

**THIRD AMENDMENT TO AND RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV**

THIS AMENDMENT TO AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV is made as of the 9th day of June, 2005, by Declarant, State of Utah, acting through the School and Institutional Trust Lands Administration, with regard to all that real property located in Washington County, Utah, described in Exhibit A, attached hereto and made a part hereof. This Amendment is made pursuant to Section 29 of The Declaration of Covenants Conditions and Restrictions of Fort Pierce Industrial Park Phases II, III & IV, recorded May 11, 1999, as Entry No. 646930, in Book 1333, at Pages 1234-1244, and amends and restates, in their entirety, the following documents of record in Washington County:

(a) THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF Fort Pierce Industrial Park Phases II, III & IV, recorded May 11, 1999, as Entry No. 646930, in Book 1333, at Pages 1234-1244;

(b) THE DECLARATION OF ANNEXATION OF ADDITIONAL PROPERTY FOR FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded December 28, 1999, as Entry No. 671704, in Book 1355, at Pages 2295-2296;

(c) THE AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded on April 5, 2002, as Entry No. 760033, in Book 1459, at Pages 2588-2593; and

(d) The SECOND AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded on June 3, 2002, as Entry No. 767360, in Book 1468, at Pages 1358-1370;

which affect that property described in Exhibit A attached hereto.

To establish a general plan for the improvement and development of the Property; to insure adherence thereto so as to avoid improper development and use of the Property; and to provide adequately for consistent quality of improvement and use, Declarant desires to subject the Property (for the benefit of all Lots within the Property), to these Covenants, Conditions and Restrictions. Declarant intends for the Property to be held, improved and conveyed subject to these Covenants.

NOW, THEREFORE, Declarant hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to the covenants, conditions, and restrictions herein set forth, each and all of which is and are for and shall inure to the benefit of and pass with each and every Lot of the Property and apply to and bind the heirs, assigns and successors in interest of each and every Owner of a Lot(s) of the Property.

ARTICLE 1
DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration:

1.1. "Articles" means the Articles of Incorporation of Fort Pierce Industrial Park Phases II, III & IV Owners Association.

1.2. "Association" Association means the Fort Pierce Industrial Park Phases II, III & IV Owners Association.

1.3. "Bylaws" means and refers to the Bylaws of the Fort Pierce Industrial Park Phases II, III & IV Owners Association.

1.4. "Common Property" means all real property (including the improvements thereto and facilities thereon) owned or hereafter acquired by the Association for the common use and enjoyment of the Owners and includes that portion of Property owned by the Association, shown on the Plat as Common Property. Common Property is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Trustees. Specifically exempted from Common Property are Lots and dedicated public streets, if any, that are identified on the Plat. Common Property shall also include all land in which the Association has an easement right.

1.5. "Declarant" means the State of Utah, acting through the School and Institutional Trust Lands Administration, its heirs, successors, and assigns. All powers and authority reserved by, or given to, Declarant under this Declaration may be exercised on behalf of Declarant by Fort Pierce Business Park, L.C., which shall be agent for Declarant in the exercise of these powers and authority.

1.6. "Declaration" means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.7. "Development Phase" shall be the time from the date of this Declaration until such time as Declarant transfers legal title to more than ninety percent (90%) of the total acreage to bona fide purchasers.

1.8. **"Trustees", "Board of Trustees", or "Board"** means the governing body of the Association.

1.9. **"Lot"** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common Property. Until such time as a subdivision plat is recorded, the term "Lot" shall mean and refer to any parcel of property within the Property owned by someone other than Declarant.

1.10. **"Lot No. 20"** means that Lot described on Exhibit B, attached hereto and made a part hereof.

1.11. **"Lot Owner"** means and is synonymous with the term "Owner".

1.12. **"Member"** means every person or entity with membership in the Association.

1.13. **"Mortgage"** includes "deed of trust" and mortgagee includes "trust deed beneficiary."

1.14. **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot or parcel of real property in the Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot or parcel ownership.

1.15. **"Plat"** means the subdivision plat, survey, or plan that describes the Property and has been recorded herewith or any replacements thereof, or alterations, amendments, or additions thereto. Declarant may prepare and record one or more plats designating ownership of the various Lots of the Property. Upon request, each Owner shall give written consent to the preparation and recording of said plat(s).

1.16. **"Property"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

1.17. **"Rules" or "Regulations"** means and refers to any rules or regulations created by the Board of Trustees, pursuant to its authority under the Articles and Bylaws, to govern the Association.

ARTICLE 2
DECLARATION

2.1. Declaration. Declarant hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth, each and all of which shall run with the land and remain in full force and effect and apply to and bind the heirs, grantees, assigns and successors in interest of each and every Owner of a Lot of the Property. Each Owner of any Lot or parcel in the Property covenants and agrees to use the Property only in accordance with the provisions hereof and to refrain from using the Property in any way inconsistent with or prohibited by the provisions of this Declaration. It is the intent and purpose of these covenants, conditions and restrictions to create mutual and equitable servitudes upon the Property in favor of all other Lots located therein, creating reciprocal rights and obligations between the respective Owners of Lots of the Property, and creating a privity of contract and estate between the Owners of said Lots.

2.2. Purpose and Intent. It is the intent of these covenants, conditions and restrictions to allow general industrial activities, manufacturing, warehousing and marketing activities to be carried out within a building or buildings on the Property, which do not contribute excessive noise, dust, smoke or vibration to the surrounding environment and do not contain a high hazard potential due to the nature of the products, material or processes involved. It is the further intent and purpose of these covenants, conditions and restrictions to control the user-occupant density on the Property, to expressly prohibit certain uses of the Property, and to protect the character of the Property.

2.3. Lots. Each Lot is owned in fee simple by the Owner. Structures may be constructed as permitted herein, subject to approval of the Board of Trustees as set forth herein, and in accordance with and subject to the ordinances of the City of St. George, including the Hillside Ordinance, and other applicable rules and regulations.

2.4. Consent to Recording Plat; Subdivision into Lots. This Declaration is executed in contemplation of subdivision of the Property into Lots. It is further contemplated that a subdivision plat describing the Lots and including dedicated streets and required utility and drainage easements has not yet, but may be recorded. Each Owner agrees to provide his consent, as may be necessary to record, alter or amend any Plat to provide for subdivision into Lots; *provided*, however, that no Owner may further subdivide any part or parcel of the Property or his Lot without the prior written consent of Declarant.

ARTICLE 3
MEMBERSHIP AND VOTING RIGHTS

The Association shall have one class of voting membership. Members are entitled to one vote for each acre of land owned. Fractional votes shall be allocated for fractions of acres

owned. When more than one person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE 4 FINANCES AND OPERATIONS

4.1. Creation of Lien and Personal Obligation of Assessment. Each Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association, assessments or charges and interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the owner of such property at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent. The Declarant shall not be subject to assessments or the lien for assessments.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used by the Association only for operating expenses of the Association including governmental fees, costs of accounting and sending bills, and insurance; acquisition, maintenance, repair and operation of Common Property and other facilities and improvements beneficial generally to the Property; the payment of taxes on common property and insurance thereon maintained by the Association; insurance deductible amounts; and the establishment of a reserve account for repair, maintenance and replacement of the Common Property which must be replaced on a periodic basis.

4.3. Rate of Assessment. Assessments must be fixed at a pro rata rate for all Lots that have been sold or conveyed by the Declarant, based on the size of the Lots. The Board of Trustees may cause the Association to levy assessments that do not exceed One Hundred Dollars (\$100.00) per acre per calendar year. Assessments in excess of that amount may only be levied if approved by members having at least sixty-six per cent (66%) of the votes in the Association.

4.4. Date of Commencement of Assessments; Due Dates.

- (a) Due dates for assessments shall be established by the Trustees.
- (b) The Trustees shall prepare a roster of the Lots and the assessments applicable thereto at the same time that it shall fix the amount of the assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

(c) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

4.5 Effect of Non-Payment of Assessment; Remedies of the Association.

(a) Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Trustees shall set by resolution) until paid. In addition, a late fee of \$25.00 for each delinquent installment shall be imposed.

(b) The Trustees may, in the name of the Association: (i) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; or (ii) may foreclose the lien against the Owner's Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; and/or (iii) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member.

(c) There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee.

(d) A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

(e) No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or by abandonment of the Lot.

4.6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

ARTICLE 5
CONSTRUCTION AND MAINTENANCE STANDARDS

5.1 Approval of Board of Trustees. Before commencing the construction or alteration of any buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to any site or Lot within the Property, the Owner thereof shall first submit the following materials to the Board of Trustees for its written approval:

- (a) Site plans, including setback lines, roads, parking areas, loading and maneuvering areas, external lighting, utilities and utility easements and grading and planting plans, which plans shall show existing grades and natural vegetation;
- (b) Floor plans, cross sections and elevations of all sides of the buildings, structures or improvements and location and detail of signs;
- (c) Samples of the actual materials proposed for all external surfaces;
- (d) A professionally designed landscape, irrigation, and drainage plan;
- (e) An accurate architect's or artist's depiction or scale model of the project; and
- (f) Appropriate specifications.

The Board of Trustees shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed structure, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other planned structure, on the outlook from adjacent or neighboring property. The Board of Trustees shall adopt development guidelines as it deems necessary to inform Owners of the standards that will be applied in approving or disapproving proposed uses and constructions. Such guidelines shall in no event be less restrictive than the restrictions stated herein, and they may be modified in the same manner as provided for modification of this Declaration. The Board of Trustees will be guided by this Declaration, the ordinances of the City of St. George, including the Uniform Building Code as adopted, and other applicable rules and regulations. In the event such Board of Trustees, or its designated representative, shall fail to approve or disapprove building plans, specifications, or site plans within sixty (60) days after they have been submitted to the Board of Trustees, such approval will not be required and this covenant will be deemed to have been complied with. The Board of Trustees shall have the power to enforce its decisions in accordance with this Declaration, the ordinances of the City of St. George, and all other applicable law. The Board shall not be liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant hereto.

5.2 Time Limitation on Construction. Each Owner, other than the Declarant, shall be required to obtain a building permit and begin construction of an acceptable building within two (2) years from the date of purchase of a Lot. The Board of Trustees has the right to extend this two-year period on terms and conditions agreeable to it. If an Owner fails to adhere to this time limitation, Declarant, at its option, may repurchase the Owner's Lot by notifying the Owner, in writing, of its intention to repurchase, and tendering to the Owner the purchase price paid by the Owner for the Lot, less the amount, if any, required to satisfy any taxes, assessments, liens, charges or encumbrances accruing or encumbering said Lot after conveyance of the same to the Owner.

ARTICLE 6 USE RESTRICTIONS AND REQUIREMENTS

6.1 Permitted Uses. The Property is restricted to selected industrial, manufacturing, warehousing and marketing enterprises that are compatible with the development. The Property is also restricted to aesthetically attractive and harmonious structures and improvements including landscaping as approved by the Board of Trustees.

6.2 Metal Construction. The Board of Trustees may restrict the use of metal in construction of any proposed improvement, fence, structure or building. These restrictions, if imposed, are intended to enhance the appearance of buildings and other improvements on the Property for mutual benefit of the Lot Owners. It is the intention of the Declarant to encourage the use of masonry in construction.

6.3 Care and Maintenance of Common Property. The Association shall be responsible for care and maintenance of any Common Property and improvements thereon. Any damage caused to Common Property by any Lot Owner and/or their agents, guests or invitees must be repaired by the Lot Owner as soon as possible after such damage is discovered, and in the event of failure of the Lot Owner to make such repairs, the Association may make such repairs and the expense of such repair shall be borne by the Lot Owner.

6.4 Prohibited Uses. No part of the Property shall be used for any purpose or business that is prohibited by the zoning applicable to the Property at any given time. Further, the following uses or any use substantially similar to any of the following is *expressly prohibited* in the Property:

- (a) Residential purposes, except for the dwelling of watchmen or other employees whose residence on the Property forms an integral part of the operation as approved by the Board of Trustees;
- (b) Further subdividing of any Lot or development of the Property or any parcel or Lot thereof as a commercial condominium.

- (c) The manufacture, storage, distribution or sale of explosives;
- (d) The salvage, wrecking or stripping of wrecked vehicles, or the storage in bulk of junk, secondhand or unsightly materials of any type;
- (e) Stock and feed yards;
- (f) Food processing which involves the slaughter of animals or the use of animal carcasses;
- (g) Recreational activities including courses for vehicular racing, the use of specialized recreational equipment, and spectator sports;
- (h) The storage, treatment, disposal or other use of hazardous substances; provided, however, that the storage, treatment, disposal or other use of hazardous substances as an incidental part of a manufacturing, food processing, transportation, or other business use shall not be prohibited so long as each such business conducted on the Property is in compliance with applicable environmental laws and regulations. As used herein, the term "hazardous substances" means any hazardous or toxic substances, materials, or waste which is or becomes regulated by any local governmental authority, the State of Utah, or the United States Government, including, without limitation, any substance, chemical, or waste that is or shall be listed or defined as hazardous, toxic or dangerous under any applicable environmental law, which shall include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; and the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-26, as such Acts have been or are hereafter amended from time to time; any regulations enacted thereunder; any so called Superfund or Superlien law; and any other federal, state, and local statute, law, ordinance, code, rule regulation, order, or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, or material;
- (i) Except as otherwise set forth herein, the manufacturing, storage, or sale of milk products or milk substitutes, including without limitation, milk, cheese, ice cream or yogurt products. Notwithstanding the above, this section shall not prohibit the manufacture, storage, or sale of milk products or milk substitutes, which is either an incidental part of a permitted use or which is not a primary part of a permitted use. In addition, the real property described in Exhibit C attached hereto and incorporated herein by this reference ("the Premises") may

be principally devoted to or primarily used for the manufacturing, storage, or sale of milk products or milk substitutes, including without limitation, milk, cheese, ice cream or yogurt products; provided, however, that if such operation ceases for twenty four (24) consecutive months, except, as a result of force majeure, labor disputes, damage, destruction, construction or reconstruction activities, or reasons otherwise beyond the reasonable control of the occupant of the Premises, then this prohibition shall no longer be in force and effect and the then record owner of the Premises shall be required to file in the Official Records of Washington County, Utah, a certificate confirming the occurrence of such events and the nullification and termination of this prohibition; and

- (j) Nursing homes, hospitals or other overnight care facilities, or hotels, motels, or other similar facilities providing overnight accommodations.

6.5. Performance Guidelines and Requirements. In order to further the intent of the covenants contained in this Declaration, the Owner of any parcel or Lot shall at all times keep the premises, buildings, improvements and appurtenances in a safe, clean and wholesome condition. In addition, the owner must comply in all respects with all government, health, fire and police requirements and regulations; the owner will remove at his or its own expense any rubbish of any character whatsoever which may accumulate on such site or Lot. Specifically, all uses permitted hereunder shall operate in conformance with the limitations set forth in each subsection below:

- (a) Vibration. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at the Lot line or at any point beyond the Lot line.
- (b) Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. In no event shall any person operate or permit to be operated any stationary source of sound in such a manner as to create a ninetieth percentile sound pressure level (L90) of any measurement period (which shall not be less than ten minutes) which exceeds 75 dB(A) during the hours of 9:00 p.m. to 7:00 a.m., or 80 dB(A) during the hours of 7:00 a.m. to 9:00 p.m., when measured at the Lot line or at any point within the Property affected by the noise. Sound level measurements shall be made with a sound level meter using the "A" weighting scale, in accordance with standards promulgated by the American National Standards Institute.
- (c) Air Pollution. No visible emissions shall be discharged into the atmosphere from any source where the opacity is sufficient to obscure an observer's view to a degree equal or greater than No. 1 on the Ringelmann Chart, except upon demonstration that the emission contains less than one-tenth pound (1/10 lb.) of particulate matter per thousand pounds (1,000 lbs.) of dry gases, adjusted to twelve percent (12%) carbon dioxide or fifty percent (50%) excess air. Visible

emissions of any kind at ground level past the Lot line of the Property on which the source of the emissions is located are prohibited. There shall not be discharged into the atmosphere any contaminate for which threshold limit values are listed for working atmosphere by the American Conference of Governmental Industrial Hygienists in such quantity that the concentration of the contaminant at ground level at any point beyond the boundary of the Property shall at any time exceed the threshold limit.

- (d) Odors. No condition or operation will be allowed which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonably with the comfort of the public.
- (e) Electromagnetic Radiation. It shall be unlawful to operate, or cause to be operated, any planned or intentional source of electromagnetic radiation for any purpose which does not comply with the then current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation, unless special circumstances exist which may be reviewed by the Board of Trustees and, upon recommendation from that Board of Trustees, the requirements of such regulations may be modified. It shall be unlawful to operate or to cause to be operated any source of electromagnetic interference, the radiation or transmission from which exceeds reasonable standards, employing standard field strength measuring techniques.
- (f) Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air and water, and the disposing of radioactive wastes, shall be in conformance with the regulations of the Nuclear Regulatory Commission as set forth in Title 10, Chapter One, Part 20--Standards for Protection Against Radiation, as amended.
- (g) Glare and Heat. No direct or sky-reflected glare, whether from floodlights or from high temperature processes such as combustion or welding or otherwise, so as to be visible at the Lot line, shall be permitted. These regulations shall not apply to signs or floodlighting of parking areas otherwise permitted by this Declaration. There shall be no emission or transmission of heat or heated air so as to be discernible at the Lot line.
- (h) Liquid or Solid Waste. There shall be no discharge at any point into any public or private sewage disposal system or stream or into the ground, of any liquid or solid materials except in accordance with the regulations and standards established by the City of St. George, Utah, and other applicable state and federal laws.
- (i) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping

ground for rubbish, trash, garbage or any other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and no rubbish, trash, papers, junk or debris shall be burned upon any Lot.

(j) Water Supply. No individual water supply system shall be used or permitted on any Lot or group of Lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department. Approval of such system as installed shall be obtained from such authority.

(k) Fencing. Fencing for an industrial site shall be at least six feet (6) high. The Board of Trustees shall determine whether chain link fencing will be adequate, or whether opaque fencing such as masonry or chain link fencing with opaque slats is a necessity. The materials to be used for fencing will be subject to approval of the Board of Trustees; however, wooden fencing is prohibited.

6.6 Minimum Area and Yard Spaces. No building may be erected or located in the Property:

- (a) less than sixty feet (60') from any public street property line;
- (b) less than ten feet (10') from any side property line;
- (c) less than twenty feet (20') from any other building on an adjacent site.

Provided, however, the minimum setback distance from 3950 South Street for the presently-existing building on Lot No. 20 is reduced from sixty feet (60') to forty-five feet (45'). All future construction on Lot No. 20 shall be subject to the sixty-foot setback.

The recommended ratio of building coverage to the total Lot area shall not exceed forty percent (40%). The ratio of building coverage to the total Lot area will be subject to the approval of the Board of Trustees. The front yard spaces required by the set backs provided in this section shall contain only paved walks, paved driveways, parking lots, lawns and landscaping. Not less than five percent (5%) of the total Lot area shall be landscaped. Landscaping shall mean decorative plazas, pools, or the planting of grass, shrubs, or trees, or other comparable surface cover. Such landscaped areas shall be maintained at all times by the owner, and shall at all times be kept adequately watered, mowed, trimmed and planted. All parking and landscaped areas shall be kept safe, clean and attractive.

6.7 External Appearance. All significantly exposed and noticeable projections outside of any building, including mechanical and electrical equipment, cooling towers, transformers, ducts, vents, etc., but excluding communications equipment, shall, to the extent reasonably possible, be screened from public view by appropriate enclosures. All plans

submitted to the Board of Trustees for approval shall show such projections and enclosures.

6.8 Loading Docks. No loading dock shall be constructed facing on any public street unless such loading dock and every part thereof is at least seventy five (75') inside the right-of-way line of the street on which such loading dock fronts.

6.9 Landscaping.

- (a) Declarant shall install entryway landscaping along the boundary of the Property with River Road. Said landscaping shall be within the City of St. George right of way and shall be maintained by the City of St. George. Any such landscaping shall comply with any requirements imposed by the City of St. George. No Owner shall in any way interfere with this entryway landscaping, except as necessary for ingress and egress as may be set forth in approved plans.
- (b) All grounds and exterior areas shall be improved and maintained according to the following standards:
- (i) Landscape irrigation, drainage, and planting shall be an integral part of the project design and construction plans submitted to the Board of Trustees for approval;
 - (ii) All planted areas shall be adequately watered;
 - (iii) All grounds and exterior areas shall be clean, neat and properly maintained at regular intervals; and
 - (iv) All fencing material shall be permanent and properly maintained.
- (c) In order to provide for an overall aesthetic project, Lots that face River Road may be subject to additional specific landscaping standards that will coordinate the Lot landscaping with the entryway landscaping referenced in 6.9(a).

6.10 Parking. Each Lot Owner shall provide adequate off-street parking to accommodate all parking needs for the Lot. Parking shall be provided on the basis of one square foot (1 sq. ft.) of parking area for every square foot of building area, with provision for one (1) parking space for every vehicle used in conducting the business, and four (4) parking spaces for every five (5) employees working on the largest shift, together with adequate visitor parking. Owners shall not permit their employees or tenants to regularly park during business hours on public streets within the boundaries of the Property. All parking areas shall be covered with a hard, dust-free, paved surface. Vehicular access to a parking area shall be permitted only by paved access roadways. Parking structures shall not be calculated as building area. Any parking in the front of buildings (public street side) shall be limited to visitor's and short-term employee parking only.

6.11 Signs. No sign shall be erected or maintained on the Property except in conformity with the provisions of the St. George City ordinances. In addition to the requirements of said ordinances and in modification thereof, the following shall be required:

- (a) Only one (1) single-faced or double-faced sign shall be permitted per street frontage. Signs not attached to the building shall be ground signs not exceeding thirty-five square feet (35 sq. ft.) in area (single-face).
- (b) A single sign shall be allowed on the front of each facility, and of a size not to exceed one square foot (1 sq. ft.) for each horizontal linear foot of building wall facing the street on which the sign faces.
- (c) Signs shall be designed as a part of the architectural design of the building so as to add to the aesthetic appearance of the building and Property. Animated or flashing signs are prohibited.
- (d) Special purpose signs, relating to construction of improvements on the Property, future tenant identification signs, or signs intended to give special directions or instructions for a limited period of time, may be permitted for limited periods of time provided they are in conformity with applicable zoning ordinances and regulations.
- (e) These sign restrictions shall not apply to the commercial activities, signs and billboards of the Declarant while the Declarant is marketing the Property.

6.12 Number of Tenants Per Building. No building shall be occupied or used by more than two (2) tenants or users simultaneously without the specific written consent of the Board of Trustees, nor shall more than two (2) businesses be conducted simultaneously in one building without the specific written consent of the Board of Trustees. The multiple occupancy and/or use of a building under this section does not change the character of the Lot on which the building was constructed or the application of the requirements of this Declaration.

ARTICLE 7 GENERAL PROVISIONS

7.1 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

7.2 Additional Property. Additional property may be subjected to these covenants, conditions and restrictions by the Declarant. Declarant shall indicate its intent to have such property bound by these covenants, conditions and restrictions on the plat of such property, or

by recording an additional set of covenants, and thereafter such additional property shall be considered as part of the Property in all respects. This right of the Declarant shall be assignable to one or more assignees.

7.3 Duration of Restrictions. The covenants and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

7.4 Enforcement. The covenants, conditions, and restrictions contained in this Declaration are for the benefit of the Declarant and the Lot Owners. Each such covenant, condition, and restriction shall inure to the benefit of and pass with each Lot, part or portion of the Property and shall apply to and be binding upon each successor in interest. These restrictions, covenants and conditions are covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any breach or noncompliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Association, the Declarant, or any Lot Owner; *provided*, however, that no such enforcement shall affect or impair the lien of any bona fide mortgage or trust deed that was given in good faith and for value, except that any subsequent Lot Owner shall be bound and obligated by these covenants, conditions, and restrictions, whether the ownership is obtained by foreclosure, at a trustee's sale, or otherwise. All attorney fees, costs, and expenses incurred in any such enforcement action shall constitute a lien on such Lot Owner's Lot, and shall also be a personal obligation of the Lot Owner, enforceable at law, until payment is made.

7.5 Construction and Amendment. The provisions of these covenants, conditions, and restrictions shall be liberally construed to effect all of their intended purposes. During the Development Phase, this Declaration may be modified, amended or repealed in whole or in part at any time and from time to time by the Declarant or its successor or assigns by recorded instrument. After the Development Phase, this Declaration may be modified or amended, as to the whole of said Property or any portion thereof, with the written consent of Owners having sixty-five percent (65%) of the votes in the Association, *provided* however that so long as Declarant owns a Lot, no such modification shall be effective without Declarant's written consent.

7.6 Interpretive Conflicts. In the event of any conflict between the provisions of this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control. In all cases of conflict between any Association or committee Rule and/or Regulation and this Declaration, the Articles, or Bylaws, this Declaration, the Articles, and Bylaws shall control.

7.7 Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

7.8 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

7.9 Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

7.10 Topical Headings. The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.

KM IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this June day of June, 2005.

DECLARANT:

STATE OF UTAH
ACTING THROUGH THE SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION

[Signature]
Director

Approved as to Form
Mark L. Shurtleff
ATTORNEY GENERAL
By: *[Signature]*

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 9th day of June, 2005, by Kevin S. Carter, Director.

Lynda Selnap
NOTARY PUBLIC
Address: _____
My Commission Expires: _____

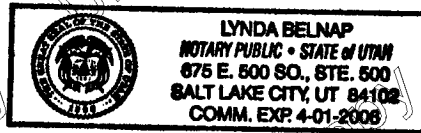


EXHIBIT A

[Legal Description of Property]

[see legal description attached]

L.R. POPE ENGINEERING INC
1240 E 100 S, STE 15B
ST. GEORGE, UTAH 84790
801-628-1676
Revised 4/26/05

**DESCRIPTION OF TOTAL AREA OF
 FORT PIERCE BUSINESS PARK INCLUDING PARK AREA**

Beginning at the West ¼ Corner of Section 21, Township 43 South, Range 15 West, Salt Lake Base and Meridian and running thence South 88°46'43" East 2639.40 feet along the Center Section Line to the Center ¼ Corner of said Section 21; thence South 01°10'30" West along the Center Section Line 2367.95 feet; thence North 74°12'15" West 134.94 feet; thence South 76°24'46" West 138.775 feet; thence South 63°56'02" West 400.21 feet; thence North 69°27'47" West 110.96 feet; thence North 48°10'25" West 140.15 feet; thence North 32°36'01" West 185.76 feet; thence North 44°31'40" West 245.95 feet; thence North 48°34'22" West 333.27 feet; thence North 56°34'24" West 442.19 feet; thence North 88°25'59" West 900.20 feet to a point on the West Line of said Section 21; thence North 01°10'31" East 339.27 feet along the Section Line to a point on a 3926.12 foot radius curve to the left (bearing to radius point is S 11°18'20" E); thence Southwesterly through a central angle of 9°14'13" and along the arc of said curve 632.96 feet to a point of tangency; thence South 69°27'26" West 2344.615 feet to the point of a 2460.00 foot radius curve to the right; thence Southwesterly through a central angle of 20°28'40" and along the arc of said curve 879.21 feet to a point of tangency; thence South 89°56'06" West 472.645 feet; thence North 01°36'27" West 1112.93 feet; thence North 83°50'30" West 180.28 feet; thence North 68°33'47" West 265.51 feet; thence North 47°39'11" West 223.51 feet; thence North 52°51'09" West 374.06 feet; thence North 20°17'29" East 379.925 feet; thence North 72°45'18" West 125.50 feet; thence South 69°12'28" West 207.88 feet; thence North 50°26'19" West 88.62 feet; thence North 00°20'01" West 135.81 feet; thence North 20°57'24" East 235.595 feet; thence North 67°10'48" West 136.92 feet; thence South 20°38'15" West 252.605 feet; thence South 44°43'28" West 356.90 feet; thence South 88°51'09" West 689.37 feet; thence South 2°28'29" East 333.00 feet; thence South 88°51'09" West 180.00 feet to the point of a 730.00 foot radius curve to the left; thence Southwesterly through a central angle of 36°24'07" and along the arc of said curve 463.79 feet; thence North 03°01'15" West 553.72 feet; thence South 89°00'17" West 495.29 feet; thence North 72°26'14" West 566.345 feet; thence North 38°27'30" West 726.46 feet; thence North 21°03'22" West 756.68 feet; thence North 58°22'01" East 1616.065 feet; thence North 55°38'13" East 210.18 feet; thence North 43°57'59" East 653.25 feet; thence South 45°07'03" East 430.38 feet; thence South 82°57'28" East 500.45 feet; thence North 54°35'35" East 528.51 feet; thence North 61°03'35" East 582.54 feet; thence North 6°54'20" West 345.90 feet; thence North 41°26'40" East 200.93 feet; thence North 66°09'47" East 499.37 feet; thence North 51°04'03" East 510.64 feet; thence South 63°57'53" East 107.50 feet; thence South 84°50'13" East 438.77 feet; thence North 89°45'50" East 325.83 feet; thence South 70°07'51" East 436.36 feet; thence North 46°02'58" East 480.21 feet; thence North 24°22'05" East 187.74 feet; thence North 1°16'52" East 835.98 feet; thence South 88°23'24" East 372.86 feet; thence North 15°59'54" East 548.37 feet; thence North 0°26'19" West 214.21 feet; thence North 88°43'08" West 248.57 feet; thence North 0°14'53" East 237.71 feet; thence North 40°21'58" East 380.67 feet; thence South 88°03'39" East 189.45 feet to a point on the West Right of Way Line of River Road; thence South 1°49'25" East 470.54 feet along said right of way to the point of a 7340.53 foot radius curve to the right; thence Southeasterly through a central angle of 1°52'16" and along the arc of said curve 239.72 feet to the point of a 2820.00 foot radius compound curve to the right; thence Southwesterly through a central angle of 24°53'23" and along the arc of said curve 1225.03 feet; thence leaving the West side of River Road and running thence South 65°03'46" East 100.00 feet to a point on the East Right of Way Line for River Road, said point also being on a 25.00 foot radius curve to the left (bearing to radius point is S 65°03'46" E); thence southeasterly through a central angle of 113°43'42" and along the arc of said curve 49.62 feet to a point of tangency on the North Right of Way Line for 3950 South Street; thence South 88°47'28" East 1891.63 feet along said Right of Way Line to the Northeast Corner of 1630 East Street; thence South 1°10'40" West 1320.62 feet along East Right of Way Line for 1630 East Street to the Southeast Corner of Section 17, Township 43 South, Range 15 West, Salt Lake Base and Meridian and running thence South 1°10'52" West 2639.38 feet along the Section Line to the point of beginning.

Containing 983.089 acres

EXHIBIT B

[Legal Description of Lot No. 20]

[see legal description attached]



ALPHA ENGINEERING COMPANY

148 East Tabernacle, St. George, UT 84770 • (435) 628-6500 • Fax: (435) 628-6553

LEGAL DESCRIPTION FORT PIERCE BUSINESS PARK

September 20, 2002
(Revised November 7, 2002)

A parcel of land located in the Southeast $\frac{1}{4}$ of Section 17, Township 43 South, Range 15 West, Salt Lake Base & Meridian, being more particularly described as follow:

Commencing at the East $\frac{1}{4}$ Corner of said Section 17;
Thence South $01^{\circ}10'40''$ West, 1,368.75 feet along the section line;
Thence West, 849.06 feet to the **Point of Beginning**, said point being on the south line of 3950 South Street;
Thence South $88^{\circ}47'28''$ East, 230.00 feet along said south line to the point of a 30.00 foot radius curve to the right;
Thence Southeasterly, 47.12 feet along the arc of said curve through a central angle of $90^{\circ}00'00''$;
Thence South $01^{\circ}12'32''$ West, 138.28 feet;
Thence North $88^{\circ}47'28''$ West, 260.00 feet;
Thence North $01^{\circ}12'32''$ East, 168.28 feet to the **Point of Beginning**.

Contains 1.00 acres more or less.

Subject to a 15 foot public utility and drainage easement over the Northerly and Easterly 15 feet thereof.

EXHIBIT C

[Legal Description of Wells Dairy Premises]

[see legal description attached]

**LEGAL DESCRIPTION
LOT 12
FORT PIERCE BUSINESS PARK**

(Revised April 23, 2002)
(Revised May 7, 2002)
(Revised May 29, 2002)

A parcel of land located in the North $\frac{1}{2}$ of Section 20, Township 43 South, Range 15 West, Salt Lake Base & Meridian, being more particularly described as follows:

Commencing at the North $\frac{1}{4}$ Corner of said Section 20;
Thence South $88^{\circ}44'49''$ East, 373.24 feet along the Section Line;
Thence South, 55.77 feet to a point on the south line of Commerce Drive and the **POINT OF BEGINNING**; said point also being South $66^{\circ}01'20''$ East, 428.00 feet from the city monument at the intersection of River Road and Commerce Drive, said point also being on a 1,640.00 foot radius curve to the left, of which the radius point lies North $11^{\circ}06'58''$ East;
Thence Easterly, 282.32 feet along the arc of said curve and the south line of said Commerce Drive, through a central angle of $09^{\circ}51'47''$.
Thence South $88^{\circ}44'49''$ East, 1,097.52 feet along the south line of Commerce Drive;
Thence South $01^{\circ}15'09''$ West, 1,247.01 feet;
Thence North $88^{\circ}44'51''$ West, 1,921.07 feet to the point of curve of a 1,167.00 foot radius curve to the right;
Thence Westerly, 170.56 feet along the arc, through a central angle of $08^{\circ}22'26''$;
Thence North $30^{\circ}45'56''$ East, 1,446.49 feet to the **POINT OF BEGINNING**.

Containing 50.000 acres, more or less.