



\*W2138650\*

E# 2138650 PG 1 OF 9  
DOUG CROFTS, WEBER COUNTY RECORDER  
28-OCT-05 309 PM FEE \$27.00 DEP VO  
REC FOR: BRADBOYER

WHEN RECORDED, PLEASE RETURN TO:

Robert A. McConnell  
Parr Waddoups Brown Gee & Loveless  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111

**DECLARATION  
OF  
EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION (this "Declaration") is executed to be effective as of the 27<sup>th</sup> day of April, 2005, by Melvin L. Rogers and Ellen B. Rogers, Co-managers of the Melvin Rogers Family, L.C. (the "Rogers"), whose address for the purposes hereof is 3585 N. 1000 W., Ogden, Utah 84414, and HARRISVILLE ROGERS III, L. C., a Utah limited liability company ("Harrisville"), whose address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101.

RECITALS:

- A. The Rogers and Harrisville own two separate but adjoining parcels of real property located in Weber County, State of Utah
- B. The Rogers and Harrisville desire to create certain rights-of-way, easements and restrictions among the said parcels.

AGREEMENT:

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned agree as follows:

- 1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

"Easement Area" means all those certain portions of the Parcels that are from time to time designed and/or otherwise designated for non-building uses (i.e. landscaping areas and areas designated for the parking of motor vehicles and for vehicular and pedestrian movement, including, without limitation, landscaped areas, parking areas, roads, driveways, walkways and sidewalks). The Easement Area is generally depicted as the crosshatched portions of the Parcels shown on the Site Plan attached hereto as Exhibit A.

"Mortgage" means a mortgage or a deed of trust recorded in the official records.

"Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records.

"Official records" means the official records of the Weber County Recorder, State of Utah.

"Owner" means the person that at the time concerned is the legal owner of record (in the official records) of a whole or undivided fee interest in any portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

"Parcel A" means the real property located in Weber County, Utah, described as follows:

11-300-0004 A

Lot 4, Harrisville Retail Subdivision

"Parcel B" means the real property located in Weber County, Utah, described as follows:

11-300-0005 A

Lot 5, Harrisville Retail Subdivision

"Parcels" means Parcel A and Parcel B, collectively, and "Parcel" means either Parcel A or Parcel B, individually, where no distinction is required by the context in which such term is used.

"Site Plan" means the Site Plan attached as Exhibit A, incorporated in this Declaration by this reference.

2. Grant of Rights-of-Way and Easements.

2.1 Access Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefitted by, and the Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress and temporary vehicular parking (without charge) on, over and across the Easement Area. Such right-of-way and easement shall be limited to use for such purposes and to such extent as may be customary to the use of the Parcels for general commercial purposes, which shall include reasonable and customary deliveries.

2.2 Utilities Right-of-Way and Easement.

2.2.1 Grant of Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefitted by, and the Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Easement Area.

2.2.2 Exercise of Right-of-Way and Easement. The Owner of any Parcel may (a) enter on any portion of the Easement Area as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Paragraph 2.2.1, and (b) in connection with such utilities and facilities, excavate or conduct construction activities within the Easement Area, so long as such excavation or construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. On completion of such excavation or construction activities, the Owner of the Parcel who has caused such construction activities to take place shall immediately restore any portion of the Easement Area affected to the same condition as existed prior to the commencement of such excavation or construction activities, using the same type and quality of materials previously used.

3. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in this Paragraph 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

4. Maintenance. Each Owner shall at all times maintain or cause to be maintained that portion of the Easement Area located on such Owner's Parcel in a reasonably good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials. If any Owner fails to comply with the provisions of the preceding sentence, any other Owner may (but is not obligated to), after giving twenty (20) days' written notice to the noncomplying Owner, perform or cause to be performed such work as is necessary to cause the Easement Area to so comply. In such event, all sums reasonably expended and all costs and expenses reasonably incurred by such other Owner in connection with such work shall bear interest from the date expended or incurred (as the case may be) at the rate of twelve percent (12%) per annum until paid or otherwise satisfied in full, and shall be paid promptly to such other Owner by the noncomplying Owner on written demand.

5. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.

6. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Declaration be strictly limited to the purposes expressed in this Declaration.

7. Appurtenances to Parcels; Covenants Run with Land; Various Events.

7.1 Appurtenances to Parcels. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to the Parcel benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to the benefited Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

7.2 Covenants Run with Land; Various Events.

7.2.1 Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Parcel in favor of the benefited Parcel (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Parcel concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

7.2.2 Transfer of Parcel. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Parcel, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after the date of recordation in the official records of the instrument effecting such transfer.

7.2.3 Effect of Breach. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel, except as provided in Paragraph 8.

7.2.4 Identical Ownership. The ownership of both Parcels by the same person shall not result in the termination of this Declaration.

7.2.5 Priority of Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the undersigned or any other person on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration. The Rogers are the sole Owners of Parcel A. Harrisville is the sole owner of Parcel B.

8. Lien. If the failure to timely pay any sum when due under this Declaration is not cured within ten (10) days after written notice is given by any Owner to the defaulting Owner, such sum and any subsequent delinquencies may be secured by a lien against all or any portion of the defaulting Owner's Parcel. Such lien shall be evidenced by a notice of lien or similar instrument filed for record by the nondefaulting Owner in the official records. A copy of such notice of lien or similar instrument shall be given by the nondefaulting Owner to the defaulting Owner within ten (10) days following recordation in the official records. Such notice of lien or similar instrument shall set forth the unpaid amount, the date such amount was due and a description of the property subject to such lien, and shall be signed by the nondefaulting Owner. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of Mortgages, but shall be subject and subordinate to (a) each Mortgage affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, (d) the interest of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests or estates (whether recorded or unrecorded at the time such notice of lien or similar instrument is recorded) in or respecting the defaulting Owner's Parcel.

9. Modification. This Declaration and any right-of-way, easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the official records of a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.

10. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

11. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and be binding on, each Owner and the heirs, personal

representatives, successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

[Signatures appear on the next page.]

THE UNDERSIGNED have executed this Declaration to be effective as of the date first set forth above.

**The Rogers:**

Melvin L. Rogers Mng  
Melvin L. Rogers, co-manager

Ellen B. Rogers mng  
Ellen B. Rogers, co-manager

**Harrisville:**

Harrisville Rogers III, L. C., a Utah limited liability company

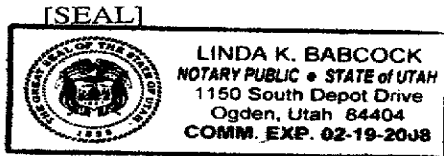
By: [Signature]

Name: Dawn M. Jones

Title: Manager

STATE OF UTAH )  
 ) SS:  
COUNTY OF Weber )

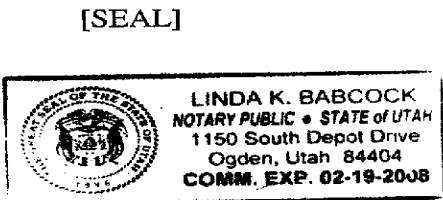
On this 27<sup>th</sup> day of April, 2005, personally appeared before me Melvin L. Rogers and Ellen B. Rogers who, being by me duly sworn, did state that they executed the foregoing "Declaration of Easements, Covenants and Restrictions" for the purposes therein contained.



Linda K Babcock  
Notary Public

STATE OF UTAH )  
 ) SS:  
COUNTY OF SALT LAKE )

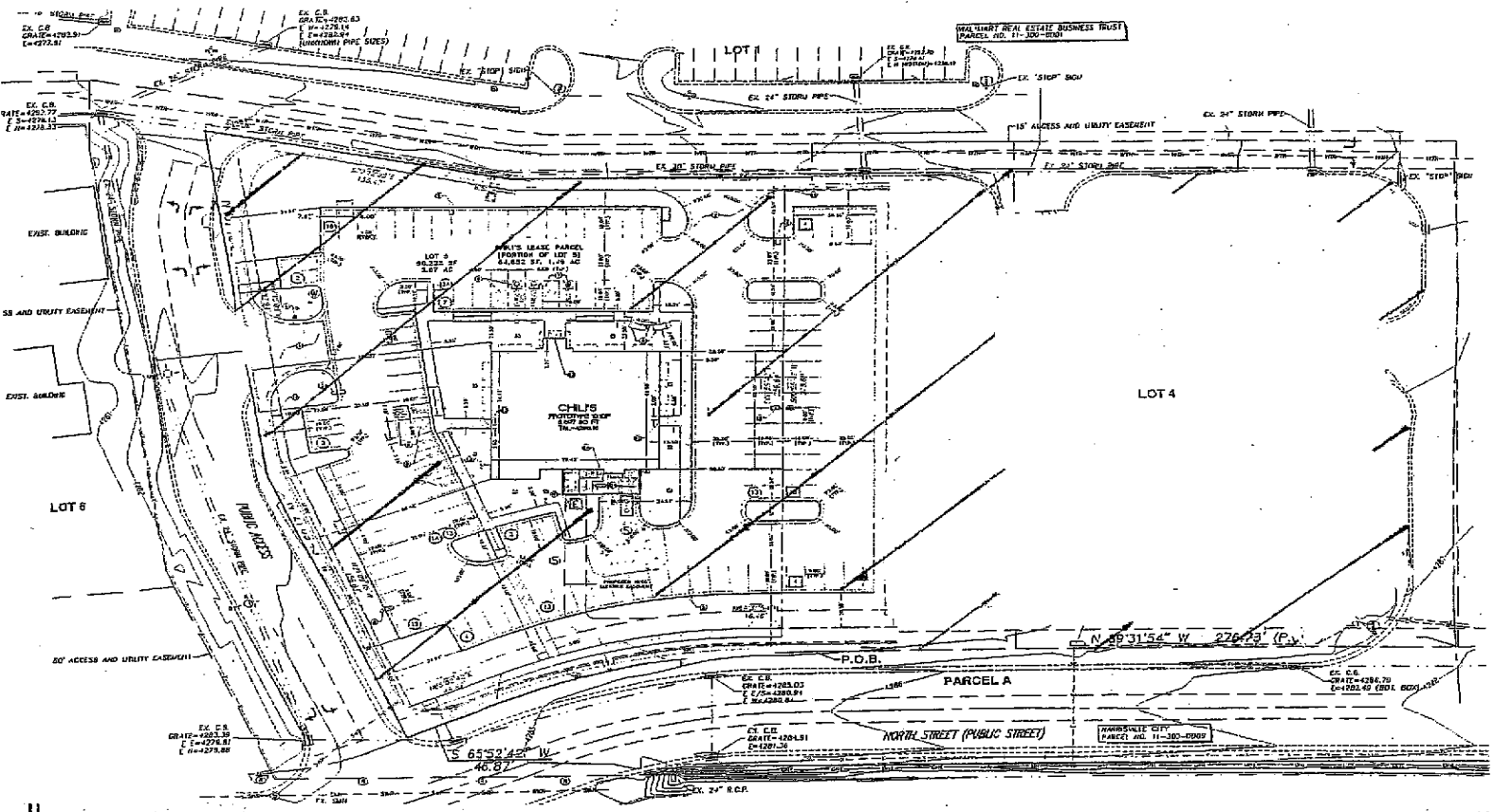
On the 27<sup>th</sup> day of April, 2005, personally appeared before me Devon Olson, the signer of the above instrument, who duly acknowledged to me that he executed the same, as Manager of Harrisville Rogers III, a Utah limited liability company.



Linda K Babcock  
Notary Public



**Exhibit A**  
to  
**Declaration of Easements, Covenants and Restrtrictions**



<b>HARRISVILLE</b> CITY	<b>HARRISVILLE, UTAH</b> HARRISVILLE RETAIL SUBDIVISION	<b>PEPG ENGINEERING, L.L.C.</b> 421 W. 12300 S. PARK • DRAPER, UT 84020 PH: (801) 562-2521 • FAX: (801) 562-2551 CIVIL ENGINEERING • LAND SURVEYING • GPS WETLANDS • CONSTRUCTION MANAGEMENT LAND PLANNING • ENVIRONMENTAL	DATE: 2/2009 SURVEY BY: BSM/AC DRAWN BY: REL CHECKED BY: DSS SCALE: 1"=30'	NO. REVISIONS DATE APPROVED
----------------------------	--	---	--	-----------------------------------