

ENT 43396 BK 2850 PG 634  
NINA B REID UTAH CO RECORDER BY RT  
1991 NOV 1 12:04 PM FEE 42.00  
RECORDED FOR EAST BAY BUSINESS CENTER AS

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

Amended to reflect change in Legal Description of Property October 31, 1991.

THIS AMENDED MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAST BAY BUSINESS CENTER, hereinafter referred to as the "Declaration" is made and adopted this 1 day of November, 1991, by PROVO CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter referred to as the "Declarant."

This amended declaration replaces, in its entirety, the MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE EAST BAY BUSINESS CENTER, adopted on the 7th day of March, 1986, and recorded by the Utah County Recorder as document 6984 on the 10th day of March 1986. This amended declaration is adopted and recorded pursuant to the provisions for "Modifications, Consents, Terminations and Amendments" as contained in Title II, Section 26(d) of the Master Declaration of Protective Covenants, Conditions and Restrictions for the East Bay Business Center as heretofore referenced. All provisions of this AMENDED DECLARATION shall supersede any and all provisions contained in the previous declaration, and all such previous provisions shall be null and void.

Declarant is the owner in fee of the majority 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, research and commercial 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 Center occupants. Declarant desires to provide for preservation of the values and amenities in said development and to 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 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.

The 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.

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.

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 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 complimented 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 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.

ENT43396 BK 2850 PG 640

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 Supplemental 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 Association, hereinafter referred to as the "Association."

The affairs and business of the Association shall be governed by its Board (the "Board") of Trustees, which Board shall consist of seven (7) persons. Three of the seats on the Board 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 four (4) seats shall be occupied by Association Members (owners) appointed by the Mayor of Provo City until such time as fifty percent (50%) of the Center is sold to Owners, at which time, those four (4) 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 two (2) years. Two members shall be elected each year. Terms of two of the four seats shall expire each year in alternating years.

The Association 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 and maintenance 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.

(a). 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 Board of Trustees shall serve as an Architectural Review (Control) Committee in fulfilling these responsibilities.

(b). The Association shall provide for and coordinate all maintenance activities of common areas and parcel improvements as may be deemed necessary and appropriate to achieve the objectives and intent of this declaration. This shall include the provision of manpower, equipment and materials necessary to maintain a high level of appearance.



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 other tenants or owners to act as the Owner's agent(s) 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 submissions 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 to the Board plans and specifications for its project, together with appropriate plats, maps, dimensioned drawings and other data sufficient to adequately disclose the scope and appearance of the proposed 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 be extended accordingly. Upon approval, the Developer or Owner shall then

proceed to the final construction drawings stage, in conformance with the Development Guidelines and Environmental Guidelines.

(c). 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 which reflect any substantive changes from the plans approved by 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). 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, county or state rules, ordinances and regulations to satisfy the approved provisions hereof.

7. Basis for Approval.

(a). Approval of 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.

ENT43396 BK 2850 PG 645

(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 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 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). Elevations of all sides of the buildings or Improvements including external screening.

(c). Indications of materials proposed for all external surfaces including colors and textures, which will be reviewed by the Board for environmental compatibility with the surrounding area

and the intent of this Declaration.

(d). Appropriate specification. ENT43396 BK 2850 PG 647

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 part of the Entire Property.

(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 completion. 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 provisions 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 approved by the Board within one (1) year following the initial Owner's purchase of an interest in a Parcel from Declarant.

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.

(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 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, 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 improvement, whether common

private. 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.

(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 within 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.

(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 of 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 the deed for said parcels. The first quarterly assessment on a newly platted parcel 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 the due date for each quarterly assessment. The due date shall be the first day of the second month of the quarter on which the assessments are levied. Written notice of the quarterly assessment shall be sent to every Owner subject thereto. At the end of the

quarterly assessment period, the Board shall determine the exact cost of operation and maintenance described herein and shall charge any deficit, or credit any surplus, toward the operating costs of the subsequent quarter. The estimate of assessments shall be based upon experience, reasonable projections, and a budget of revenues and expenditures for each calendar year which shall be prepared and adopted by the Board prior to or during the first month of that calendar year.

(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 Parcel.

(7). Subordination of the Lien to Mortgages and Deeds of Trust. The lien of the assessments provided for 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 of the type and amount of any such insurance secured by it and shall advise the Owners of any changes made with respect thereto.

(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 therefore. 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 right-of-ways.

(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, the south end of East Bay Blvd. (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.

(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.

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

Environmental 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 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 said work and establishing the Entire Property as an industrial/business center 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 the General Provisions.

(d). Modifications, Consents, Terminations and Amendments. Any termination of, modification or amendments to this Declaration must be by the affirmative vote of fifty percent (50%) of ballots entitled to be cast in person, or by written proxy, at

any dully called meeting of the Association. 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 Declaration. 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 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

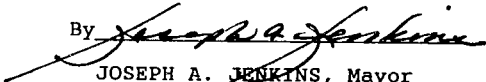
singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

DATED at Provo, Utah, this 1st day of November 1991.

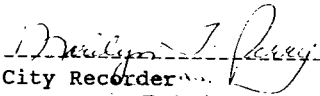
DECLARANT:

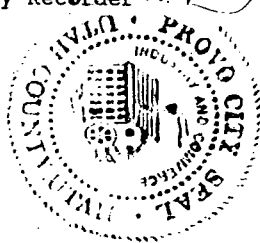
PROVO CITY CORPORATION

By

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

ATTEST:

  
-----  
City Recorder





STATE OF UTAH )  
 ) : ss.  
COUNTY OF UTAH )

ENT43396 BK 2850 PG 664

On this 1 day of November, 1991, 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.

Jill M. Stoneman  
NOTARY PUBLIC  
Residing at: 351 West Center  
Provo, Utah

My Commission Expires:

6-19-94  
7290L

ENT43396 BK 2850 PG 665

EXHIBIT "A"

LEGAL DESCRIPTION FOR

ENTIRE PROPERTY

EAST BAY BUSINESS CENTER  
Updated and Recorded with Utah County 2/20/91

(Attached)



## LEGAL DESCRIPTION

October 30, 1991

A revised description of the outside boundary of the East Bay, Phase I, P.U.D., Provo, Utah.

Beginning at a point which is West 742.97 feet from the Southwest corner of Section 7, Township 7 south, Range 3 east, Salt Lake Meridian. The point of beginning is on the east side of University Avenue, Provo, Utah.

THENCE North for a distance of 341.77 feet along the east line for this course and the next five courses;

THENCE North 00 degrees 21 minutes 03 seconds East for a distance of 823.92 feet;

THENCE North 04 degrees 02 minutes 49 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 03 degrees 56 minutes 06 seconds East for a distance of 281.46 feet;

THENCE North 07 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 88.98 feet, being subtended by a chord of North 06 degrees 28 minutes 45 seconds East for a distance of 88.97 feet more or less to the south line of Stubbs Addition to Provo;

THENCE North 89 degrees 17 minutes 16 seconds East for a distance of 446.96 feet along the south line of Stubbs Addition to Provo;

THENCE South 68 degrees 13 minutes 16 seconds East for a distance of 35.28 feet leaving the south line of Stubbs Addition to the north line of 900 South Street, Provo, Utah;

THENCE North 89 degrees 28 minutes 04 seconds East for a distance of 106.74 feet along the north line of 900 South Street;

THENCE South 00 degrees 10 minutes 11 seconds West for a distance of 572.01 feet leaving the north line of the street along the west line of the U.S.P.S. property;

THENCE North 89 degrees 28 minutes 04 seconds East for a distance of 711.00 feet along the south line of the U.S.P.S. property (revised) to the east line of 250 East Street, Provo, Utah;

THENCE South 00 degrees 10 minutes 11 seconds West for a distance of 281.76 feet along the east line of 250 East Street for this course and the next course;

THENCE along a curve to the right having a radius of 316.41 feet and an arc length of 172.74 feet, being subtended by a chord of South 15 degrees 48 minutes 37 seconds West for a distance of 170.61 feet;

THENCE South 00 degrees 03 minutes 52 seconds East for a distance of 285.20 feet leaving the east line of the street;

THENCE South 89 degrees 58 minutes 37 seconds East for a distance of 171.73 feet;

THENCE South 00 degrees 03 minutes 10 seconds West for a distance of 601.29 feet;

THENCE South 89 degrees 56 minutes 50 seconds East for a distance of 270.00 feet crossing 350 East Street to the west line of the Provo City Corp. property;

THENCE South 00 degrees 03 minutes 10 seconds West for a distance of 1667.78 feet along the west line of the Provo City Corp. property for this course and the next three 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 07 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 07 degrees 09 minutes 19 seconds East for a distance of 144.01 feet along the west line of the Snarr Advertising Parcel for this course and the next course;

THENCE South 00 degrees 39 minutes 10 seconds West for a distance of 195.73 feet;

THENCE South 89 degrees 35 minutes 50 seconds East for a distance of 405.39 feet along the south line of the Snarr Advertising Parcel;

THENCE South 00 degrees 24 minutes 10 seconds West for a distance of 193.28 feet to the southwest corner of the Jacobson Parcel;

THENCE South 86 degrees 01 minutes 50 seconds East for a distance of 728.73 feet along the south line of said Jacobson and Norton parcels;

THENCE South 00 degrees 24 minutes 10 seconds West for a distance of 84.67 feet leaving the south line of said Norton parcel, crossing 1860 South Street to the south right of way line of the Street (the south r/w line being the north line of the East Bay Golf Course);

THENCE North 86 degrees 01 minutes 50 seconds West for a distance of 297.43 feet along the south R/W line for this course and the next course;

THENCE South 88 degrees 49 minutes 22 seconds West for a distance of 100.34 feet along the south r/w line;

THENCE South 01 degrees 13 minutes 03 seconds West for a distance of 67.25 feet leaving the r/w line along the northward prolongation of an existing fence line;

THENCE South 00 degrees 46 minutes 22 seconds West for a distance of 76.33 feet along the fence line and the southward prolongation of said fence line;

THENCE North 81 degrees 02 minutes 32 seconds West for a distance of 76.09 feet;

THENCE South 70 degrees 32 minutes 31 seconds West for a distance of 253.66 feet;

THENCE North 03 degrees 50 minutes 40 seconds East for a distance of 224.13 feet along the east back of sidewalk (existing) along the easterly side of the golf course parking lot, including the north and south prolongation of said back of sidewalk to the south right of way line of said 1860 South Street;

THENCE North 86 degrees 01 minutes 50 seconds West for a distance of 190.22 feet along the south line of East Bay Boulevard (being the north line of the Golf Course) for this course and the next two courses;

THENCE along a curve to the right having a radius of 373.78 feet and an arc length of 237.11 feet, being subtended by a chord of North 67 degrees 51 minutes 28 seconds West for a distance of 233.15 feet;

THENCE along a curve to the left having a radius of 33.50 feet and an arc length of 30.07 feet, being subtended by a chord of North 75 degrees 24 minutes 09 seconds West for a distance of 29.07 feet leaving East Bay Boulevard onto 1860 South Street;

THENCE South 00 degrees 39 minutes 10 seconds West for a distance of 78.70 feet leaving the south line of 1860 South Street;

THENCE North 89 degrees 38 minutes 00 seconds West for a distance of 768.30 feet along the north line of the Bureau of Reclamation Parcel;

THENCE South 24 degrees 45 minutes 36 seconds West for a distance of 5.02 feet leaving the north line of the B.O.R. Parcel along the right of way of the cul-de-sac at the west end of 1860 South Street;

THENCE along a curve to the right having a radius of 82.00 feet and an arc length of 135.10 feet, being subtended by a chord of North 09 degrees 33 minutes 38 seconds West for a distance of 120.33 feet;

THENCE South 52 degrees 21 minutes 43 seconds East for a distance of 25.00 feet;

THENCE along a curve to the right having a radius of 57.00 feet and an arc length of 64.54 feet, being subtended by a chord of North 70 degrees 04 minutes 28 seconds East for a distance of 61.15 feet to a point common to the north right of way of the cul-de-sac and the East Bay Golf Course property line;

THENCE North 24 degrees 45 minutes 36 seconds East for a distance of 514.85 feet along the property line of the Golf Course for this course and the next six courses;

THENCE North 45 degrees 38 minutes 03 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;

THENCE South 05 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 east 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 09 degrees 22 minutes 03 seconds West for a distance of 752.91 feet along the east line of University Avenue for this course and the next four courses;

THENCE North 02 degrees 18 minutes 37 seconds East for a distance of 1115.97 feet;

THENCE North 00 degrees 46 minutes 00 seconds East for a distance of 455.88 feet;

THENCE North 89 degrees 41 minutes 38 seconds West for a distance of 4.32 feet;

THENCE North for a distance of 949.72 feet to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 164.5044 acres more or less.