

RESOLUTION NO. 3737
A RESOLUTION CREATING COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE ELKHORN VIEW INDUSTRIAL PARK.

WHEREAS, the City is the owner of all of the real property known as Elkhorn View Industrial Park Subdivision located in Baker City, Oregon; and

WHEREAS, it is the goal of the City to establish a harmonious development of the Elkhorn View Industrial Park Subdivision which will promote industrial development within Baker City for the benefit of its residents; and,

WHEREAS, to achieve the foregoing goals, the City intends for the Elkhorn View Industrial Park Subdivision to be improved with buildings and industries which will promote and enhance the economy of Baker City and Baker County; and,

WHEREAS, this Declaration is established to impose various covenants and restrictions upon the Property for the purpose of promoting the stated goals; and

NOW THEREFORE, the City hereby declares that the property herein described as Elkhorn View Industrial Park Subdivision will be held, sold and conveyed subject to the covenants, conditions, restrictions and easements set forth herein, all of which are for the purpose of protecting the desirability of the Elkhorn View Industrial Park Subdivision, and will run with the Property and be binding upon all persons, having any right, title or interest therein, or in any part thereof, and their respective heirs, successors and assigns; and which will in turn benefit the City.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELKHORN VIEW INDUSTRIAL PARK SUBDIVISION

ARTICLE I: DECLARATION OF RESTRICTIVE COVENANTS:

The City, owner of all land within the Elkhorn View Industrial Park Subdivision more particularly described in Exhibit "A" attached hereto and made a part thereof, hereby declares that the Elkhorn View Industrial Park Subdivision, and every part thereof now owned or hereafter acquired, is and will be owned (legally and beneficially); leased, or otherwise occupied; conveyed; encumbered or otherwise transferred; developed; improved; built upon or otherwise used are subject to all provisions of this Declaration. All of these covenants shall run with the land and every part thereof for all purposes, and shall be binding upon and inure to the benefit of the City, and all owners, Lessees and Licensees, and their successors in interest as set forth in this Declaration. These covenants shall encumber the entire Elkhorn View Industrial Park Subdivision whether or not contained in any conveyance of property within said park, and they shall not be extinguished as to any property therein by foreclosure, execution, sale, or tax sale.

ARTICLE II: GENERAL RESTRICTIONS

A. BUILDING MATERIALS:

1. Except as otherwise provided herein, the sides and rear of all buildings shall be finished in an attractive manner in keeping with the accepted standards used for industrial buildings subject to the approval of the City. Buildings must be kept in good repair and appearance at all times. Buildings must be of approved construction in conformity with all applicable building codes. Buildings shall not exceed fifty (50) feet in height except upon written approval of the City.

- B. **BUILDING ELEVATIONS:** All elevations of the building shall be designed in a consistent and coherent architectural manner. Changes in material, color and/or texture shall occur at points relating to the massing and overall design concept of the building.
- C. **BUILDING LOCATION:** All buildings shall be sited on the lot to present their most desirable face to the street and, where possible, should be related to buildings on adjoining lots.
- D. **HVAC UNITS AND MISCELLANEOUS EQUIPMENT:** Cooling towers, rooftop and ground mounted mechanical and electrical units and other miscellaneous equipment shall either be integrated into the design of the building or screened from view.

ARTICLE III: REGULATION OF IMPROVEMENTS:

- A. **APPROVAL OF PLANS:** No improvements shall be constructed, erected, placed, altered, maintained or permitted to remain in the Elkhorn View Industrial Park Subdivision until final plans and specifications shall have been submitted to and approved by the City. All proposals for development must be submitted and approved by the Planning Department (buildings 15,000 sq. ft. or smaller) or Planning Commission (buildings larger than 15,000 sq. ft.) prior to submission for building permit issuance. Customary review of site plans by City Staff for technical compliance shall be scheduled prior to review by the Planning Commission. Work scheduling and estimated completion dates should be included with plans as well as estimated employment at peak and anticipated shift schedules. Approvals under this section do not remove the obligation to obtain all other necessary construction permits that may be required by the City or other agency.
- B. **LIABILITY:** Neither the City, nor the City's assignees or successors as hereinafter provided, shall be liable for any damage, loss or prejudice suffered or claimed by any Owner, Lessees or Licensee, or by any such Owners' architect, engineer or contractor, who submits such plan for approval.

ARTICLE IV: DIVISION OF PROPERTY INTERESTS

- A. **DIVISION OF PARCELS:** All property divisions shall follow the established land division procedures. No parcel located within the Elkhorn View Industrial Park Subdivision shall be further divided into parcels smaller than one (1) acre. In no instance shall such division create a parcel which is not developable in compliance with this Declaration or which would violate any applicable state and local laws, ordinances or regulations regarding the subdivision of lands.
- B. **COOPERATION FOR EASEMENTS:** All owners and occupants of parcels within the Elkhorn View Industrial Park Subdivision shall cooperate with the City and other owners and occupants of lots within the Elkhorn View Industrial Park Subdivision in the planning and granting of all necessary and reasonable easements for gas, electric, telephone, sewer, water, drainage ditches, access roads, railway spurs, and loading tracks to the extent that such easements do not interfere with existing uses of the land or unduly restrict future intended uses. Nothing contained in this section shall be deemed to require the purchaser to grant any specific easement, nor grant easements or rights-of-way, without reasonable compensation.

ARTICLE V: RECAPTURE OF LAND

A. CITY RIGHT OF FIRST REFUSAL AS TO VACANT LAND:

1. In the event any owner of land in the Elkhorn View Industrial Park Subdivision elects to sell any portion which is not being used in connection with the business or industry of the owner, or which the owner desires to sell separate and distinct from any sale of the business or industry being conducted by the owner, the same shall first be offered for sale, in writing, to the City at the same price and on the same terms as the property may be sold by virtue of an acceptable bona fide offer to purchase received by the owner, or its legal representatives, successors, heirs or assigns. The City shall exercise its right of first refusal within sixty (60) days of receiving written notice of the bona fide offer to purchase. In the event the City shall not exercise its right of first refusal in a timely

manner, the owner may then sell the property on the terms set forth in the offer to purchase which was noticed to the owner. In that event, the City's right of first refusal shall then terminate as to that pending offer. However, the right of first refusal shall continue for each and every subsequent sale by an owner. It is intended that this right of first refusal shall apply only to the resale of vacant land. Any division of parcel shall comply with the minimum parcel size requirements required herein or by City ordinance.

2. In the event of acceptance of such offer by the City, conveyance shall be by Warranty Deed, free and clear of all liens and encumbrances created by act or default of the owner. Regardless of the City's actions herein, the use of the land by any subsequent owner shall be subject to applicable zoning, ordinances, restrictions and regulations of the City and the Elkhorn View Industrial Park Subdivision Restrictive Covenants relating to the use of the land at the time of the sale.

B. RECAPTURE OF LAND FOR FAILURE TO IMPROVE:

1. If a purchaser of land in the Elkhorn View Industrial Park Subdivision has not or cannot start construction and improvements on the land purchased within eighteen (18) months of the date of payment of the purchase price, has not completed construction within thirty (30) months, or has failed to comply with the plans or specifications approved by the City, the City shall have the right to repurchase the property from the purchaser at the original purchase price without interest less the estimated cost of restoring the property to the condition which it was in at the time of purchase; however the City may at its option accept the parcel and the improvements thereon in which case restoration shall not be required. Any extension of time to permit construction and improvement must be mutually agreed upon in writing between the City and the purchaser and adopted by Resolution of the City Council.
2. If the City reclaims the land through non-performance by the purchaser as provided herein, purchaser shall convey the property to the City by Warranty Deed, free and clear of all liens and encumbrances created by act of default of the purchaser. The Deed shall be delivered to the City upon payment of the amounts set forth herein.
3. If the City reclaims the land through non-performance by the purchaser, the City may sell the land to any party and the subsequent purchaser shall be subject to applicable zoning, ordinances, restrictions, and regulations of the City and the Elkhorn View Industrial Park Subdivision Protective covenants relating to the use of the land at the time of the sale.

ARTICLE VI: ENFORCEMENT OF COVENANTS AND RESTRICTIONS

These covenants and restrictions may be enforced by the City as follows:

- A. **COST OF CORRECTION/FINES:** If any Owner, Lessee, or Licensee in the Elkhorn View Industrial Park Subdivision fails to conform to the provisions of this Declaration or the plans/specifications as approved by the City, and such failure to conform continues for thirty (30) days after written notice from the City is delivered to such Owner, Lessee or Licensee, specifying such failure to conform, hence the City may, without further notice, perform such acts and take such action directly upon the property of the non-conforming Owner, Lessee, or Licensee, and said Owner, Lessee or Licensee shall be responsible for, and upon written demand shall immediately pay to the City all costs incurred by the City in correcting and/or curing such failure to conform, and such costs shall bear interest at the maximum legal rate allowed by law from the date of correction and/or curing by the City until paid.
- B. **INJUNCTIVE RELIEF:**
 1. If any Owner, Lessee or Licensee, or their employees, agents, contractors or invitees shall violate or attempt to violate or permit to be violated any of the provisions thereof or the plans/specifications approved by the City, the City shall have the right to prosecute any proceeding in any court of competent jurisdiction, against such person or persons, violating or attempting to violate, or permitting to be violated, any such provision, to

prevent and permanently enjoin such violation and to recover damages for such violation. The City may without notice apply for and obtain a temporary injunction, if deemed necessary by the City to prevent any violation hereof. All Owners, Lessees Licensees, Agents, Employees, Contractors, invitees and their heirs, successors or assigns consent to such proceedings being prosecuted in Courts in Baker County, Oregon. The foregoing enforcement remedy shall be in addition to and not in limitation of any legal or equitable remedy available to the City under the laws of the State of Oregon. All costs including actual reasonable attorney's fee, incurred by the City in any legal proceeding which results in a judgment order or decree in favor of the City, shall be borne in full by the defendant in such proceeding.

2. Failure by the City, its successors or assigns, to enforce any restriction, covenant, condition or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as the same breach or as to any breach occurring prior or subsequent thereto.
 3. Notwithstanding any other provisions hereof, any Owner, Lessee or Licensee of land in the Elkhorn View Industrial Park Subdivision shall have the right and standing to take legal action for the enforcement of the covenants in the event the City fails to do so, provided the City shall first have been given written notice of the intention to take such action together with a reasonable stated period of time in which the City may commence enforcement of these covenants as to the matters set forth in the notice, which period shall be reasonable under the circumstances, and further provided that within said period the City shall have failed to initiate such enforcement action.
- C. SEVERABILITY: If any provisions of this Declaration are held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions.
- D. ORDINANCES: If the City's Code of Ordinances and land use restrictions differ from those set forth in this Declaration, then compliance with the more restrictive provisions shall be required.
- E. AMENDMENTS: Initially, this Declaration or any covenant, condition or restriction contained herein, may be terminated or amended, as to the whole Property or any portion thereof, at the sole discretion of the City. At such time as eighty percent (80%) of the total square footage of the Property, exclusive of areas dedicated for streets, parks, storm water management facilities or other public uses, has been conveyed to persons other than the City, then this Declaration, or any covenant, condition or restriction contained herein, may be terminated or amended, only with the written consent of the City and the owners of two-thirds (2/3) of the square footage of the non-dedicated portion of the Property not owned by the City. At such time as the City ceases to have any interest in the Property, then this Declaration, or any covenant, condition or restriction contained herein, may be terminated or amended, only with the written consent of the owners of two-thirds (2/3) of the square footage of the Property. Any written consent described in this section that terminates or amends this Declaration shall be in recordable form and shall take effect upon recordation.
- F. TERM: The benefits and burdens of the covenants, conditions and restrictions of this Declaration shall run with the land and shall bind and inure to the benefit of, any owner, tenant or occupant of any land subject to this Declaration, their successors or assigns. This Declaration shall continue in effect for a period of twenty (20) years from the date this Declaration is initially recorded. After the expiration of such twenty (20) year period, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless terminated as provided for above.
- G. GOVERNING LAW: This Declaration shall be governed by the laws of the State of Oregon.

ARTICLE VII: LIENS AND NON-PAYMENT OF ASSESSMENTS

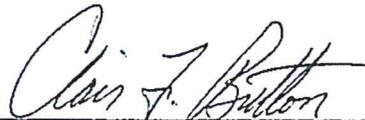
Each Owner of any property in the Elkhorn View Industrial Park Subdivision, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the City all sums which may become due the City from such Owner pursuant to the provisions of this

Declaration. The assessment of any such sums as herein provided, including interest, cost, penalty, and actual reasonable attorney's fees for the enforcement of the same, shall be a recoverable.

ARTICLE VIII: NOTICES

Any written notice or demand required pursuant to these covenants shall be deemed to have been delivered to any Owner, Lessee or Licensee upon the depositing of the same in the United States mail, postage prepaid, directed to the address of the Owner, Lessee or Licensee shown on the last recorded instrument conveying title in and to such property in the Elkhorn View Industrial Park Subdivision.

PASSED by the City Council of Baker City, Oregon, and signed by the Mayor of Baker City, Oregon, this 9th day of September, 2014.



Mayor

ATTEST:



City Recorder

Ayes: 5 (Langrell, Downing, Button, Mosier, Johnson)

Nays:

Absent: (Coles, Dorrah)

Abstain