

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
EPHRAIM INDUSTRIAL PARK II**

**DECLARANT
EPHRAIM CITY, UTAH**

SEPTEMBER 2007

THIS DECLARATION is made as of the date hereinafter set forth by Ephraim City, a political subdivision of the State of Utah (hereinafter referred to as the “*Declarant*”).

RECITALS

A. Declarant is the fee owner of that certain real property situated in Sanpete County, Utah, described on EXHIBIT A, attached hereto and hereby incorporated by reference (the “*Parcel*”).

B. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Ephraim Industrial Park II, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (hereinafter collectively referred to as the “*Restrictions*”), which shall run with and be a burden upon the Property; and

C. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Industrial Park and the quality of life therein.

DECLARATION

NOW, THEREFORE, Declarant, as owner of the Parcel and for the purposes above set forth, declares as follows:

ARTICLE I

DEFINITIONS

As used herein, unless the context otherwise requires:

Section 1.1 “*Architectural and Design Guidelines.*” The Declarant has prepared Design Guidelines for the Project. The approved Guidelines shall apply to all construction activities within the Project.

Section 1.2. “*City*” shall mean Ephraim City, a political subdivision of the State of Utah.

Section 1.3 “*Declarant*” shall mean the City of Ephraim, a municipal corporation of the State of Utah, and the successors and assigns of Declarant’s rights hereunder.

Section 1.4. “*Occupant*” shall mean a Person or Persons, other than an Owner, in possession of, or using a Lot, including, without limitation, family members, tenants, guests, or invitees.

Section 1.5. “*Owner*” shall mean the Person or Persons who are vested with record title of a Lot, and whose interest in the Lot is held in fee simple, according to the records of the County Recorder of Sanpete County, Utah; *provided, however,* Owner shall not include a Person who holds an interest in a Lot merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Lot prior to its initial conveyance by Declarant.

Section 1.6. “*Parcel*” shall mean the real property legally described on EXHIBIT A, and all buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

Section 1.7. “*Person*” shall mean a natural individual, corporation, estate, partnership, limited liability company, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

Section 1.8. “*Plat*” means the record of survey map of the Parcel submitted with respect to this Industrial Park and showing thereon, each of which is identified by a Lot Number. A copy of the Plat is included as EXHIBIT B, attached hereto and hereby incorporated by reference. The original Plat is recorded in the records of the County Recorder of Sanpete County, Utah. “*Plat*” shall also refer to any additional plat which may be recorded with any Supplemental Declaration.

Section 1.9. “*Project*” shall mean the Ephraim Industrial Park II and shall be subject to all provision of the Declarations, Covenants and Restrictions as described herein.

Section 1.10. “*Property*” shall mean the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

Section 1.11. “*Restrictions*” shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

Section 1.12. “*Supplemental Declaration*” shall mean a written instrument recorded in the records of the County Recorder of Sanpete County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

The land is SUBJECT TO the described easements and rights of way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements and are depicted on the Plat Map. Furthermore, Lot ___ is subject to an easement for the placement of an industrial park sign together with the necessary easements for utilities to serve the sign.

II.

COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. *Description of Improvements.* It is intended that the Project will consist of ___ lots if all of the intended improvements are made.

2. *Description and Legal Status of the Property.* The Plat Map shows the Lot Number of each Lot. All Lots shall be capable of being independently owned, encumbered and conveyed subject to the rights of Declarant, and all easements of record.

3. *Conveyancing.* Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of Lot No. ____ contained within the Ephraim Industrial Park II, as the same is identified in the Plat Map recorded in Sanpete County, Utah as Entry No. ____ in Book ____ at Page ____ of the official records of the County Recorder of Sanpete County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for _____ recorded in Sanpete County, Utah as Entry No. ____ in Book ____ at Page ____ of the official records of the County Recorder of Sanpete County, Utah (as said Declaration may have heretofore been supplemented).

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4. *Architectural and Design Guidelines.* The Declarant has prepared Design Guidelines for the Project, which have been approved by the City. The City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion. The approved Design Guidelines shall apply to all construction activities within the Project. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property. The Declarant must stamp all proposed plans and specifications to construct or remodel a Building or Lot “approved and in compliance with the Declaration and Design Guidelines” before presenting such plans and specifications for the issuance of a building permit. The following minimum standards shall apply:

(a) The development is subject to the control of the Ephraim City Zoning Ordinance and all its requirements and restrictions. In the event of conflict between these guidelines and the zoning ordinance, the most restrictive requirement shall apply.

(b) The compatibility of the businesses in the Project is essential to the long-term viability of the Project. Declarant reserves the right in its sole discretion to restrict the nature, type and character of such business and/or service.

(c) Building design must include a front exterior finish of brick, stucco or similar material.

(d) Building plans including an artists rendering, or engineering drawing sufficient to show the building design and appearance must be submitted to, and approved by, the Declarant prior to construction.

(e) The design of all buildings, primary and accessory, must be approved by the Declarant. Enclosures and accessory buildings shall be designed and constructed in a manner compatible with that of the main structure and located to the rear of the main structure or building.

(f) Main business entry of all main buildings shall be oriented toward the public street.

(g) At least 5% of the property must be maintained as landscaped area. Unless impracticable a landscaped area adjacent to the public street shall be provided and planted with trees. Unused areas of the lot may not be left exposed and allowed to grow weeds. These areas must either be landscaped, covered by asphalt or have other suitable cover material. Xeriscape or other non-traditional landscaping or cover material must be approved by the Declarant.

(h) Business operations may not result in excessive odor, dust, noise, light, emission or other offensive or unhealthful activity.

(i) Buildings and lots must be well maintained and kept in a clean, well managed state. Debris or other discarded material may not accumulate longer than 14 days.

(j) All building and/or structures may be used for industrial/commercial purposes. No building and/or structures may be used or occupied for residential purposes.

(k) No lots within the project may be subdivided. However, any lot may be combined with another adjacent lot, subject to the requirements of the Ephraim City Code and state law.

(l) Antennas, masts or similar structures shall not extend greater than 10 feet above the highest point of the building.

(m) Refuse cans or containers must be shielded from view from the street.

(n) Storage of all stock in trade, goods, raw materials or similar materials must be contained within the building or within an enclosure located to the rear of the main structure or building.

(o) No raising or keeping of pets is allowed.

(p) Parking of trailers or other commercial vehicles longer than 72 consecutive hours in the front or at the sides of the main building is prohibited. All parking of commercial vehicles and trailers for periods greater than 72 hours shall be restricted to the rear 1/2 of the lot. The parking of recreational vehicles, such as, but not limited to, boats, travel trailers, snowmobiles, campers and ATVs is prohibited. No inoperable vehicle, trailer or other mobile device may be parked or stored on the property longer than 24 hours.

(q) Construction of the main building or structure must begin within 6 months of purchase. One extension may be granted based upon extenuating circumstances. Initial construction and any other improvement, once commenced, shall be diligently pursued to the final completion, and no delays in construction longer than 60 days will be allowed unless approved by the City Council. In the event an Owner fails to comply with the covenants set forth in this paragraph, 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 time periods set forth herein above, shall begin when such Parcel or interest therein is purchased from Declarant.

(r) Default. If an Owner fails to install landscaping within six (6) months from date of occupancy and fails to cure the default within thirty (30) days after written notice, Declarant may proceed to complete the landscaping or repair the system without further notice and the cost thereof shall be the debt of the Owner at the time the expense is incurred and is collectible as such. If an Owner fails to pay such debt, that amount constitutes a lien on the Owner's interest in the property, and upon recording of a notice of lien it is a lien upon such interest prior to all other liens and encumbrances, recorded or unrecorded, except: (a) tax and special assessment liens on the property in favor of any assessing unit or special improvement district; and (b) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a line prior to subsequently recorded encumbrances.

5. *Ownership and Use Restrictions.* Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his Lot, subject to the following use restrictions:

(a) *Nuisances.* Nuisances are prohibited, including the creation or maintenance of a condition which bothers, annoys, disturbs or embarrasses other residents, or interferes with their right to the peaceful and quiet enjoyment of the premises.

(b) *Subdivision of a Lot.* No Lot may be subdivided except by the Declarant.

(c) *Laws.* Nothing shall be done or kept in, on or about any Lot, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

6. *Liability of Owners for Damages and Waste.* Each Owner shall be liable to the Declarant, or other Owners for damages to person or property and waste in the Project caused by his negligence.

7. *Amendment.* This Declaration may be amended as follows:

(a) *Unilateral Right to Amend Under Certain Conditions.* Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; *provided, however,* any such amendment shall not materially adversely affect the title to any Lot unless the Owner of said Lot shall consent thereto in writing. Said amendment shall be effective when executed by the Declarant and when recorded in the office of the County Recorder.

(b) *Declarant's Rights.* No provision of this Declaration reserving or granting to Declarant any unexpired developmental rights may be amended, including by way of illustration but not limitation, a modification which would terminate or decrease any developmental right, without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

8. *Declarant's Rights Assignable.* All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

9. *Interpretation.* To the extent Utah law is inconsistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections 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.

10. *Covenants to Run with Land.* This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the City, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees,

heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11. *Enforcement and Right to Recover Attorneys Fees.* Should the Declarant be required to take action to enforce the Declaration, Design Guidelines or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

12. *Effective Date.* This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Sanpete County, Utah.

DATED this 18th day of October, 2006.

CITY OF EPHRAIM, a political subdivision of the
State of Utah

By: _____
Cliff Birrell
Mayor

STATE OF UTAH)
 : SS
COUNTY OF SANPETE)

On the _____ day of _____, 2006, personally appeared before me Cliff Birrell, who by me being duly sworn, did say that he is the Mayor of the City of Ephraim, a political subdivision of the State of Utah, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of the Municipal Council, and said Cliff Birrell duly acknowledged to me that said City executed the same.

Notary Public

[SEAL]