

DIP 2<sup>nd</sup> Covenants  
10/15/99 10:33 AM  
STATE OF KANSAS } SS  
SEDGWICK COUNTY }

DECLARATION OF COVENANTS AND RESTRICTIONS

OCT 22 1 44 PM '99

DERBY INDUSTRIAL PARK 2<sup>nd</sup> ADDITION  
A subdivision of the City of Derby, Kansas

BILL MEEK  
REGISTER OF DEEDS

WHEREAS, the City of Derby, Kansas (the "City") is owner of the following described property (the "Business Park"):

Lots 1-7, inclusive, and Reserve "A," of Block A, and lots 1-8 inclusive, of Block B, Derby Industrial Park 2<sup>nd</sup> Addition to the City of Derby, Sedgwick County, Kansas; and

WHEREAS, it is the desire and intention of the City to develop the Business Park in an aesthetically harmonious environment, with suitable landscaping so as to enhance the value of all properties within the Business Park; and

WHEREAS, it is the desire and intention City to create mutually beneficial limitations, restrictions and covenants under a general plan of improvement for the benefit of all of property within the Business Park, and the improvements thereon, and for the benefit of owners thereof;

NOW, THEREFORE, the City hereby declares that all lots within the Business Park are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following limitations, restrictions and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Business Park and the lots therein. Such limitations, restrictions and covenants are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Business Park and every part thereof. All such limitations, restrictions and covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the property made subject thereto or any part thereof, and shall be for the benefit of each owner of any portion of such real property, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

A. Definitions:

1. "Approving Agent" means, in the following order of precedence:

(a) An architectural committee consisting of persons appointed by the governing body of the City. Such committee shall be responsible for the implementation of the various limitations, restrictions and covenants contained herein.

(b) An association, whether or not incorporated, organized by owners of a majority of the Lots in the Business Park to, among other things, review and approve plans and granting modifications as hereinafter provided. Membership in such association shall be available to all such owners without charge, provided the City has granted to said association the exclusive right to approve plans and grant modifications as hereinafter set forth, which the City agrees will be done before the City divests itself of all ownership

interest in lots located within the Business Park if written request therefor is received prior to that time.

2. "Junk yard" or "salvage yard" means any land or building used for collection, storage or sale of wastepaper, trash, rags, fibrous material, scrap metal or other discarded material; or for collecting, storing, dismantling or salvaging of machinery or unlicensed motor vehicles not in operable condition, or for the sale of parts thereof; or collection, storage or sale of materials resulting from demolition of buildings or other structures of any type.

3. "Lot" means a parcel of land that is designated by its owner or developer at the time of applying for a zoning permit as a tract, all of which is to be used, developed or built upon as a unit under single ownership; a lot may consist of (a) a lot of record, (b) a portion of a lot of record, (c) two or more lots of record, (d) a combination of one or more lots of record and one or more portions of lots of record.

noise, vibration or pollution from hazardous materials, or which will be hazardous by reason of danger of fire or explosion.

6. The exterior of all structures and all walks, driveways, lawns and landscaping on each lot shall be maintained in good order, repair and condition. All exterior painted surfaces shall be maintained in first-class condition.

7. With the exception of growing plants, employee and customer vehicle parking areas, and other parking areas used in conjunction with the business occupying the lot, no open storage shall be permitted on any lot unless visual screening, approved in the manner hereinafter provided, is constructed to a height of not more than 8 feet.

8. No buildings, structures or exterior signs shall be erected, nor shall exterior structural alterations or additions made, on any lot except pursuant to plans and specifications approved in the manner hereinafter provided as to landscaping and architectural style; provided, that such approval shall not be withheld unreasonably. At least 25% of the front elevation of all structures shall have an architectural treatment of brick, stone, dryvit, or other material acceptable to the Approving Agent. This requirement of approval shall be in addition to, and not in substitution for, any and all other restrictions herein contained.

9. Grassed portions of each lot shall be properly mowed and maintained to a height of not more than 6 inches. In the event any owner fails to maintain any lot or portion thereof in conformity with this paragraph, the Approving Agent may perform such maintenance and charge the cost thereof to the owner of such lot.

**C. Approvals, Modifications and Waivers.**

1. So long as there is an Approving Agent, it shall have the exclusive right to grant approvals required by these Covenants and Restrictions, and to waive or modify the same in particular respects whenever in its opinion such waiver or variance will not be detrimental to the Business Park or to other properties within the Business Park

2. After there ceases to be an Approving Agent, the owners of record of lots in the Business Park abutting upon each lot shall have the exclusive right to grant approvals required by the Restrictions; and shall have the exclusive right to waive or vary the Covenants and Restrictions in particular respects whenever in their opinion such waiver or variance will not be detrimental to other properties or to the Business Park as a whole.

3. Any person having an interest in any lot may rely upon any instrument of record signed by the Approving Agent or, after there ceases to be an Approving Agent, by the owners of abutting lots, purporting to grant an approval or to waive or vary the Covenants and Restrictions in particular respects.

4. Any proposed building, structure or use shall meet all zoning and subdivision regulations of the City, and construction or improvement thereof shall in all respects be governed by the building trade codes and licensing regulations of the City.

5. Any construction, other than exterior signs, driveways, parking areas, grading, landscaping, fences and screens, completed for more than three (3) months shall be deemed approved, unless within such period a suit for enforcement of these Covenants and Restrictions has been commenced and service has been made upon parties defendant. No owner of any lot shall be responsible for any violation of these Covenants and Restriction that occurred before such owner acquired its interest in such lot, unless such owner had actual or constructive notice of such violation at the time such interest was acquired.

**D. Enforcement.**

1. These Covenants and Restrictions shall run with the land and be enforceable by action at law or in equity in any court of competent jurisdiction.

2. So long as there is an Approving Agent, said agent shall have the exclusive right to enforce the provisions hereof, without liability for failure so to do; provided, that the owner of record of any lot in the Business Park shall have the right to enforce the provisions hereof if the Approving Agent fails to do so within 30 days after written request from such owner.

3. After there ceases to be an Approving Agent each, owner of record of land in the Business Park shall have the right to enforce any limitation, restriction or covenant contained in these Covenants and Restrictions with respect to any lot, without liability for failure so to do.

**E. Term.**

The foregoing limitations, restrictions and covenants shall be binding upon the Business Park for a period of 25 years from the date of filing, and may be extended thereafter, in whole or in part, by the owners of a majority of the lots in the Business Park.

**F. Amendment.**

These Covenants and Restrictions may be amended or supplemented at any time, upon approval by the owners of 2/3 of the lots in the Business Park.

EXECUTED this 22 day of OCT., 1999.



*Richard D. Standrich*  
Richard D. Standrich, Mayor  
City of Derby, Kansas

ACKNOWLEDGMENT

State of Kansas ) ss.  
Sedgwick County )

The above and foregoing instrument was acknowledged before me by Richard D. Standrich, <sup>Mayor</sup> of the City of Derby, Kansas, this 22 day of Oct, 1999,.

My appointment expires: 4.9.01

Carolyn N. Morrison  
Notary Public

