

526542

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 14th day of March 1979, by Beneficial Development Company and Zions Securities Corporation, Utah Corporations, hereinafter referred to as "Grantor":

W I T N E S S E T H :

NSL Ind Pk "B"

WHEREAS, the Grantor is the Owner of real property described in this Declaration; and

WHEREAS, Grantor is desirous of subjecting said real property to the protective covenants hereinafter set forth, each and all of which is and are for the benefit of said property and for each subsequent Owner and Occupant thereof;

NOW, THEREFORE, Grantor hereby declares that the real property herein referred to as North Salt Lake Industrial Park (Plat B) elsewhere identified in this Declaration as "North Salt Lake Park" located in North Salt Lake City, Davis County, Utah, and more particularly described in Exhibit "A" attached hereto and made a part hereof by reference, shall be held, transferred, sold, conveyed, leased, subleased, and occupied subject to the conditions, covenants, restrictions, easements and reservations hereinafter set forth:

I. PURPOSE OF THIS DECLARATION.

This Declaration is made to require development, improvement and use of North Salt Lake Park so as to:

- Abstracted
- Indexed
- Entered
- Platted
- On Map
- Compared

- (a) protect the Owner and Occupants of building sites against such use of neighboring Building Sites as might depreciate the value of their property;
- (b) encourage the erection of attractive, permanent improvements appropriately located to insure harmonious appearance and functions;
- (c) assure adequate off-street parking space and off-street truck loading and maneuvering facilities;
- (d) encourage the development of esthetic architectural and engineering design, including compatible landscaping, and, in general, provide a harmonious development that will promote the general welfare of the Owners and Occupants of North Salt Lake Park.

II. DEFINITION OF TERMS.

The following terms and words are defined for use herein as follows:

- (a) Building - shall mean and include, but not be limited to the main portion of a structure built for permanent use and all projections or extension thereof, including but not limited to garages, outside platforms and docks, storage tanks, carports, canopies, enclosed malls and porches;
- (b) Building Site - shall mean a tract of real property within North Salt Lake Park as determined by the legal description in a conveyance or lease from Grantor. If fee simple title to two (2) or more adjacent Building Sites, as defined hereinabove, is acquired by the same Owner, such commonly-owned Building Site may at the option of said Owner, be combined and treated as a single Building Site for the purposes of this Declaration, provided that the location of the Improvements on such combined Building Site shall be subject to prior written approval;

[Signature]

- (c) Declaration - shall mean this Declaration of Covenants, Conditions and Restrictions, together with all of the provisions contained herein;
- (d) Improvements - shall mean and include, but not be limited to, buildings, out buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad trackage, retaining walls, roads, screening walls, signs, utilities and walkways located on a Building Site;
- (e) Landscaping - a space of ground covered with lawn and/or ground cover combined with 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 on the Building Site;
- (f) Lawn - a space of ground covered with grass, kept neatly mown and maintained;
- (g) Occupant - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which has purchased, leased, rented or has otherwise legally acquired the right to occupy and use any Building or Building Site, whether or not such right is exercised;
- (h) Owner - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which is record owner of any fee simple estate, or which has leasehold or an equity of redemption in a Building Site.

III. LAND USE.

Building Sites within North Salt Lake Park shall be used for high quality rail-served and non-rail-served commercial and industrial purposes. The foregoing shall not, however, prevent Grantor from constructing, owning, operating, leasing or conveying real property within North Salt Lake Park for service facilities consistent with the purposes of this Declaration.

IV. RESTRICTIONS AND REQUIREMENTS ON IMPROVEMENTS.

The following restrictions and requirements are imposed on property subject to this Declaration:

- (a) Temporary Structures - No temporary Buildings or other temporary structures shall be permitted on any Building Site; provided, however, trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. Such structures shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Building Sites, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building (s) in connection with which the temporary structure was used;
- (b) Location of Buildings - All buildings shall be set back at least thirty (30) feet from the front property line of the building site. At least fifteen (15) feet of this thirty (30) foot frontage shall be maintained in a landscaped condition. The buildings shall be set back at least five (5) feet from the property line on the sides and back of the subject property, except as follows:
 - (1) On the rail side of the Building site, all structures shall be set back not less than 23 feet 6 inches (23'6") from the centerline of the adjacent lead track. Where conditions require greater setbacks because of specific Building requirements such as

spur tracks within Buildings, Buildings of large size requiring fire lanes or special track configuration, the rail side setback will be determined by the Grantor and prospective Owners and Occupants;

- (2) Underground improvements such as storage tanks may be placed within those portions of setback areas which are not included in the easement to municipalities and utility companies as identified in Paragraph (f) of this Section.
- (c) Parking, Loading and Unloading Areas - No parking shall be permitted on any street or drive, or any place other than parking areas located upon Building Sites. Each Owner and Occupant shall be responsible for compliance by its employees and visitors.

All parking visible from public roads shall be buffered as well as practicable by the use of landscaping materials.

All driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials.

Loading areas shall not encroach into setback areas along street frontages. Off-street loading space shall be designed to include an additional area or means of ingress and egress which shall be adequate for maneuvering.

- (d) Screening of Service Facilities and Storage Areas - Garbage and refuse containers shall be contained within Buildings, or shall be concealed by means of shrubbery or screening walls of material similar to and compatible with that of the Building. Fuel and other storage tanks and coal bins shall be installed underground, wherever practicable or screened from public view. Such improvements shall be integrated with the concept of the Building Plan, be designed so as not to attract attention, and shall be inconspicuously located. Unless specifically approved in writing for display and similar purposes, no materials, supplies or equipment shall be stored in any area on a Building Site except inside a closed Building, or behind a visual barrier which screens such areas so they are not visible from the front view of neighboring Building Sites or public streets;
- (e) Landscaping - Every Building Site shall be landscaped in accordance with plans submitted and approved in writing as provided herein. Landscaping prior to construction may be of such minimal nature as to provide ground cover. Landscaping shall be installed within ninety (90) days after completion of Building construction or as soon thereafter as weather will permit;
- (f) Landscaping - Adjacent to Streets - Except on the Redwood Road Property, each Building Site is subject to a 15 foot (15') air, light, view and utility easement to North Salt Lake City Corporation adjacent to street frontages which easement constitutes one-half of the required 30 foot street setback and which shall be completely landscaped and maintained by Owners or Occupants. The remainder of the required 30 foot street setback may be used for parking, provided, however, that intermittent landscaping is placed in the parking areas so used.

Where a dedicated street right of way intervenes between finished curbs and the 15 foot air, light, view and utility easement to North Salt Lake City Corporation, such right of way area shall be planted in lawn and maintained by Owners or Occupants;

- (g) Exterior Materials, Colors - Architecturally and esthetically suitable building materials shall be applied to or used on all sides of a Building which are visible to the general public and to the front view of neighboring Building Sites. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent Buildings;
- (h) Utilities - Mechanical Equipment - Roof Projections - All utility lines including electrical shall be underground. Pad-mounted transformers, switchgear and similar equipment which must be installed above ground line, shall be screened with suitable landscaping consistent with safety and other regulations of the utility companies.

All mechanical equipment shall be located or screened so as not to be visible from the street view of the general public or from the front view of other Building Sites. Penthouses and mechanical equipment screening walls shall be of design and materials compatible with those of the Building.

Antennae shall be visually masked to the extent practicable and consistent with electromagnetic considerations;

- (i) Pollutants - No trades, services or activities shall be conducted in North Salt Lake Park, nor shall anything else be done therein which may be or become an annoyance or nuisance to the Owners or Occupants by reason of unsightliness or excessive emission of fumes, odors, glare, vibration, gases radiation, dust, liquid wastes, smoke or noise;
- (j) Exterior Lighting - All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained in accordance with plans and specifications approved in writing to the end that lighting shall be compatible and harmonious throughout North Salt Lake Park.
- (k) Maintenance - Each Owner and Occupant of North Salt Lake Park shall be responsible for keeping its Building Site or Sites, whether or not improved, Buildings and other Improvements including lawn and landscaping, maintained in a safe, clean, neat and orderly condition and shall prevent rubbish, dunnage, replaced equipment or machinery and the like from accumulating on its Building Site. Such maintenance shall include all spur track areas and track areas within Building Sites except for that portion within 8 feet 6 inches (8'6") of the centerline of designated switching lead tracks;
- (l) Fences - Fences along street frontage shall be erected behind the 15-foot air, light view and utility easement identified in Paragraph (f) of this Section.

V. APPROVAL OF PLANS.

No construction or exterior alterations of any Building or other Improvements may be commenced without written approval by Grantor of the plans for such construction or alteration. Grantor shall either approve or disapprove plans submitted in writing within thirty (30) days from the date on which they are received, and failure to either approve or disapprove within this period shall constitute approval of said plans. Wherever approval in writing is required by the terms of this Declaration, such requirement shall mean written approval of Grantor in the following manner:

- (a) All applications to Grantor shall be addressed as Follows:

Beneficial Development Company
P. O. Box 11585
Salt Lake City, Utah 84147

or to any such address as the Grantor shall hereafter designate in writing, addressed to Owners and Occupants by certified or registered mail;

- (b) Grantor shall exercise its best judgment to see that all Buildings and Improvements constructed within North Salt Lake Park conform to the purposes and requirements of this Declaration; provided, however, Grantor and its employees or agents shall not be liable to any Owner or Occupant or to anyone submitting plans for approval, or to any other party by reason of a mistake in judgment, negligence or non-feasance arising out of or in connection with the approval, disapproval or failure to approve any such plans;
- (c) Upon receipt of approval of plans, Owner or Occupant shall diligently proceed with the commencement and completion of all approved construction. Unless work on the approved construction shall be commenced within one (1) year from the date of such approval and diligently pursued thereafter, then the approval shall automatically expire, unless Grantor has given a written extension of time;
- (d) Approval of plans by the Grantor may be secured prior to acquisition of a Building Site pursuant to the terms of a sales contract.

If, after initial construction of a Building upon a Building Site, Owner or Occupant submits plans for alteration, addition or reconstruction, and having received a decision of Grantor, feels that said decision is not consistent with the provisions of this Declaration, such Owner or Occupant may submit the decision to determination by arbitration in the following manner:

The party desiring arbitration shall serve upon Grantor a written notice naming an arbitrator. Within ten (10) days after the delivery of said notice, Grantor shall likewise appoint an arbitrator and notify the party desiring arbitration of such appointment, and if Grantor fails within said ten (10) days so do, the arbitrator appointed by the party desiring arbitration shall proceed in the determination of plan approval and his decision as to such approval shall be final. If Grantor appoints an arbitrator within the prescribed time, the two arbitrators so appointed shall choose a third arbitrator. If the two arbitrators so chosen shall fail to agree upon the selection of a third arbitrator within a reasonable time, such arbitrator shall be appointed, upon application of either party, by any judge of the District Court of the United States for the district which then shall include the locality in which the Building Site is situated, but such application shall not be made until such party shall have given ten (10) days written notice to the other party of its intention to do. The board of arbitrators constituted as aforesaid, shall proceed to determine whether or not the proposed plans shall be approved and the decision of the board, or of any two members thereof, as to such shall be binding upon the parties hereto. All expenses of such arbitration shall be apportioned equally between the parties to the arbitration.

VI. CONFLICTS.

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Zoning ordinances, building codes and regulations, and any other governmental restrictions and requirements shall be observed. In the event of any conflict between this Declaration and any such governmental codes, regulations, restrictions and requirements, the more restrictive standards shall apply. Any approval of Grantor required in this Declaration, does not in any way relieve Owners and Occupants from obtaining approvals required by any governmental body having jurisdiction.

VII. ENFORCEMENT.

Enforcement of the provisions of this Declaration shall be by any appropriate proceeding at law or in equity against any person, corporation or other entity violating or attempting to violate said provisions, either to restrain such violation, to enforce liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue hereof. Grantor shall not be liable for enforcement of or for failure to enforce said provisions and failure to Grantor or of any Owner or Occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

VIII. MORTGAGES - DEEDS OF TRUST.

Breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value within North Salt Lake Park; but said covenants shall be binding upon and effective against any Owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

IX. DURATION, MODIFICATION AND TERMINATION.

The Conditions, Covenants, Restrictions and Reservations set forth in the Declaration shall run with and bind the land within North Salt Lake Park and shall be and remain in effect, and shall inure to the benefit of, and be enforceable by Grantor or the Owner of any property subject to this Declaration, their heirs, successors and assigns for a term of ten (10) years from the date this Declaration is recorded; provided, however, that this Declaration may be amended or terminated by Grantor by an instrument in writing, properly executed, acknowledged and filed with the Salt Lake County Recorder; and provided further that such amendment or termination shall not adversely affect any Owner's or Occupant's rights to use its Building Site for purposes consistent with this Declaration.


X. SEVERABILITY.

Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed by the duly authorized officers and its corporate seal to be affixed hereto on the date first above written.

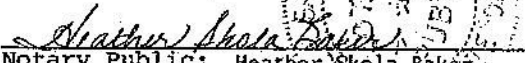
BENEFICIAL DEVELOPMENT COMPANY
By:


Marvin C. Steadman
President

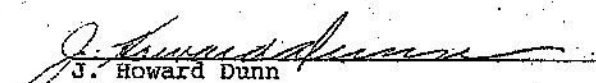
Attest:

Richard R. Neslen
Secretary

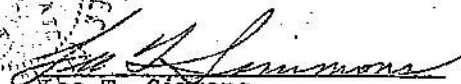
State of Utah)
: ss.
County of Salt Lake)

On this 14th day of March, 1979, personally appeared before me Marvin C. Steadman and Richard R. Neslen, who being by me duly sworn did say, each for himself, that he, the said Marvin C. Steadman is the President, and he, the said Richard R. Neslen is the Secretary of Beneficial Development Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of Directors and said Marvin C. Steadman and Richard R. Neslen each duly acknowledged to me that said corporation executed the same.


Notary Public: Heather Skola Baker
Residing: Salt Lake City, UT
Commission Expires: June 10, 1982

ZIONS SECURITIES CORPORATION
By:


J. Howard Dunn
President

Attest:

Lee T. Simmons

State of Utah)
: ss.
County of Salt Lake)

On this 20 day of March, 1979, personally appeared before me J. Howard Dunn and Lee T. Simmons, who being by me duly sworn did say, each for himself, that he, the said J. Howard Dunn is the President, and he the said Lee T. Simmons is the Secretary of Zions Securities Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said J. Howard Dunn and Lee t. Simmons each duly acknowledged to me that said corporation executed the same.



Notary Public:
Residing: Salt Lake City, Utah
Commission Expires:
My Commission Expires: 1981

EXHIBIT "A"

Beginning at the Northeast corner of lot 12, North Salt Lake Industrial Park, Plat A, a subdivision located in the West 1/2 Section 2, Township 1 North, Range 1 West; Southeast 1/4, Section 3, Township 1 North, Range 1 West; and the Southwest 1/4 Section 35, Township 2 North, Range 1 West, Salt Lake Base and Meridian, which point is being also East 1953.04 feet and North 678.44 feet from the Southwest corner of Section 35, Township 2 North, Range 1 West, Salt Lake Base and Meridian, and running thence North 630.00 feet; thence West 1422.15 feet; thence North 22°22'21" West 108.63 feet; thence North 0°32'56" West 460.71 feet to the South line of 1100 North Street; thence South 89°54'51" East 2473.86 feet along said South line; thence South 0°05'09" West 557.45 feet; thence West 385.11 feet; thence South 630.00 feet; thence West 620.00 feet to the Point of beginning.