

INSTRUMENT NO. 200609196

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SKY RANCH BUSINESS CENTER

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (Declaration), executed on the date following the last signatory hereto, is made by Freehold Development, LLC by and through its Managing Member, Craig L. Gibson, hereinafter Declarant, and is based on the following facts:

RECITALS

A. Declarant is the owner of certain real property located in the City of Caldwell, Canyon County, Idaho, which is more particularly described in the plat thereof recorded in Book 37 of Plats at Pages 14-16, as Instrument No. 20060507, on JANUARY 26, 2006, records of Canyon County, Idaho ("SKY RANCH BUSINESS CENTER PHASE 1 Subdivision" or "Property").

B. Declarant desires to establish certain covenants, conditions, easements and restrictions on the Property assure the attractiveness of the individual lots and common areas and facilities within the real property; to prevent future impairments thereof; to prevent nuisances; to preserve, protect and enhance the values and amenities of the Property; and to provide for the maintenance of the subdivision capital improvements.

NOW THEREFORE, Declarant hereby declares that all of the properties above described shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, each of which shall run with the properties and shall be binding on all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof. Declarant reserves the right to amend this Declaration at any time to set forth any additional or modifications to the easements, conditions, covenants, restrictions and reservations applicable to the lots in the Subdivision. Any amendments to this Declaration shall affect only those areas of the Property or Lots not sold at the time of such amendment. The Declarant specifically intends to make provisions for each area of the Property with a discrete use that may be different for each area, such as specific provisions for commercial, industrial or office uses that are not found in or applicable to the other uses within the Property.

ARTICLE I
DEFINITIONS

A. "Assessment" means payment due to the Association or Sub-Association and levied by the Association, including regular, special or limited assessments.

B. "Association or Sub-Association" means the non-profit corporation or corporations organized under the laws of the State of Idaho, of which each Lot is a Member through the Owner(s) thereof, and which is charged with the management of the subdivision and enforcement of this Declaration, or any successor or assign of the Association. There may be

one Association or an Association and Sub-Associations for each phase or particular use. The actual form and number of associations shall be in the sole discretion of the Declarant.

C. "Board of Directors" means the Board of Directors of the Association.

D. "Building" means any structural improvement on any Lot that is enclosed by exterior walls, floor and roof, and which is designed for the conduct within of the activities and business of the Owner of such Lot, or the Occupant or Tenant of such improvement. Building is also an improvement.

E. "Common Area" means those portions of the Property as designated on any plat or as designated pursuant to any other instrument recorded in the official records of Canyon County, Idaho, or which shall be otherwise identified by the Declarant, the Association or one or more of the Sub-Associations and any other Owner of such Lot, from time to time, to be for the benefit, common use and enjoyment of all Owners and the entire Property, including use and access by the public. Common Area also means those portions of the Property owned by the Association or Sub-Association, easement and license areas granted or reserved to the Declarant Association or the respective Sub-Associations or the public, including but not limited to any waterways, parks and any other real or personal property owned, held, maintained or operated by the Association or a Sub-Association. Common Areas shall be operated and maintained by the Association or Sub-Association and the expense thereof shall be assessed against the Owners as provided below.

G. "Declaration" means the Declaration of Covenants, Conditions, Easements and Restrictions for Sky Ranch Business Center as amended from time to time.

F. "Design Guidelines" means those standards of design including but not limited to architecture and landscape review standards as promulgated and amended from time to time by the Design Review Committee. The Design Guidelines exist separate and apart from the design guidelines herein, but are binding upon any purchaser of a Lot as if set forth fully herein. There may be Design Guidelines that differ from phase to phase and from use to use as promulgated by the Design Review Committee or Sub-Committee.

A. "Design Review Committee" means the Committee charged with approval of any construction, erection, alteration or repair of any improvements on any Lot in the Property as hereinafter provided. Each Sub-Association may have a separate Design Review Committee to ensure compliance where the phase regulated by the Sub-Association has Design Guidelines or Common Areas that differ from all other phases, as determined by the Declarant or after the Declarant has sold all the lots in the subdivision, as determined by the Association and the Design Review Committee.

G. "Exclusive(s)" means any exclusive right to a specific permitted use granted to a Lot or the Owner thereof. Exclusives shall be binding on the entire Property subject to the terms of such Exclusive Use.

H. "First Mortgagee" means any Mortgagee possessing a lien on any Lot or improvement thereon first and prior to any other Mortgage.

I. "Improvement" means and includes every structure, facility, system or object and all appurtenances of every kind and type as well as other physical changes upon, over, across, above or under the Property, whether permanent or temporary. It includes, for example, but is not limited to: antennas, awnings, benches, buildings, canopies, construction trailers and other temporary construction outbuildings, ditches, drive isles, exterior appliances, exterior lighting, fences, landscaping and associated improvements, living or dead vegetation, meters, outbuildings, parking facilities and structures, patios, roads, rocks, screening, sidewalks, shelters, signs, towers of any nature, walls, walkways, satellite dishes and other communications equipment including fiber optic cables, water facilities and equipment including lines, pipes, ponds, pumps, tanks, and wells, as well as any other similar item or new exterior construction or exterior improvement not mentioned above. Improvement(s) includes both original improvements existing on the Property on the date this Declaration is recorded and all later changes and additions.

J. "Institutional Holder" means a Mortgagee, which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

L. "Limited Assessment" means an assessment levied by the Association or Sub-Association on one or more Lots, but not upon all Lots within the Property for the purpose of securing payment by the Owner thereof of amounts expended by the Association or Sub-Association to correct a condition or violation that the Owner has failed to cure or for the purpose of paying costs and expenses benefiting less than all Owners in the Property.

K. "Lot" means all lots within and shown upon any plat for the Property thereof held in separate ownership, with the exception of the Common Areas.

L. "Mortgage" means any mortgage, deed of trust or other security instrument by which a Lot or any improvement thereon is encumbered.

M. "Mortgagee" means any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage,

N. "Occupant or Tenant" means any person or entity occupying any portion of a building or Lot who holds less than a fee simple interest, including but not limited to licensees and invitees.

O. "Owner" means the owner of record, whether one or more persons or entities, of a fee simple title to any lot, but excluding those having an interest merely as security for the performance of an obligation. In the event a Lot is owned by more than one (1) Owner, each Owner shall be a member of the Association but each Lot shall only be entitled to one (1) vote.

P. "Plat" means the official recorded plat of the Subdivision or any amendments or additions thereto.

Q. "Property" means the real property constituting Sky Ranch Business Center, described above and according to the Plat, and any additions thereto, as may be made subject to this Declaration or otherwise brought within the jurisdiction of the Association.

R. "Project" means the Property and all contemplated improvements thereto.

T. "Regular Assessment" means an assessment levied by the Association against each Lot for the payment of the regular expenses incurred by the Association or Sub-Association for the cost of maintenance and operation of the Common Area and the business expenses of the Association or Sub-Association.

V. "Special Assessment" means an Assessment levied by the Association upon the Lots to defray the cost of the construction, improvements and repair of Common Area, or improvements therein or to cure a deficit in Regular Assessments.

W. "Sub-Association" means an association of Owners of Lots in a particular location of the Property that contains a certain type of specific use such as a commercial or industrial or office Owner's association. Such a Sub-Association shall be subject to this Declaration, the Association and the Design Review Committee but may have separate articles of incorporation, bylaws, design guidelines and assessment provisions as approved by the Association and Design Review Committee.

X. "Subdivision" means the Sky Ranch Business Center as shown on the final Plat thereof recorded in the Office of the County Recorder, Canyon County, Idaho as well as any additional properties brought into the Subdivision or under the jurisdiction of any of the associations.

ARTICLE II GENERAL RESTRICTIONS

A. Compliance with Applicable Laws: All development within the Subdivision shall comply with all relevant State and County ordinances, regulations and laws.

B. Covenant: The Declarant hereby covenants for all of said property. Each Owner, whether by ratification of this Declaration or by acceptance of a deed or contract of purchase, whether or not these covenants, conditions and restrictions are expressly set forth in any such deed or other conveyance or agreement for conveyance is deemed to covenant and agrees to comply with and abide by these covenants, conditions and restrictions and agrees for the Owner or Owners, the Owner(s)' heirs, administrators, delegees or assigns to be personally bound by each of these covenants, restrictions, reservations and servitudes, and as may be amended from time to time, jointly, separately and severally.

C. Enforcement of Restrictions: The Declarant, Design Review Committee, Association or any Owner shall have the right to enforce, whether at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, any Exclusive(s) granted to a Lot or Owner, or the Articles, Bylaws or Rules of the Association. Not less than ten (10) days prior to bringing an action of enforcement, the offending party shall be served with written notice setting forth with specificity the covenant, restriction, condition, reservation, lien or charge that the person is charged with failing to comply with. Failure to enforce any the foregoing shall in no event be deemed a waiver of the right to do so thereafter. These covenants, conditions and restrictions are cumulative and all remedies provided herein for breach are in addition to any rights and remedies provided by local or state laws and not in lieu thereof.

D. Judgment and Attorneys' Fees: Whether an action is prosecuted to judgment, the prevailing party shall be entitled to reasonable attorneys' fees and costs. In the event of judgment against any person, the court may award injunction against any person for violation, required compliance as the court deems necessary, award such damages, reasonable attorneys' fees, costs and expenses as well as such other or further relief as may be deemed just and equitable.

E. Mortgages or Deeds of Trust Not Invalidated: The breach of any of these covenants, conditions, restrictions or any repurchase by reason of such breach, shall not defeat or render invalidate the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots in such premises, but shall be binding upon and effective against any such mortgagee or trustee or Owner thereof, whose title is or was acquired by foreclosure, trustee's sale, or otherwise.

F. Use of Lots and Subdivision: No portion of the Property, including any Lot shall be used inconsistent with this Declaration, the Design Guidelines, and any applicable, law, ordinance, regulation or rule. All uses shall be approved by the Design Review Committee and permitted pursuant to the conditions of development set forth herein to which the Subdivision is subject as well as any Exclusive(s) granted by Declarant or the Association.

ARTICLE III CONSTRUCTION RESTRICTIONS

A. Approval of Improvements: No exterior improvements or interior improvements that are visible from the exterior of a building shall be commenced, constructed, erected, installed, placed or materially altered within the Property until the plans and specifications, including the provisions for the staging of construction and landscape plan, have been reviewed and approved in writing by the Design Review Committee. All plans and specifications submitted to the Design Review Committee must comply with all applicable laws, regulations and ordinances, including the Ordinances of the City of Caldwell. No construction shall be commenced, nor materials delivered to any Lot until written approval is received from the Design Review Committee.

B. Construction Equipment and Material Storage: No machinery, building equipment, or material shall be stored on site until the Builder is ready and able to immediately commence construction. Such building materials must be kept within the property line of the Lot on which the building, structure or improvement is to be constructed.

C. Damage to Improvements: It is the responsibility of the Builder of any improvement in the Property to leave streets, curbs, sidewalks, fences, tiled irrigation lines or other improvements, if any, as well as utility facilities, free of damage and in good and sound condition at the conclusion of the construction period. It shall be conclusively presumed that all such improvements are in good sound condition at the time construction commences on each Lot. The builder is responsible for notification to the contrary, in writing, to the Design Review Committee at the time any construction activities commence including the delivery of materials or equipment on site.

D. Grading: The grading of any portion of the Property, or any modification, alteration or change to such grade must be made in accordance with the site plan approvals by the Design Review Committee and the requirements or ordinances of the City of Caldwell as well as any other applicable laws, ordinances or regulations. All grading shall be completed in such a manner as to

E. Irrigation Water: Non-potable irrigation water is provided to each Lot through a pressurized irrigation system constructed at Declarant's expense and operated by the Pioneer Irrigation District. Each Owner is responsible for obtaining the Design Review Committee's prior written approval of the sprinkling system required to irrigate each Lot, as well as any fees payable to the Association, Pioneer Irrigation District and any utility provider. The Owner is further responsible for separate payment of all taxes and assessments against the Lot imposed by any entity.

F. Landscaping: Each Owner, excluding the Declarant and the Association or Sub-Associations, at the Owner's sole cost and expense, shall install, within ninety (90) days of the transfer of title by the Declarant to the Owner of such Lot, sufficient landscaping, as approved by the Design Review Committee, and in compliance with the City of Caldwell Landscape Ordinance, to cover a strip of land ten (10) feet in width, adjacent to and running along the common area lots along arterial streets and five (5) feet in width along other public local streets. If the Lot is located adjacent to a public right-of-way that has no common area, the landscaping strip shall be a minimum of twenty (20) feet and shall connect to the landscaping within the public right-of-way. In no event, shall there be a gap between the public right-of-way landscaping and the landscaping installed by the Owner. Each Owner shall, within the same time period cover the balance of its Lot with dry land grasses by either seeding or hydro mulching until development of the Lot is completed. In no event shall any noxious weeds be allowed to grow and any other weeds shall be mowed at all times to less than twelve inches (12") in height. In the event that the Owner commences construction of the improvements on the Lot within ninety (90) days of the transfer of title by Declarant, the Declarant or Design Review Committee may waive the requirement to install landscaping. Further, the Declarant or Design Review Committee may extend the time period in which landscaping shall be

installed, at the Declarant or Design Review Committee's sole discretion. All landscaping shall comply with the Landscape Ordinance of the City of Caldwell.

G. Location of Structures on Lots: No structure shall be located or constructed on any Lot without prior written approval of the Design Review Committee and shall comply with the ordinances of City of Caldwell, as well as easements, setbacks and special requirements of the respective plat.

H. Permits: Each Owner shall be solely responsible to obtain at the Owner's sole expense, such permits as may be required by any governmental authority having jurisdiction thereof for the Owner's proposed use. In addition, each Owner shall be solely responsible for all fees and charges of any description whatsoever imposed by any governmental authority as a result of the proposed use for the Owner's Lot.

I. Setbacks: No improvements may be constructed or maintained on a Lot within the minimum building setback lines as provided for by the ordinances of City of Caldwell.

J. Site Maintenance During Construction: All Owners, builders and subcontractors must operate a clean site during the construction period. Debris shall be placed in an enclosure that will ensure no debris is blown around the site or off the Lot. The enclosure shall be emptied not less frequently than every two (2) weeks. No burning or disposal of construction materials shall be allowed on site. Neither dogs nor loud music will be allowed. Builders shall have placed and maintained a portable toilet. The toilet must be available on the first day on which materials are delivered to the site and removed immediately after construction is completed. All construction activities shall be performed in a manner that minimizes the generation, emission, entrainment, suspension and/or transport of fugitive dust within the Property. All maintenance is at the sole cost and expense of the Owner.

K. Temporary Buildings: No house trailer, tent, shack, unattached garage or temporary structure shall be erected or placed on any Lot without the prior written consent of the Design Review Committee and only in compliance with the Ordinances of the City of Caldwell. No barn, trailer, tent or other structure shall be used as a dwelling.

L. Utility Services- Electrical, Gas and Telephone: All services shall be installed in road or easement right of way as platted. All utilities shall be placed underground and comply with requirements of the various utility providers and site plan approvals by the Design Review Committee. Each Owner agrees, at Owner's sole expense, to pay for costs and hook-on charges as established by the respective utility, as a condition precedent to connection thereto. Declarant shall not be liable for the cost thereof but may recover funds advanced, if any, to obtain preliminary installation.

M. Water and Sewer: Water and sewer services are provided through connection to services provided by the City of Caldwell. Owners of Lots are responsible for connection to such services and payment of all hook-up fees required by Declarant and the City of Caldwell.

**ARTICLE IV
EASEMENTS**

A. Access Easements Declarant hereby grants for the benefit of the Subdivision, and their invitees and members of the public, a perpetual and indefeasible easement over and across the cross-easements for ingress and egress as depicted on the Plat, for the purpose of ingress to and egress from each of the Lots. The perpetual right of ingress and egress over and across the easements may not be terminated or extinguished without the written consent of all of the Owners, any and all parties having an interest in any affected Lot and the City of Caldwell.

B. Common Area Easements: Declarant reserves unto Declarant and hereby grants to each Owner or Occupant/Tenant of any Lot, a non-exclusive easement for the use and enjoyment of the Common Areas, which shall be appurtenant to and shall pass with the Title to every Lot. Provided, however, the Association shall have the right to adopt or amend regulations or rules for the use of the Common Areas as appropriate for the use and enjoyment of all Owners, Occupants/Tenants and the public.

C. Drainage Easements: Declarant reserves unto Declarant and also hereby grants to each Owner a non-exclusive easement for surface drainage over the Property through the drainage patterns and systems as are established from time to time on the Property. Except where designated as Common Area, each Owner shall maintain all such drainage facilities located on such Owner's Lot in a neat, orderly, operable and safe condition and in such manner as to prevent erosion and to facilitate the orderly discharge of water throughout the drainage systems and patterns established from time to time. Subject to prior written approval of the Design Review Committee and compliance with the Ordinances of the City of Caldwell, nothing herein shall prevent an Owner from relocating a drainage pattern, at its sole cost and expense, so long as such relocation does not unreasonably interfere with the drainage of other Lots within the Property and does not interfere with the orderly discharge of water throughout the Property. Notwithstanding the above, no Owner shall alter the drainage pattern and system designed by Declarant without the prior written approval of the Design Review Committee and the City of Caldwell.

D. Electric Service: Electric service for the Common Area may be separately metered or supplied and metered. The Association shall have an easement across the Property and all Lots for installation, repair, and replacement of such electrical transmission facilities as may reasonably be necessary to provide an electrical power supply to the Common Area. If supplied through an Owner's privately metered service, the Owner of the Lot shall be entitled to collect from the Association a reasonable charge for the electrical service from the affect Lot, based upon a reasonable estimation of the amount of electrical power used by the Association. In the event the Association concludes that the amount charged by the Lot Owner is unreasonable, the Association may elect to have electrical power separately metered to the Common Areas.

E. Encroachment Easements: Declarant reserves unto Declarant and also hereby grants to the Owners, reciprocal easements of encroachments between each Lot and such portions of the Common Area adjacent to any particular Lot, and adjacent Lots, due to the unwillful placement, settling, or shifting of Improvements.

F. Future Easements: The Declarant and the Association shall have the future right to provide for such easements across, upon and under the surface of the Common Area as may be reasonably necessary to serve the interests and convenience of the Owners for public or private ways, public utilities, drainage, access, subterranean irrigation lines, and eave and balcony overhangs.

G. Improvement, Maintenance and Repair Easement: Declarant reserves unto Declarant and also hereby grants to the Design Review Committee and the Association, together with the right to grant and transfer the same to its successors and assigns, a non-exclusive, permanent easement across, upon or through the Property or Lots, and the Common Areas, for the purposes of alteration, improvement, maintenance and repair of facilities located throughout the Property, including, but not limited to, snow removal, landscape maintenance, utility service and drainage system maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right, from time to time, to cut, trim and remove trees, shrubs, overhanging branches and other obstructions that may injury or interfere with the use, occupation or enjoyment of the reserved easement, the operation, maintenance and repair of utility service connections and drainage systems or adjoining Lots.

H. Landscape Area Easement: Declarant hereby reserves to itself and for the benefit of the Association an exclusive easement for landscape and related purposes across all landscape easement areas or Common Areas designated as landscape areas on any plat of any portion of the Property. Declarant further reserves to itself and the Association, the right to install, maintain, replace and restore such landscaping and the Declarant or the Design Review Committee may deem related improvements as appropriate. Any such landscaping improvements shall be owned and maintained by the Association or a Sub-Association in accordance with the provisions of the Declaration. In connection with its rights under the easement created hereby, the Declarant or the Association, shall exercise exclusive control over the placement of any landscaping features, signs, sculptures, or any other structures in or on the easement premises, and no Owners shall have then right to erect, place or cause to be erected or placed any landscaping feature, sign, sculpture or any other structure in or on the easement except with the prior written consent of the Design Review Committee.

I. Restoration of Easements: In the event that any construction, installation, maintenance, operation, repair or replacement of any of the easements granted in this Article disturbs or damages any landscaping or other improvements within the Property or any Lot, including the Owner's Lot, the Owner performing, or having performed, the work, shall restore the Property or Lot to a conditional reasonably comparable to its condition prior to the work. If the Owner performing, or having performed, the work does not complete the restoration within fourteen (14) days after completion of the work, upon notice to the Owner,

the Owner, including the Declarant or Association, of the disturbed improvements shall have the right to complete the restoration in a reasonable manner, as determined in the sole discretion of the Owner of the disturbed improvements, and charge the costs thereof to the Owner who performed the work. The Owner who performed the work shall pay the costs and expenses within twenty (20) days of the billing therefore. If a Common Area, the Association may include the costs and expenses of the restoration as part of the Common Area Maintenance charges payable by the Owner performing the work or take any other appropriate action to collect the fees and expenses.

J. Signage Easement: Except as limited by any separately recorded instrument or the Ordinances of the City of Caldwell, Declarant reserves unto Declarant and also hereby grants to the Association, a nonexclusive easement on, over, under and through any portion of the Property located within fifteen (15) feet of any public right-of-way- for the construction, installation, maintenance, repair and replacement of directional signage and other signage deemed necessary or appropriate, as determined in the sole discretion of the Declarant or the Association, to be for the benefit of the Property as a whole or a phase or particular grouping of uses thereon. In addition, Declarant reserves unto the Declarant and also grants to the Association, a nonexclusive easement on, over, under and through those portions of the Property located within fifteen (15) feet of any public street or highway for the construction, installation, maintenance, repair and replacement of monument signs. Notwithstanding the above, Declarant may assign these easement rights to specific Owners, and subject to Design Review Committee approval, allow specific Owners the right to place monument signage within the easement areas set forth in this section.

K. Utilities Easement: Declarant reserves unto Declarant and also grants to the Association, a non-exclusive easement on, over, under and through the Property and all Lots for the construction, installation, maintenance, operation, repair and replacement of all utilities, including the irrigation system.

ARTICLE IV OWNER INSURANCE AND MAINTENANCE RESPONSIBILITIES

A. Maintenance Obligations: Each Owner shall maintain in first class condition, order, and repair, all improvements, including landscaping located on an Owner's Lot excluding any portion of the Lot designated as Common Area or to be maintained by the Association. The Owner's obligations include but are not limited to:

1. All windows, glass and exterior surfaces of any structures shall be washed and cleaned regularly;

2. All trash and rubbish shall be kept in enclosed containers in the location and manner required or provided for by the Design Review Committee;

3. All landscape maintenance shall include, but is not limited to weekly mowing of lawns, monthly trimming or hedges, weekly adequate irrigation, replacement within one (1)

week of dead, diseased or unsightly landscaping, weekly removal of weeds from planted areas, and appropriate pruning of plant materials; and,

4. Compliance with any other regulations or rules as promulgated or amended from time to time by the Association or Design Review Committee.

B. **Owner's Insurance:** Each Owner shall carry or cause to be carried by Occupants or Tenants, public liability insurance for damage to persons or property occurring upon such Owner's Lot or elsewhere upon the Property, in any manner arising out of the use of such Owner's Lot. Such insurance shall be in amount of not less than Five Million Dollars (\$5,000,000), combined single limit, or in such other minimum amount as the Declarant or Association may from time to time determine. Each Owner shall furnish the Association with a current certificate of such insurance to be in effect at all times. If an Owner fails to maintain or cause to be maintained such insurance coverage, the Association may obtain such insurance coverage as it deems appropriate and levy an assessment against such Owner personally and such Owner's Lot for the amount of the premium therefor. The Declarant or Association may require that in any given situation, the Declarant or Association is named as "Additional Insured" on the Owner or Occupant/Tenant policy and the Owner shall be liable for the costs and expenses of such additional premium, if any.

ARTICLE IV COMMON AREA MATTERS

A. **Common Area Expenses:** All Owners agree to pay, as demanded by the Declarant or the Association, the reasonable fees and charges for improvement, maintenance, repair and capital replacement of Common Areas or facilities as set forth in this Declaration, the By-Laws, Design Guidelines or Regulations of the Association, all as amended from time to time.

B. **Enjoyment:** Each Owner shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and pass with the title to every Lot, subject to the rights of the Association to:

1. **Assess Fees or Levies:** In accordance with this Declaration, the Articles of Incorporation of the Association or its By-Laws, Design Guidelines, Regulations or Rules, the Declarant or the Association shall have the right to assess fees or levy reasonable assessments for the improvement, maintenance, operation and repair and replacement of the Common Areas or any facilities or plantings therein.

2. **Borrow Money:** In accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities; and to place a mortgage or trust deed thereon. Provided that the Common Areas or facilities may not be mortgaged or conveyed without the consent of at least two-thirds of the votes of the Lots, represented by the Owners thereof as Members of the Association, voting in person or by proxy at a meeting duly held for this purpose. And, provided further, that any conveyance or mortgage of the Common Area shall be subject to and subordinate to the rights of ingress and egress of an Owner to the Owner's Lot.

3. **Dedicate Land:** Dedicate or transfer all or any part of the Common Areas of facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Provided however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Areas or facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the consent of at least two thirds of the votes of the Lots, represented by the Owners thereof as Members of the Association, voting in person or by proxy at a meeting duly held for this purpose.

C. **Private Areas Used in Common:** Some areas of the Lots are subject to cross-easements for parking and pedestrian access between Lots. The respective Owner agrees that the Owner and its agents, employees and representatives will maintain these areas at all times in a clean and safe manner for the purposes of protecting the other Owners and their invitees. In addition, the Owners agree specifically to annually maintain their respective parking areas and to completely resurface the parking areas with at least the same type of material used by Declarant, not less frequently than every seven (7) years. Provided further, that if the parking area needs resurfacing prior to that time, the Owner agrees to have the resurfacing performed. In the event that the Owners determine that it is cost effective to treat the individual parking areas as Common Areas for the purpose of parking and resurfacing, then the Association is authorized to pay for resurfacing of the entire parking area of the Subdivision upon a consent of at least two thirds of the votes of the Lots served by the respective parking area, represented by the Owners thereof with one vote per Lot owned, voting by written vote, or in person or by proxy at a meeting duly held for this purpose. In such event, the costs therefore shall be assessed against each benefited Lot.

ARTICLE IV PROPERTY USE RESTRICTIONS

A. **Antennae:** No antennae, satellite receivers, television or radio aerials shall be installed on the Property. Provided however, any such item may be installed so long as it is contained wholly within the inhabited structure. And further provided, that the Design Review Committee may approve a single satellite receiver "dish" be installed on the structure or elsewhere on the Lot so long as the "dish" does not exceed eighteen (18) inches in diameter and three (3) feet in height, or where appropriate to the particular use of the Lot, a grouping of up to ten (10) antenna may be placed on the roof of the building so long as screened entirely from view. The Design Review Committee shall approve the placement and screening for any antennae.

B. **Exclusives and Uses:** No Lot shall be used in violation of an existing Exclusive Use. All Lots shall be utilized only as approved in writing by the Design Review Committee and in compliance with applicable laws, ordinances or regulations.

C. **Garbage and Refuse Disposal:** No part of any Lot shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of any Lot except in a sanitary container. Any equipment for

the storage or disposal of such material must not violate setback restrictions and must be enclosed with an aesthetic screen or fence in accordance with the applicable Design Guidelines and shall be kept in a clean and sanitary condition.

D. **Leasing Restrictions:** Any lease between and Owner and Occupant or Tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's approvals pertaining to the Lot, the Association's Articles of Incorporation, Bylaws, Design Guidelines, and Rules and Regulations. And, that any failure by the Occupant or Tenant to comply with the terms of such documents shall be a default under such lease.

E. **Loading Areas ~ Design and Screening.** Each Industrial Lot, and others as required by the Design Review Committee based on the proposed uses or business, shall have sufficient facilities, approved by the Design Review Committee, for loading and unloading to serve the business conducted on the Lot, without using any adjacent public streets. Design, location, screening and use shall be in compliance with the respective Design guidelines.

F. **Nuisances:** Nothing of an offensive, dangerous, odorous, or noisy endeavor shall be conducted or carried on any Lot, nor shall anything be done or permitted on the Property which may be or become an annoyance or nuisance to other individuals or Owners.

G. **Parking:** Each Owner shall be responsible to provide and maintain such parking and parking areas to serve the business conducted on the respective Lot as are constructed by Declarant, required by this Declaration or any governmental authority with jurisdiction thereof. No parking shall be permitted on any portion of the Property except in designated parking spaces or other approved areas as in the case of a trucking or freight company. Adequate off-street parking may be provided on the Lot or pursuant to a Shared Parking Agreement with another Lot Owner. No on-street parking shall be allowed except as approved by the Design Review Committee. Any such approved on-street parking shall comply with the parking requirements of the City of Caldwell.

H. **Roof Mounted Equipment:** All roof-mounted equipment, including mechanical equipment, utility installations, duct work, radar equipment, satellite equipment or other telecommunications equipment or antennae or any other devices that project vertically above the roof line, must be approved in writing by the Design Review Committee, and if approved shall be constructed and screened, if required, in accordance therewith, as well as comply with any applicable laws, ordinances or regulations.

I. **Sight Distance at Intersections:** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) feet and eight (8) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and an imaginary line connecting them at a point 30 feet from the intersection of the street lines, or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement.

J. Signs: No sign of any kind shall be displayed to public view on any Lot except a professionally designed and constructed sign meeting the sign requirements of City of Caldwell and approved by the Design Review Committee, as well as in accordance with the Design Guidelines. The Association may maintain Subdivision identification signs, and appropriate informational signs of a size and design approved by the Design Review Committee.

K. Storage Areas ~ Use and Screening: Unless previously approved in writing by the Design Review Committee, no materials, supplies, inventory, garbage dumpsters, equipment or any other personal property shall be stored on any portion of the Property, whether such items are for sale or used in or for the Owner's business, except inside a building or behind an approved visual barrier in compliance with the respective Design Guidelines. Such barrier shall not be less than nor exceed the height approved by the Design Review Committee and in compliance with any applicable laws, ordinances or regulations.

ARTICLE V DESIGN REVIEW COMMITTEE

A. Design Review Committee Approval. No improvements, including buildings or other structures, including without limitation, fences, walls, signs, and parking areas, or landscaping improvements (hereinafter collectively improvements) of any type shall be altered, built, commenced, constructed, placed, sited or maintained on any Lot, Common Area or other area within the Property, nor shall any exterior additional, change or alteration of existing Improvements be made until the complete plans and specifications and a plan showing the location of the structure, exterior finish samples have been approved by the Design Review Committee, in its sole discretion. The Design Review Committee shall specify the types of plans and specifications, numbers of copies and fees for review. No submission shall be deemed complete unless all required documentation has been submitted in accordance with the requirements of the Design Review Committee. Among the items that may be considered by the Design Review Committee include, but are not limited to the Design Guidelines, harmony of external design with existing structures, location or proposed improvements or alterations, materials, quality of workmanship, compliance with specific material type requirements and location, as provided herein or the respective Design Guidelines.

B. Action by Quorum and Majority: A majority of the Design Review Committee shall constitute a quorum. All action by the Design Review Committee shall be by majority vote of those members in attendance so long as a quorum is present at a meeting.

C. Alternate Members: In the event of death or resignation of a member, the remaining members shall have full authority to act, and within a reasonable time after the occurrence of such vacancy, the Declarant, or if after the formation of the Association, the Board of Directors of the Association shall appoint a replacement.

D. Design Review Committee Initial Members: The Design Review Committee shall have three (3) members. The initial members of the Design Review Committee are appointed by and serve at the discretion of the Declarant until the formation of the Association. The initial members are James Hoover, Cornell Larson and Susan Wildwood. These individuals serve at the discretion of the Declarant. The Declarant may increase or decrease the number of members. Upon the sale of the last Lot in the Subdivision, the Owner's Association or Associations shall take over the responsibilities of Declarant. The Board of Directors of the Association shall appoint members of the Design Review Committee at each annual meeting of the Board.

E. Certification by Design Review Committee or Secretary of Association: The records of the Design Review Committee, or as appropriate, the Secretary of the Association, shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Design Review Committee showing that the plans and specifications for the improvements or other matters therein provided for have been approved and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Design Review Committee, or Association by the Secretary, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to any Lot or the Subdivision or any portion thereof or any lien thereon or any interest therein as to any matters referred to in the certificate and fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefore by municipal or other governmental authority, any structure, work improvement or alteration shall as to any purchaser or encumbrancer in good faith and for value and as to any title company that shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Secretary of the Association shall have been served on the respective Lot Owner, or filed in the office of the County recorder of Canyon County, State of Idaho, or unless legal proceedings shall have been instituted to enforce completion or compliance.

F. Compensation: The members of the Design Review Committee may be entitled to compensation from the Declarant or Association as determined by the Board of Directors (Board) for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder, said compensation to be determined by the Board.

G. Design Guidelines: The members of the Design Review Committee shall have the power to adopt, amend, interpret, promulgate, and repeal Design Guidelines in their sole discretion. The Design Guidelines shall have the status of a regulation or rule promulgated by the Association. The Design Review Committee may adopt any combination of Design Guidelines or have differing Design Guidelines for different locations or grouping of uses such as differing guidelines for commercial, industrial and office.

H. Duties: The duties of the Design Review Committee are to review, approve, deny or conditionally approve of all new construction or alteration of existing structures on such terms and conditions as the Design Review Committee shall deem appropriate. Its determination is binding on all parties. The Design Review Committee is further charged

with enforcement of this Declaration until the Board of Directors takes over the responsibilities of the Declarant. The Design Review Committee may, with the consent of the Declarant, appoint a Sub-Committee, which may or may not be constituted of Members of the Association, to enforce all areas of this Declaration not pertaining to new construction.

I. Duties of Sub-Committee: In the event that a Sub-Committee is appointed, its duties shall be to enforce, control and review for approval, non-approval or conditional approval, all areas encompassed by this Declaration not pertaining to new construction or alteration of existing structures. All Owners agree that the Sub-Committee and its successors shall incur no liability for any omissions or acts under this Declaration. In the event of death or resignation of a member, the remaining members shall have full authority to act, and within a reasonable time after the occurrence of such vacancy, the Design Review Committee and Declarant, or if after the formation of the Association, the Board of Directors of the Association shall appoint a replacement.

J. Fees: The Design Review Committee may establish, by rules, a fee schedule for an architectural review fee to be paid by each Owner, except Declarant, submitting plans and specifications for approval. No submission for approval will be considered complete, and the Design Review Committee has no obligation to begin its review of the application, until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Design Review Committee for the costs of professional review of submittals including review by legal counsel, and the services of a consultant to administer the matter to its completion, including inspections that may be required by any governmental agency or jurisdiction.

K. Inspections. The Design Review Committee shall have the right to inspect all work in progress in any location on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is violating this Declaration, Design Guidelines, or any other rule or regulation adopted by the Association or Design Review Committee.

K. Liability: Neither the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or any other party, for any damage suffered or claimed on account of any act, action, or lack thereof, or conduct of the Design Review Committee or any members thereof, so long as the Design Review Committee, or the respective members thereof, acted in good faith on the basis of information that they then possessed.

L. Rules and Regulations. The Design Review Committee is authorized, but is not required, to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Design Review Committee deems appropriate. The Design Review Committee is further empowered to adopt such rules and regulations as it deems appropriate, consistent with this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests, referred to as Design Guidelines. Any such rules and regulations, if adopted, may be amended in the sole discretion of the Design Review Committee. The failure of the Design Review Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of the Design Review

Committee's discretion. It is the specific intent of this Declaration to provide the Design Review Committee with as broad discretion as is permissible under Idaho law.

M. Submission of Applications, Plans and Specifications. To request Design Review Committee approval for the alteration, construction, demolition, modification, siting or removal of any exterior improvement(s) or interior improvement(s) that are visible from the exterior of a building, the Owner shall submit a written application, in a form required by the Design Review Committee. The form must be signed by the Owner, contain all requested information and be accompanied by all other material to be submitted, including required samples. All applications must contain, or have submitted therewith, the following materials prepared in accordance with acceptable architectural standards, submitted with the application form and fees, if any, as required by the Design Review Committee:

1. **Building Plan.** A building plan shall consist of preliminary or final blueprints including the footprint of all structures, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building that shall indicated, by sample, if required by the Design Review Committee, all exterior colors, material and finishes, including roof, to be used.

2. **Garbage Plan.** A garbage plan showing the location, design, size and other pertinent information related to the storage and disposal of any garbage, refuse, compost, grease or other waste byproduct, including the visual barrier that screens such areas from view.

3. **Landscape Plan.** A landscape plan, for that portion of the Lot to be landscaped that shall show, unless otherwise waived by the Design Review Committee the location, type and size of trees, plants, ground cover, shrubs, berms and mounding, grading, irrigation, drainage, fences, freestanding exterior lights, driveways, parking areas, and walkways. The plan shall be professional in appearance and if any part of the proposed landscape is subject to the Landscape Ordinance of the City of Caldwell, the entire plan shall be prepared by a licensed landscape architect.

4. **Sign Plan.** A signage plan showing the location, design, size, color, and materials proposed for all exterior signs as well as any sign to be located within any structure or building that is visible from the exterior.

5. **Site Plan.** A site plan showing the location of all improvements, including but not limited to landscape, parking areas, sidewalks, fences and walls, loading docks and storage areas, including garbage storage areas, on the Lot, Lot drainage and all setbacks or other pertinent information related to the improvements.

N. Submission Review Period. The Design Review Committee shall have twenty (20) days from the date the Design Review Committee has received all required materials, to review the plans, drawings and specifications. The Design Review Committee shall indicate its approval of the proposal by the dating and signing of the plans by a designated member of the Design Review Committee. Such approval shall be construed as full compliance with this

Declaration. Approval shall be transmitted to the applicant by letter. No proposal shall be deemed approved without the written approval of the Design Review Committee and an authorized signature of a Design Review Committee member. The Design Review Committee shall have the sole discretion to determine what is substantial or full compliance with this Declaration. The Design Review Committee shall have the right to retain the plans and specifications. The Design Review Committee shall have no authority to approve the interior design except to the extent incidentally necessitated by use and size requirements or as otherwise specified herein.

O. Substantial Compliance, Inspections, Final Inspection and Occupancy: Actual construction of any improvements shall comply substantially with the plans and specifications approved by the Design Review Committee. Upon substantial completion of any improvement, the Design Review Committee shall be permitted to make a final inspection thereof, and no improvement shall be occupied until such time as the Design Review Committee shall have completed its final inspection and certified it for occupancy.

O. Variances. The Design Review Committee may authorize variances from compliance with the requirements and conditions and restrictions provided in this Declaration, the Bylaws, or Design Guidelines in the sole discretion of the Design Review Committee where such topography, natural obstructions, aesthetics or hardship may so require. Such variances must be evidenced in writing signed by at least two (2) members of the Design Review Committee. If a variance is granted, no violation of this Declaration, the Bylaws or Design Guidelines or other rules and regulations shall be deemed to have occurred. The granting of such variance shall not operate to waive any such requirements for any purpose except as to the particular subject matter of the variance and the specific Lot covered thereby. The Design Review Committee shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners. Provided, any such variance shall be in compliance with any applicable ordinances of the City of Caldwell.

P. Violations. Any Owner of a Lot, the professional management company, the Design Review Committee, or the Association may bring a complaint against any other Owner for violation of this Declaration, the Design Guidelines or other rules and regulations not covered by a variance approved by the Design Review Committee. Such complaint shall be in writing and specify the violation and be filed with the Design Review Committee.

1. Notice of Violation. If the Design Review Committee determines that there has been a violation, it shall issue a written notice thereof to the Owner or the Lot and, if applicable, the Occupant or Tenant, specifying the violation and a demand that the Owner bring the Lot to conformance as follows:

a. The Owner, Occupant or Tenant shall immediately cease the activity that constitutes the violation.

b. The Owner, Occupant or Tenant shall adhere to the corrective measures, including time periods in which to cure the violation, as set forth in the written notice.

2. **Appeal to Board of Directors.** An Owner that is dissatisfied with the Design Review Committee's notice may bring the matter before the Board of Directors within ten (10) calendar days of the Design Review Committee's notice of violation and the determination of the Board shall be binding on the Lot Owner.

3. **Other Enforcement.** Any Owner may commence a legal or equitable action to enforce this Declaration. The Association, professional management company or the Design Review Committee, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined to be necessary or proper to correct or enjoin any activity of condition existing with the Property, the continuation of which violates the provisions of this Declaration, the Design Guidelines and other rules and standards adopted by the Association, if any, or the approved plans and specifications. The authority of the Association shall include the power to retain legal counsel and expert witnesses, any filing fees, and all other costs and expenses associated with the action. The prevailing party, defined as that party to whom a duty is owed or a sum of money is to be paid, shall be entitled to reasonable fees and expenses of the action, including attorneys fees, whether the matter is pursued to litigation, or not, and upon appeal. If the prevailing party is the Association, all the fees and expenses to be paid by the defaulting Owner may be paid at the Associations sole discretion as a limited assessment against any or all of the Lots owned by the defaulting Owner and payable upon the terms of such limited assessment and enforced and collected as any other assessment as provided herein.

P. **Waivers:** The approval of any plans, drawings or specifications for any structure, improvement, or alteration or for any matter requiring the approval of the Design Review Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specification, or matters subsequently submitted for approval.

ARTICLE VI OWNERS' ASSOCIATIONS

A. **Association and Sub-Associations Establishment:** Not later than the sale of the last Lot in the Subdivision, the Declarant or the Owners shall form an Association through filing of articles of incorporation as a nonprofit Idaho Corporation with the Idaho Secretary of State. Provided, however, that an Association may be formed prior to the sale of the last lot or Sub-Associations may be formed as the Declarant in its sole discretion determines. Provided however, if there is no common area to be maintained by an association in a given phase or area, there shall be no requirement to form a Sub-Association. Any Sub-Association shall be subject to this Declaration, the Association and the Design Review Committee, but may have discrete articles of incorporation, bylaws, committees and Design Guidelines to govern the activities of the Sub-Association. In the event of any conflict, this Declaration shall control over any matter in dispute. The Association shall be charged with the duties and vested with the powers prescribed by law and set forth in this Declaration, the articles of incorporation and bylaws of the Association. Neither the articles of incorporation nor any bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event the Association or any Sub-Association is dissolved or transfers by

separate instrument any of its obligations and responsibilities to another person or entity, such person or entity shall accept responsibility for managing the Common Areas and otherwise assume all obligations and duties of the Association contained herein.

B. Incorporation of Plat Requirements and Declaration: All the provisions of the final plat for the specific area and this Declaration shall be deemed incorporated into the articles of corporation or bylaws of the Association or Sub-Association, to manage common areas managed, owned or operated by the Association or Sub-Association, as if fully set forth therein. If there is a conflict between the articles of incorporation, bylaws or rules of the Association or any Sub-Association and this Declaration, the provisions of the plat and this Declaration shall control.

C. Liability of Association Board Members, Association Officers and Declarant. Neither the Declarant, nor any member of the Board, nor any Officers of the Association or Sub-Association, including all agents and employees of the same, shall be personally liable to any Owner, Member, Occupant, Tenant or any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Declarant, the Board, an Officers, including all agents and employees of the same. Provided, that such person acted in good faith and without intentional misconduct. The Association or Sub-Association shall hold harmless, indemnify and defend all such persons or entities from any suit or proceedings which may arise as a result of a decision made in good faith and without intentional misconduct within the scope of such person's responsibilities.

D. Membership: Every Owner of Lot in the specific final plat shall be a member of the Association and any respective Sub-Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Membership shall not include those persons or entities who hold an interest merely as security for the payment of an obligation.

E. Membership Classes and Voting: Each Association shall have two (2) classes of voting membership:

1. **Class A:** The Class A members shall all be Owners, with the exception of the Declarant, during the period when the Declarant is a Class B member. Each Class A member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such Owners determine. However, there shall not be more than one (1) vote cast per Lot; fractional votes shall not be permitted. The vote applicable to any Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

2. **Class B:** The sole Class B member shall be the Declarant, or its successor, which shall retain seventy-five percent (75%) voting control until the last available Lot in the entire Property is sold. In that event, Declarant shall become a Class A member to the extent and under the same conditions as other Owners of Lots.

F. Officers and Directors: At an annual meeting called pursuant to written notice as herein provided for the establishment of annual assessments, a Board of Directors of the respective Association shall be elected by ballot of a majority of those attending said meeting or voting by proxy. The Board shall consist of three (3) Directors elected to serve for a period of three year with staggered terms. Provided, however, that until the sale of the last lot in the Subdivision, the Declarant shall have the right to select a person to fill one (1) seat on the Board and shall have seventy-five percent (75%) voting control on the Board. At the initial election, one Director shall serve for one year, one for two years and the third for three years. Elections thereafter shall take place annually for one Director position. One member shall serve as the Chairperson of the Board, elected by majority vote of the Directors. One person shall serve as Secretary to the Board.

G. Powers and Duties of Association. The Association shall have all powers and obligations under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the articles of incorporation, the bylaws or this Declaration. The Association shall also have the power to assume all powers and obligations of the Declarant at such time as the Class B ceases to exist. It shall have the power to do any and all lawful things that may be organized, required or permitted to be done under the articles of incorporation, bylaws or this Declaration, and to do and perform any and all acts that may be necessary or proper for, or incident to, the proper management and operation of the Common Areas and the performance of other responsibilities including, but not limited to, the following:

1. **Assessments.** The power to levy regular, special and limited assessments on the Owners and Lots and to enforce payment thereof in accordance with the provisions herein.

2. **Budgets and Financial Statements.** Financial statements for the Association and respective Sub-Associations if applicable, shall be regularly prepared and copies distributed to each Member. A budget for the upcoming year shall be distributed not later than sixty (60) days after the beginning of each fiscal year. A balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for the closing year shall be distributed not later than ninety (90) days after the close of the fiscal year.

3. **Delegation of Authority.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager or carry out any association powers or duties.

4. **Emergency Powers.** The right to enter onto any Lot or into any Building or other improvement on a Lot in the event of any emergency involving illness or potential danger to life or property, or when necessary in connection with any maintenance or construction for which it is responsible, or where an inspection is associated with any complaint by another Owner, the Design Review Committee or the Association or Sub-Association. Such entry shall be made at reasonable times given the situation and with reasonable inconvenience to the Occupants as is practicable. Any damage caused thereby shall be repaired by the Association, unless the entry was necessitated by a condition or situation caused by the Owner, Occupant, Tenant or an invitee.

5. **Eminent Domain.** In the event of a threatened taking or condemnation of all or a portion of the Common Area, the Association shall represent all Owners in connection with such proceedings. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking or condemnation and shall be entitled to make a voluntary sale to the condemner in lieu of engaging a condemnation action. Any awards received on account of the taking or condemnation of Common Area shall be paid to the Association, which may retain such award and utilize the same to offset future Common Area expenses.

5. **Enforcement.** The power and authority from time to time, in its own name, on its own behalf, or on behalf of any Owner(s) who request or consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the articles of incorporation, bylaws, this Declaration, or other rules and regulations and to enforce by mandatory injunction, or otherwise, as well as seeking monetary damages.

6. **Identification Signs.** Maintain, replace and repair, all permanent entry and special identification signs, including without limitation, entrance and monument signs, for the Property whether the same be located within or outside of the boundaries of the Property.

7. **Insurance.** Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance.

a. Comprehensive public liability insurance insuring the Association, the Board, Officers, the Declarant, the Design Review Committee and the individual Owners, and agents and employees of each of the foregoing, including any Sub-Association, against any liability incident to the ownership and/or use of the Common Areas owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board.

b. Directors and officers' full coverage liability insurance in an amount determined by the Board.

c. Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all improvements, equipment, fixtures and other property located within the Common Areas owned by the Association, including such equipment, fixtures and other property not located in the Common Areas, if the same are used or necessary for the use of the Common Areas or easement areas under the control of the Association.

d. Workers' compensation insurance as required by the State of Idaho and other insurance policies and coverage as the Board shall deem necessary or reasonable to carry out the Association's functions as well as to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property

Insurance premiums for the various policies shall be deemed a common expense to be included in the Regular Assessments levied by the Association. The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies and shall have full power to receive such proceeds and to deal therewith. All such policies shall also be subject to:

a. **Contribution**: Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgage holders.

b. **Insurance Rating**: All hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.

c. **Subrogation Waiver**: Each policy of insurance obtained by the Association shall where possible provide:

(1) A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests.

(2) A provision that the policy cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured.

(3) That any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

8. **Licenses, Easements and Rights-of-Way**. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on, through or under the Common Areas as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, including any public or quasi-public improvements or facilities.

9. **Operation and Maintenance of Common Areas**. Perform or provide for the performance of, the improvement, maintenance, management, operation and repair of the Common Areas including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss and all other property owned by the Association.

10. **Taxes and Assessments**. Pay all real and personal property taxes and assessments separately levied against the Common Areas owned by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association. Provided, however, that they are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state

or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

11. **Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, refuse collection, electrical telephone, gas and other necessary services for the Common Areas owned by the Association.

H. **Professional Management Company:** The business and affairs of the Association shall be managed by a professional management company. No management agreement shall be terminated without having another contract in place with a different professional management company.

ARTICLE ASSESSMENTS

A. **Assessments a Charge Against the Lots.** All Assessments, together with interest, costs, including administrative costs and expenses, and reasonable attorneys' fees that may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and payable. The lien shall not be affected by a conveyance of title. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Areas or by abandonment of such Owner's Lot.

B. **Covenant to Pay Assessments:** Each Owner of any Lot, by acceptance of a deed therefore, whether or not expressed in such deed, is deemed to covenant and agrees to pay to the Association:

1. **Association Assessments.** All Regular, Special and Limited Assessments or charges made by the Association of which the Owner is a Member; and

2. **Sub-Association Assessments.** All Regular, Special and Limited Assessments or charges made by the Sub-Association of which the Owner is a Member.

3. **Set-Up and Transfer of Ownership Fee:** A set-up fee of two hundred fifty dollars (\$250) upon each sale of each Lot, payable at closing by the title company.

C. **Estoppel Certificate.** The Association or any Sub-Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a written statement stating whether or not a particular Owner is in default under the provisions of this Declaration and the amount of any assessments due or previously paid as to such Lot and such other matters as the Board deems reasonable to respond. The Association or Sub-Association shall have the right to charge a reasonable fee for the certification herein provided.

G. Exempt Property: The following property subject to this Declaration shall be exempt from the assessments created herein:

1. Properties expressly dedicated to and accepted by a local public authority;
2. Lots or Common Facilities owned by the Association.
3. Unsold lots owned by the Declarant.

C. Types of Assessments. All Owners are subject to and shall pay as assessed, the following assessments that are determined and assessed by the Board against one or more Lots in the Property:

1. **Limited Assessments:**

a. **Management and Repair:** The Association shall have the power to incur expenses for maintenance or repair of any Lot or any improvements on a Lot. If such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Area or any other portion of the Property and if the Owner of the Lot has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity therefor has been delivered by the Board to the Owner. The Board shall levy a Limited Assessment against the Lot and the Owner thereof shall pay for the costs of such maintenance and repair and any other costs and expense, including attorney's fees arising out of or incident to such maintenance and repair and the Assessment therefor.

b. **Correction of Violations.** In addition to maintenance and repair, the Board, upon notice from the Design Review Committee of the failure or refusal of an Owner or Sub-Association to correct a violation of this Declaration, Design Guidelines or any application rule or regulation, shall have the power to correct such violation on a Lot or an improvement on a Lot. The cost of such corrective action, together with interest, related expenses and attorneys' fees should be assessed against the Owner of the Lot. The Owner shall pay the assessment within thirty (30) days of billing therefor.

2. **Regular Assessments.** Regular Assessments shall be made by the Declarant until formation of the Association, and thereafter by the Association or Sub-Association if applicable, at times and intervals deemed appropriate by the Declarant or the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Declarant or the Board for the maintenance and operation of the Common Areas and other areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of federal, state or local governments, premiums for all insurance that the Association is required or permitted to maintain, landscaping and care of grounds, legal and accounting fees, and any deficit remaining from previous periods. The Regular Assessment for each upcoming year shall be determined based on the actual expenses incurred the previous year and an estimate of the

costs for the upcoming year as well as a charge for the capital replacement account for the Common Areas.

The Regular Assessment for the calendar year 2006 shall be one cent (\$0.01) per square foot of each Lot for capital replacement and one cent (\$0.01) per square foot of each Lot for operation and maintenance. The square foot assessment for both the capital replacement and operation and maintenance shall be evaluated in January of each year and adjusted based on actual experience or changes in projected reserve funds required for the capital replacement account. Provided that no Assessments shall be assessed against Lots owned by the Declarant or the Association.

The Regular Assessment shall be payable quarterly in advance with the first quarter paid from the closing of the sale of the respective Lot. Provided, however, where there is less than one (1) month remaining in the quarter, both the first quarter due and payable and the subsequent quarter shall be paid from the close of the transaction directly to the Declarant or Association by the title company handling the transaction. All other quarterly assessments shall be paid not later than twenty (20) days after billing therefore. Billings for assessments shall be deemed received by the Lot owner three (3) days after mailing of the billing.

3. Special Assessments. The Board may levy a Special Assessment at any time, payable over such period as the Board may deem appropriate for the following purposes:

a. To defray, in whole or in part, the cost of any construction or reconstruction of improvements on a Common Area, unexpected repair or replacement of a Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of special services, other than those appropriate for Limited Assessments, or for any other expenses incurred or to be incurred as provided herein.

b. To defray a deficit in the common and ordinary expense of the Association for which the Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay necessary or appropriate expenses, as determined by the Board.

4. Sub-Association Assessments. Any Sub-Association is hereby empowered to assess and certify for levy and collection by the Association, Regular, Special and Limited Assessments on the Lots and Owners thereof who are Members of the Sub-Association. The Secretary of any Sub-Association shall provide written notification to the Board that the Sub-Association Board of Directors has approved an assessment. Upon receipt of such notification, the Board shall levy such Assessment in accordance with the terms and conditions of the certification and through the process in this Article. Funds paid pursuant to a levy certified by a Sub-Association shall be deposited in the separate account of the Sub-Association.

I. Uniform Rate of Assessment. Except as expressly provided in this Declaration, Assessments shall be fixed for each Lot based on the square footage of land within each Lot as compared with the square footage of land in all Lots, subject to the right of the Association to make equitable adjustments based on the density of the development, the nature and intensity

of the use and other such criteria as shall be appropriate. Within limiting the foregoing, portions of the Property owned by Declarant, may at Declarant's sole discretion, not be required to pay Assessments.

I. Unpaid Assessments, Late Fees, and Interest: Any assessment not paid within thirty (30) days after the due date are deemed unpaid and subject to late fees, interest, and other penalties.

1. **Late Fee:** Unpaid Assessments are subject to a late fee of fifty dollar (\$50) or such other amount as set annually by the Board.

2. **Interest:** Unpaid Assessments shall bear interest from the due date at the rate of eighteen percent (18%) per annum or at such other interest rate as may be established annually by the Board.

ARTICLE XX ENFORCEMENT OF ASSESSMENTS

A. Association Authority. The right to collect the enforce payment of the Assessments made by the Association or Sub-Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Design Guidelines or other rules and regulations, the Owner against whom such enforcement is sought shall pay reasonable attorney's and all other costs and fees, including but not limited to accounting or administrative fees, in connection therewith.

B. Creation of Assessment Lien. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots pursuant to this Declaration, together with late fees and interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including but not limited to reasonable attorneys' fees, accounting or administrative fees. The lien shall be prior to and superior to all other liens, or claims created by subsequent recordation of this Declaration except the following. All other lien holders acquiring liens on any Lot after this Declaration is recorded shall be inferior liens to the lien levied by the Association or Sub-Association whether or not such consent is set forth in the instruments creating other such liens.

1. **Valid tax and other government assessments or liens;**
2. **Liens for all sums unpaid and secured by a first Mortgage or first Deed of Trust duly recorded in Canyon County, Idaho; and,**
3. **Recorded labor or material men's liens.**

C. **Enforcement.** Upon the failure of an Owner to pay an Assessment, the lien for Assessments herein created may be enforced by the sale, by the Association, of the Lot, to be conducted in the manner provided by law for the exercise of the power of sale in Deeds of Trust or any other manner elected by the Board without the necessity of filing any documents of foreclosure prior to proceeding other than notice to the defaulting Owner. In any such foreclosure, the Owner shall be required to pay the costs and expenses associated therewith, including all attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay any Assessments against the Lot arising during the proceedings. The Association shall have the right to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, and otherwise use the Lot as the Owner thereof.

D. **Non-Exclusive Remedy.** The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or equity.

ARTICLE X MAINTENANCE RESPONSIBILITY

A. **Association Responsibility:** The Association shall provide maintenance to and be responsible for the Common Areas and facilities and any improvements thereon, including any Association-owned structures, private streets, street lights, common drainage facilities, exterior boundary fencing, pedestrian easements and the landscape area easements. In the event the need for maintenance or repair is caused through the negligent or willful act of an Owner, the Owner's invitees, employees, agents or representatives, the costs of such maintenance or repairs and replacement may, in the sole discretion of the Association or Sub-Association, be added to and become part of the assessment to which such Owner's Lot is subject or may be assessed as a Special Assessment that shall be immediately payable by the Lot Owner. In order to assure that the Association properly performs its obligations as set forth herein, the Association shall contract with a professional property management company whose responsibility it shall be to operate and maintain all Common Areas and facilities, including the provision of administrative activities associated therewith. Any such contract entered into by the Association shall be terminable, without cause, upon not more than thirty (30) days' notice but in no event shall the management company be replaced without contemporaneous commencement of either on-site management by a professional manager or another management company.

B. **Owner Responsibility:** Each Owner shall be responsible for maintaining and keeping in good order and repair all improvements located on the Owner's Lot including, but not limited to all buildings, landscaping improvements, structures, parking areas, sidewalks and drainage facilities associated with the Lot except those that are specifically identified herein to be maintained by the Association.

C. **Cross-Easements.** Each Owner of a Lot burdened or benefited by a cross easement for ingress and egress as depicted on the Plat or described herein, shall together with the Owner or Owners of any other Lots burdened or benefited by the cross easement, be responsible for

the repair and maintenance of the easement premises unless owned or maintained by the Association.

ARTICLE X CONDEMNATION

A. **Consequences of Condemnation:** If at any time, all or any part of the Common Areas or facilities shall be taken or condemned by any public authority of sold or otherwise disposed of in lieu or in avoidance thereof, the following shall apply.

B. **Proceeds:** All compensation, damages or other proceeds payable by way of the condemnation (hereinafter condemnation award) shall be payable to the Association.

C. **Apportionment:** The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per square footage basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each account shall remain in the name of the Association and shall be further identified by Lot number and name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of the priority of their Mortgages and other liens (unless waived) and the balance remaining to each respective Owner.

ARTICLE XI MORTGAGEE PROTECTION

A. **Reserve Fund:** The Association shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of the Common Areas and facilities and such reserve shall be funded by at least quarterly assessments.

B. **Examination of Books:** The holders of First Mortgages shall have the right to examine the books and records of the Association and to require annual reports or other appropriate financial data.

C. **Liens:** Any lien which the Association may have on any Lot for the payment of assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date notice of such assessment lien is duly recorded.

D. **Consent of First Mortgage Holders:** Unless all institutional holders of First Mortgages have given their prior written approval, the Association shall not:

1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or facilities owned, directly or indirectly, by the Association for

the benefit of the Owners. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas or facilities shall not be deemed a transfer within the meaning of this clause.

2. Change the method of determining the obligations, assessments, dues or other charges, which may be levied against an Owner.

3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the improvements in the Subdivision or the maintenance of the Common Areas or facilities.

4. Fail to maintain fire and extended coverage on insurable Common Area property or facilities on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

5. Use hazard insurance proceeds for losses to any Common Area property or facility for other than the repair, replacement or reconstruction of such Common Area property or facility.

6. Materially amend this Declaration, the Association's Articles of Incorporation or its Bylaws in such a manner as to unreasonably impair the rights or obligations of any institutional holder.

ARTICLE IX MISCELLANEOUS

A. Amendment: This Declaration, except the easements herein granted, may be amended by the Declarant at any time prior to the sale of the last Lot. After the sale of the last Lot, up to the end of twenty (20) years from the date this Declaration is recorded, it may be amended only by either the notarized signatures of seventy-five percent (75%) of the Lots or an instrument signed and acknowledged by the President and Secretary of the Association affirming that such amendment was approved, either by proxy or affirmative vote of not less than seventy-five percent (75%) of the Lots, at a meeting called for such purpose. Thereafter, this Declaration may be amended or terminated only by either the notarized signatures of sixty-six percent (66%) of the Lots or an instrument signed and acknowledged by the President and Secretary of the Association, affirming that such amendment was approved, either by proxy or affirmative vote of not less than sixty-six percent (66%) of the Lots, at a meeting called for such purpose. Amendment or termination may take place at anytime.

B. Assignment by Declarant: Any or all rights, powers and reservations of Declarant herein contained may be transferred or assigned to the Association or to any other person, including corporations or associations which are now organized or which may hereafter be organized which will assume the specific rights, powers and duties of Declarant hereunder, evidencing its intent in writing to accept such assignment. All rights of Declarant hereunder reserved or created shall be held and exercised by Declarant alone, so long as it owns any interest in any portion of the Property until the sale of the last Lot.

C. **Binding Effect:** The covenants and restrictions of this Declaration and any amendment hereto shall run with and bind the land. These covenants shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded. It may be amended at any time in compliance with Paragraph A above. After the first twenty (20) years, the Declaration shall be automatically extended for successive periods of ten years, unless amended in accordance with Paragraph A above.

C. **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not be interpreted to nor affect those provisions contained in any section so referenced.

D. **Common Facilities Title and Improvements Transfer to Association:** The Common Areas shall be conveyed to the Association upon the sale of the last Lot by the Declarant. Declarant shall retain the right of continuing access to complete such improvements thereon or thereto as Declarant intends to construct.

E. **Enforcement:** The Association or any Owner or the owner of any recorded Mortgage upon any part of the Subdivision or a Lot, shall have the right to enforce, by any proceedings at law or in equity, including mediation and arbitration, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

G. **Exhibits.** All exhibits referenced or attached hereto are incorporated herein by this reference.

H. **Gender; Singular or Plural Usage.** Unless the context requires a contrary construction, the feminine, masculine or neuter shall each include the feminine, masculine and neuter. And, the singular shall include the plural and the plural the singular.

F. **Governing Law and Choice of Forum.** This Declaration shall be construed and governed under the laws of the State of Idaho. Any action to enforce any of its terms shall be brought in the District Court serving Canyon County, Idaho.

F. **Interpretation.** The provisions of this Declaration shall be liberally construed together to effectuate its purpose of creating a uniform plan for the development, management and operation of the Property.

F. **Severability:** Invalidation of any one of these covenants or restrictions by judgment or court order shall not invalidate ore affect any other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the date following the signature below.

FREEHOLD DEVELOPMENT, LLC

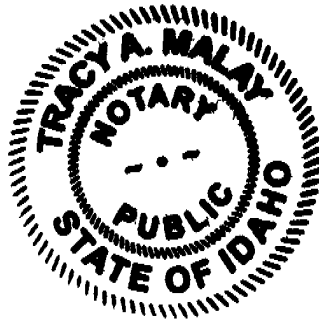
Craig L. Gibson
Craig L. Gibson, Managing Member

Dated: 2.8.06

STATE OF IDAHO)
)ss.
County of)

On this 8th day of February, 2006, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Craig L. Gibson identified to me or known to me to be the managing member of the above referenced limited liability company and the person whose name is subscribed to the within instrument and acknowledged to me that he was authorized to and executed the same on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Tracy A. Malay
Notary Public for the State of Idaho
Residing at Boise, ID
My Commission Expires: 11-06-07

2006 FEB 8 PM 2 18
G NOEL HALES
CANYON CNTY RECORDER
REQUEST Freehold Development
TYPE 100 FEE 16.00
BY M. Laughlin Ap.

RECORDED

200609196

①

200601912 INSTRUMENT NO.
200616599

FIRST AMENDMENT TO
SKY RANCH BUSINESS CENTER
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This First Amendment to the Sky Ranch Business Center Declaration of Covenants, Conditions and Restrictions (hereinafter Declaration), previously recorded as Instrument Number 200609196, on February 8, 2006, Records of Canyon County is effective immediately upon recordation hereof.

1. Article VI, Owners' Associations, Paragraph E. Membership Classes and Voting, Paragraph 1 Class A, is hereby amended to read as follows:

1. Class A: The Class A members shall all be Owners, with the exception of the Declarant, during the period when the Declarant is a Class B member. Each Class A member shall be entitled to one (1) vote per acre, as well as one (1) vote for any fractional portion of an acre that exceeds two-thirds (2/3) of an acre, the total of which comprises an individual Lot owned by the Owner. Fractional acreages from differing Lots shall not be combined to achieve an additional vote unless the total of all fractional acreages exceeds one (1) acre. In that event, only a single additional vote shall be attributable to all such combined fractional acreages. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such Owners determine. In the event that the Owners cannot reach a mutually acceptable determination, no votes shall be accepted or considered for that Lot. The contract seller shall exercise the vote applicable to any Lot being sold under contract of purchase, unless the contract expressly provides otherwise. Any such contract shall be submitted to the Declarant, or filed with the Association if formed, prior to exercise of such vote.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the date following the signature below.

FREEHOLD DEVELOPMENT, LLC

Craig L. Gibson
Craig L. Gibson, Managing Member

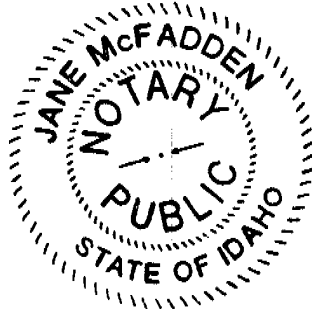
Dated: 3-7-06

STATE OF IDAHO)
)ss.
County of)

On this 7 day of March, 2006, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Craig L. Gibson identified to me or known to me to be the managing member of the above referenced limited liability

company and the person whose name is subscribed to the within instrument and acknowledged to me that he was authorized to and executed the same on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Jane McFadden
Notary Public for the State of Idaho
Residing at Meridian, ID
My Commission Expires: 10-27-11

200616599

RECORDED

2006 MAR 8 PM 4 49

C. NOEL HANES

CANYON COUNTY RECORDER

BY

[Signature]
sp.

PIONEER-CALDWELL

REQUEST

TYPE Power FEE 6.00

① 200605856

**SECOND AMENDMENT TO
SKY RANCH BUSINESS CENTER
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Second Amendment to the Sky Ranch Business Center Declaration of Covenants, Conditions and Restrictions (hereinafter Declaration), previously recorded as Instrument Number 200609196, on February 8, 2006, Records of Canyon County is effective immediately upon recordation hereof.

1. Article I, Definitions, is hereby amended to add a new paragraph to read as follows:

Y. "Industrial Lots" means Lots 1 through 12, Block 1 and Lots 1 through 10, Block 2, Phase One of the subdivision.

2. Article IV, Paragraph F, Nuisances is hereby amended to read as follows:

F. Nuisances: Nothing of an offensive, dangerous, odorous, or noisy endeavor shall be conducted or carried on any Lot, nor shall anything be done or permitted on the Property which may be or become an annoyance or nuisance to other individuals or Owners. Provided, however that equipment or devices required by state or federal laws or regulations, including but not limited to back-up alarms or equipment on equipment or vehicles, shall not be considered to be nuisances even though they may produce odor or noise that would otherwise be considered offensive.

In addition, the operation of a lumberyard, building materials distribution center, millwork manufacturing and distribution center, and truss manufacturing plant on any of the Industrial Lots shall not be considered in and of themselves a nuisance.

3. Article IV, Property Use Restrictions, Paragraph K Storage Areas – Use and Screening is hereby amended to read as follows:

K. Storage Areas Other than Industrial Lots ~ Use and Screening: Except on the industrial Lots, unless previously approved in writing by the Design Review Committee, no materials, supplies, inventory, garbage dumpsters, equipment or any other personal property shall be stored on any portion of the Property, whether such items are for sale or used in or for the Owner's business, except inside a building or behind an approved visual barrier in compliance with the respective Design Guidelines. Such barrier shall not be less than nor exceed the height approved by the Design Review Committee and in compliance with any applicable laws, ordinances or regulations.

4. Article IV, Property Use Restrictions, is hereby amended to add a new paragraph to read as follows:

L. **Storage Areas Industrial Lots ~ Use and Screening:** Any materials stored outside the building structures on an Industrial Lot shall be properly screened and in accordance with the design guidelines for industrial areas. Provided, however, that for security purposes the Design Review Committee may approve the use of chain-link fencing with slats and barbed wire as part of the fencing requirements on a particular lot. In addition, materials may be stored higher than the fence so long as the materials are not stored between the front plane of the building and the front lot line. In the event that the lot is a corner lot, the Design Review Committee may also require additional screening or fencing as well as limit the height of materials stored against the fencing or screening so as to minimize visual impact from such storage from any public street. For purposes of this Second Amendment, Lots 6-9 of Block 2 shall not be considered corner lots.

5. Article IV, Property Use Restrictions, is hereby amended to add a new paragraph to read as follows:

N. **Hours of Operation:** All uses shall comply with hours of operation established by the City of Caldwell or as otherwise established in the Design Guidelines. Provided, however, that unless prohibited by the City of Caldwell, industrial lot operations may be conducted for a full twenty-four (24) hour period and seven (7) days per week.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the date following the signature below.

FREEHOLD DEVELOPMENT, LLC



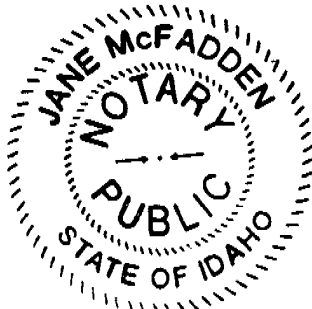
Craig L. Gibson, Managing Member

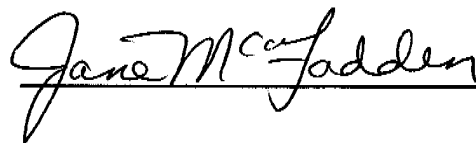
Dated: 6-21-06

STATE OF IDAHO)
)ss.
County of Ada)

On this 21 day of June, 2006, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Craig L. Gibson identified to me or known to me to be the managing member of the above referenced limited liability company and the person whose name is subscribed to the within instrument and acknowledged to me that he was authorized to and executed the same on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year second above written.





Notary Public for the State of Idaho
Residing at Meridian, ID
My Commission Expires: 10-27-11

200649173

RECORDED

2006 JUN 22 PM 12 42

8 NOEL JENSEN
CANYON COUNTY RECORDER
BY DNJ

PIONEER-CALDWELL

QUEST
MISC FEE 9-