a distance of 335.00 feet;

THENCE South 85 degrees 11 minutes 54 seconds West for a distance of 140.00 feet;

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February 17, 1986 Provo City, East Bay Business Park  
(continued)

THENCE South 5 degrees 11 minutes 54 seconds West for a distance of 540.00 feet;

THENCE South 58 degrees 11 minutes 54 seconds West for a distance of 215.23 feet to the easterly line of University Avenue;

THENCE along a curve to the right having a radius of 1859.85 feet and an arc length of 758.14 feet, being subtended by a chord of North 9 degrees 22 minutes 3 seconds West for a distance of 752.91 feet;

THENCE North 2 degrees 18 minutes 37 seconds East for a distance of 1115.97 feet along said easterly line the following three courses;

THENCE North 0 degrees 46 minutes 0 seconds East for a distance of 455.88 feet;

THENCE North 89 degrees 41 minutes 23 seconds West for a distance of 4.32 feet;

THENCE North for a distance of 949.33 feet to the point of beginning.

Excepting the following parcels as described on Utah County Recorder's Entry No. 23644-84, Book 2155, Page 508 (VanWagenen property: 173138 sq. feet or 3.9747 acres)

and

Utah County Recorder's Entry No. 21907, Book 1565, Page 603 (J Oil Company property: 30000 sq. feet or 0.6887 acres). Note that this property's boundaries will be relocated northerly to accommodate the proposed boulevard right-of-way which is currently under construction.

Subject parcel contains 157.641 acres more or less,  
less 3.975 acres (VanWagenen parcel),  
less 0.689 acres (J Oil parcel).

Balance: 152.977 acres more or less, when considering the area of roads, rights-of-way, easements, canals, ponds, etc., which are existing or to be developed. There are also Provo City owned parcels adjoining this described parcel.

All subject to restrictions, easements, rights-of-way, title insurance exception reasons and Federal or State ownership of artificially filled lands, submerged lands and lands lying below the ordinary high water mark of Utah Lake.

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EXHIBIT "B"  
ELECTRIC SERVICE AGREEMENT  
FOR  
PRIVATE OUTDOOR LIGHTING SERVICE  
(Attached)

EXHIBIT "B"

ELECTRIC SERVICE AGREEMENT  
FOR PRIVATE OUTDOOR LIGHTING SERVICE

THE UNDERSIGNED, called Customer, agrees to use, and  
PROVO CITY POWER agrees to supply electric energy to  
\_\_\_\_\_ outdoor \_\_\_\_\_  
\_\_\_\_\_

under Provo City Ordinance No. 51 (Section 19.08.100 Rev. Ord.  
1976), for a minimum period of five (5) years from the date  
hereof.

Defining the term "yard light", a \_\_\_\_\_-watt  
\_\_\_\_\_ will be mounted on a \_\_\_\_\_ pole.

In consideration of the investment of Provo City  
Power, as provided for in said ordinance, the Customer agrees  
to pay the sum of \$ \_\_\_\_\_ plus sales tax per light per  
month, and \$1.72 plus sales tax per month for each light pole  
that is required to deliver the power line to the light or  
lights in question, for a minimum period of five (5) years,  
payable monthly. In case any changes in rates are established  
by Provo City Power, these rate changes will be passed on to  
the Customer, and the charge herein set forth shall be modified  
to conform to such new rates.

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This agreement will remain in force and effect under the terms hereof after said minimum five (5) year period, until either party herein expressly terminates this agreement in writing, by giving 30 days written notice to the other party. It is expressly understood and agreed between the parties herein that for good cause, either before the end of the minimum five (5) year period or after the minimum five (5) year period, that Provo City Power shall have the right, upon giving 30 days written notice to the Customer, to remove the poles and lamps in question, and installed on the premises as described in this agreement; that these poles, lamps and fixtures shall remain the property of Provo City Corporation and shall not be considered a part of the real land and property upon which these poles and fixtures are installed.

Provo City Power will provide at its expense all necessary labor and materials for normal repairs and maintenance of electric service hereunder. Notification must be given to the Provo City Power by the Customer that repairs or maintenance is required; after this notice is given to Provo City Power, it will perform all necessary repairs or maintenance at its earliest convenience during daytime hours.

Anytime a Customer requests a yard light pole be moved or removed after it has once been installed, the Customer will have to assume all costs for moving the pole or having it removed.

The Customer expressly covenants to protect and care for the equipment installed, to prevent vandalism, negligent damage and needless waste of City-owned equipment. It is mutually agreed that, if, in the opinion of the Director of Provo City Power, there has been excessive breakage of the equipment that it may withdraw upon 30 days written notice.

Provo City is hereby authorized to enter upon the hereinabove described premises at all reasonable times to install, maintain, service, repair, and/or remove the poles, lines and fixtures installed under the terms of this agreement.

In the event the Customer defaults and fails to make the payments herein described, and within 15 days from the monthly due dates, then it is expressly understood and agreed that the Customer herein shall be liable for and pay all costs, past and present, of installation, maintenance and removal cost accrued by Provo City Power, and that Provo City Power may then have the right to enter upon said premises and remove said poles, lights, and fixtures, and charge the expense of the same to the Customer, which shall then become immediately due and owing.

In the event the Customer breaches any of the covenants herein contained, or fails to make the payments as herein described, the Customer expressly agrees to pay all costs, expenses, including a reasonable attorney's fee, that are incurred by Provo City Power in the enforcement of this agreement, or in enforcing any of the rights under the terms of this agreement.

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All payments herein are to be made at the office of  
Provo City Power in Provo, Utah.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1986.

PROVO CITY POWER

By \_\_\_\_\_  
Its Director

By \_\_\_\_\_  
Its Customer

TITLE: \_\_\_\_\_

7291L

6984

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