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After Recording Return to:

Shane Lundgren  
PO Box 3500, PMB 303  
Sisters, OR 97759

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND EASEMENTS FOR SUN RANCH BUSINESS PARK ("Declaration") is made by DUTCH PACIFIC PROPERTIES LIMITED PARTNERSHIP, an Oregon limited partnership ("Declarant") with reference to the following facts:

A. Declarant is the owner of certain real property located in the City of Sisters, Deschutes County, Oregon, described as follows ("Property") :

See **Exhibit A** attached hereto and by reference incorporated herein.

B. It is the intent and desire of Declarant to create a mixed use community on the Property and to subdivide the Property into twenty (20) Lots (the "Lots" or singly a "Lot") and Tracts A, B and C and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of owners of the Lots and Tract C to be created within the Property. Except as stated otherwise in this Declaration, Tracts A and B are excluded from the terms and conditions of this Declaration and shall not be encumbered by this Declaration unless and until Declarant may elect to subject Tracts A and B to this Declaration by separate written instrument. The name of the development to be constructed on the Property is Sun Ranch Business Park ("Sun Ranch") and may also be referred to as the "Project".

C. Sun Ranch is intended to provide the workplace and business oriented component to a mixed-use community located on the north side of the City of Sisters (the "City"). The comprehensive master planning that has been completed by the Declarant is intended to provide all Owners an opportunity for an enriched quality of develop able land. Compliance with that

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plan is assured, in part, by imposing the covenants, conditions, restrictions, easements, servitudes and architectural standards set forth in this Declaration.

The design of the development in Sun Ranch is expected to encourage pedestrian and bicycle travel and thus reduce dependence on motor vehicle transportation. The Declarant also intends to create trails and pathways throughout Sun Ranch. Natural contours will be preserved, where practicable, and considered in every phase of the Project resulting in a community that is sensitive to the natural landscape.

Sun Ranch is intended to be a dynamic and diverse community. It is expected that the Project will be served by business, and hospitality amenities on an adjacent commercial property and will strive, where practicable, to promote cascade mountain views for the Owners of the Lots. Sun Ranch is planned to capture the existing ambience of the City of Sisters, invoking the heritage of this community by requiring development on the Property to complement the Hitchcock/Barclay/Conklin house and barn (collectively "Hitchcock House"). The Hitchcock House is located on an adjacent property that is not controlled by or subject to this Declaration. Sun Ranch is also intended to provide a connection to the City's future by creating a state of the art business park incorporating a comfortable, connected, safe and friendly place for small enterprises to take root in the City yet compete in the global marketplace.

1. Declaration. Based on the foregoing, Declarant hereby declares that all of the Property, except Tracts A and B unless provided or stated otherwise in this Declaration, is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, easements, and conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property except Tracts A and B, for the purpose of enhancing the value, use, desirability and attractiveness of the Property, except Tracts A and B. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions, and restrictions hereof, are hereby imposed as equitable servitudes upon the Property, except Tracts A and B. All limitations, restrictions, easements, conditions, and covenants herein, shall run with and burden the Property, except Tracts A and B and shall be binding on and for the benefit of all of the Property, except Tracts A and B and except owners of Tracts A and B, all parties having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns. Declarant reserves the right, at any time, to subject all or part of Tracts A and B to this Declaration.

#### 1.1 Definitions.

(a) "Applicable Laws" means all rules, regulations, ordinances, codes, statutes or laws, decrees, writs, injunctions, or conditions of approval or authorization of any governmental entity, agency or political subdivision whether now in force or which may hereafter be in force.

(b) "Association" shall mean Sun Ranch Business Park Association, an Oregon non-profit corporation, its successors and assigns.

(c) "Building" means any structure that will be constructed on a Lot.

(d) "City" means the City of Sisters.

(e) "Common Area" shall include, without limitation, all gas, water and waste pipe, all sewers, all streets, driveways or alleys, which are not dedicated to the public, and all other common facilities or equipment, parking areas, and landscaping on those areas which are not located on a Lot.

(f) "Development Agreement" means that certain document among the City of Sisters, Deschutes County, Barclay Meadows Business Park L.L.C., dated April 20, 2001, recorded May 4, 2001 in Volume 2001, Page 21130, Official Records, Deschutes County, Oregon.

(g) "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, roads, driveways, parking areas, fences, the paint on all exterior surfaces, screening windbreaks, the exterior surfaces of any visible structure, planted trees and shrubs, poles, signs, air conditioning equipment, water softener fixtures, and any office equipment affixed to the structures placed on a Lot, and any of the foregoing items which may be constructed in the right of way immediately adjacent to a Lot other than improvements installed by utility providers or by the City of Sisters.

(h) "Lot" means a platted lot and Tract C in Sun Ranch Business Park subdivision, but does not include Tracts A and B.

(i) "Member" means every Person holding a membership in the Association.

(j) "Mortgage" shall mean any recorded mortgage or deed of trust or other conveyance of a lot or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage".

(k) "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust; "Mortgagor" shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage, and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term

"Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee").

(l) "Owner" shall mean the record owner, whether one or more Persons, of a fee simple interest in a Lot, including Declarant with respect to each Lot owned by Declarant. The term Owner shall also include purchasers under executory contracts of sale, but shall exclude Mortgagees.

(m) "Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

(n) "Site Improvements" means any roads, streets, alleys, curbs, utilities or landscaping that will be used by the Owners of the Lots in common, and even though such Site Improvements are located on a Lot, e.g. a common utility line.

(o) "Sun Ranch Business Park" means Lots 1 thru 20, and Tract C as shown on the Plat, which may be referred to herein as "Sun Ranch."

1.2 Tracts A and B. Even though Tracts A and B will be created on the plat of Sun Ranch, these Tracts are not subject to this Declaration except as provided in this Section 1.2. In addition, the Owners of Lots in Sun Ranch will not have any liability for the maintenance or repair of Tracts A and B, while they remain undeveloped, but if the City imposes conditions of approval that will require joint maintenance, such as bicycle or foot paths then Declarant may amend this Declaration to allow for such joint maintenance requirements and in such event the Association shall administer such maintenance and repair requirements. Nevertheless, the Declarant reserves the right to develop such Tracts in the future in accordance with Applicable Laws and each Owner who purchases a Lot in Sun Ranch waives any right to object to such future development of Tracts A and B, or either of them, by Declarant or its successors and assigns. In connection with any such development of Tract A or Tract B, Declarant reserves the right to apply for zoning or other land use changes under any Applicable Laws to create a development on Tracts A and B as may be contemplated by Declarant. In addition, Declarant may apply for amendment(s) to the Development Agreement which will assign traffic trips (referred to in the Development Agreement) to Tracts A or B or to other adjoining properties or to change the development restrictions or other provisions of said Agreement. Each Owner, upon acquiring title to a Lot, agrees not to object to any such amendment to the Development Agreement or to an amendment to this Declaration in order to effect any assignment of traffic trips, and each Owner waives any right to a specific number of trips allocated to such Owner's Lot if Declarant or the City elects to amend the Development Agreement or this Declaration and re-allocate traffic trips.

As part of the development of Tract A, the City requires, and Declarant will install a path across Tract A as shown on the plat for Sun Ranch. Declarant hereby creates and establishes a perpetual, non-exclusive easement for the path over and across Tract A as shown on

the plat which the Owners in Sun Ranch may use. Except as provided above, the Owners of Lots 1 thru 20 and Tract C will not have any obligation to maintain or repair such path unless an Owner causes damage to such path in Tract A. Subject to any conditions of approval imposed by the City for the development of Tracts A and B, Declarant intends that the path in Tract A will initially be maintained by Declarant and will in the future, be maintained by a public entity if it is dedicated to the public, or by the future owners of Tract A or their homeowners association after Tract A is developed by Declarant.

**1.3 Development Agreement.** The Development Agreement encumbers the entire Property and all development on the Property must comply with the Development Agreement. Each Owner acknowledges that the Development Agreement allocates a certain number of PM peak hour trips to the Property which are owned by Declarant. Once those peak hour trips are utilized then the City has the right to require Owners of Lots to address the transportation impacts of their development. Declarant, as part of the approval process by the City and in fulfillment of certain conditions of the Development Agreement, is required to pay for traffic impact fees which are properly allocable to each Lot. The Declarant intends to reserve a certain number of the Trips that the City has allocated to the Property pursuant to the Development Agreement, and, Declarant, in its sole discretion, may sell such reserved Trips to an Owner for a fee determined by the Declarant or Declarant may retain such reserved Trips and use them for other developments.

(a) At the time of closing of the purchase of a Lot, each Owner will be required to reimburse the Declarant for the traffic impact fees attributable to six PM peak hour trips as defined in the Development Agreement (each a "Trip" or "Trips" if plural). The price for each Trip shall be determined by Declarant. This fee will be increased at a rate of 8% per year of the prior year's fee on February 1 of each year starting in 2006 to compensate Declarant for prepaying traffic impact fees. Once purchased by an Owner, these six Trips shall be deemed appurtenant to each Lot and may not be transferred or sold, except as provided in this Section 1.3. By accepting title to a Lot in Sun Ranch, an Owner agrees that an Owner will not permit any business which will be located on a Lot to exceed the six Trips that the Owner is obligated to purchase as herein provided, except as provided in paragraph (b) and paragraph (c). An Owner may not allow business uses on a Lot which will exceed the six Trips plus Trips acquired from the City, Declarant or from another Owner as provided in this Section 1.3 unless and until the City of Sisters approves an amendment to the Development Agreement to allocate Trips on a per Lot basis as stated in this Section 1.3 and which permits the City to impose exactions on a per Lot basis for additional Trips ("City Trips") that exceed the six (6) Trips per Lot to be sold by Declarant to each Owner at time of sale of each Lot and will not in any way impact the Trips retained by the Declarant or allocated to the Lots or properties which are governed by the Development Agreement ("Trip Amendment"). If the City approves the Trip Amendment, and an Owner elects to purchase City Trips pursuant to the Trip Amendment, these City Trips may not be any of the 203 Trips that have been allocated to the Property pursuant to the Development Agreement prior to the Trip Amendment.

(b) In no event shall the type of business conducted on any Lot exceed the number of Trips that an Owner may acquire and own, as set forth in this Section 1.3. In the event the City determines as part of its permitting of an Owner's planned Improvements on a Lot that more PM Peak hour Trips will be generated by the Owner/applicant or any tenant or tenants that may occupy a Lot in excess of the Trips acquired and owned by an Owner, or if an Owner/applicant changes the use of its Lot, at any time, to increase the number of PM Peak hour Trips to exceed the Trips that are appurtenant to a Lot, the Owner shall, if the Declarant has any excess Trips available and the Declarant is prepared to sell any of its Trips, purchase from Declarant the number of excess Trips which the City has determined is necessary for the Owner's proposed use or uses on the Owner's Lot. Otherwise, an Owner must: (i) alter its proposed use so that the use does not generate vehicle trips in excess of the Trips owned by Owner (initially six Trips); or (ii) acquire additional Trips from other Owners as stated below.

(c) If the City determines that an Owner's use of the Lot will not require all of the appurtenant Trips, an Owner may elect to sell any of an Owner's excess Trips. The Declarant shall have a right of first offer, that is the Owner shall first offer to sell an Owner's excess Trips to the Declarant before offering to sell any excess Trips to any other Owner in Sun Ranch. If Declarant declines to purchase the excess Trips, then an Owner may sell such excess Trips to any other Owner in Sun Ranch for not less than the same price and on the same terms that Owner offered to sell such Trips to Declarant. If the Owner sells any such excess Trips to another Owner for a price which is less than one offered to Declarant or the terms and conditions are more favorable, then Declarant may acquire such Trips from the purchaser of such Trips. Otherwise, upon completion of such sale, the Trips so purchased shall be appurtenant to the Lot of the purchasing Owner. The Owner of a Lot who sells the Trips shall limit the type of business uses on its Lot to uses which will not exceed the number of Trips retained by such Owner. The purchasing Owner may place business uses on such Owner's Lot which may use the number of Trips which are then appurtenant to the purchasing Owner's Lot, but may not place a business on a Lot which will exceed the total number of Trips then owned by the Owner. Trips may not be sold except among the Owners of the Lots in Sun Ranch, unless approved in writing by the Declarant in the Declarant's sole discretion. If not approved by the Declarant, any sale of Trips outside of Sun Ranch will be deemed void and the Declarant or the Association may obtain injunctive relief to nullify any such sale or exercise any other right or remedy to nullify the sale of such Trips.

(d) The Trip limitations of this Section 1.3 shall automatically terminate when the Development Agreement expires or at such time as all 203 Trips assigned to the Property by the Development Agreement have been used for the Property or other developments as selected by the Declarant. When the Development Agreement, including any amendments, expires, the protections granted and burdens imposed by the Development Agreement will also expire. When the development of the Property or the

development of any other property exceeds the trip limit of 203 vehicle trips, the City will be entitled to require any Owner to pay development exactions based on any proposed new development of a Lot or may deny any site improvement application on a Lot based on traffic system deficiencies.

(e) Each Owner is encouraged to review the Development Agreement. Until Declarant sells all of the Lots, Declarant also reserves the right to obtain amendments to the Development Agreement at any time in the future, and each Owner by accepting title to a Lot consents to the filing of land use applications to amend the Development Agreement as stated in Section 17 and, each Owner waives any right to object to such amendments to the Development Agreement.

1.4 Acquisition of Other Property. If Declarant acquires any additional real property adjacent to Sun Ranch, Declarant may, in Declarant's discretion, subject such additional real property to the terms and conditions of this Declaration (even if Declarant, at such time, does not own a Lot in Sun Ranch). Each Owner who acquires a Lot in Sun Ranch waives any right to object to the Declarant encumbering any additional real property to the terms and conditions of this Declaration.

1.5. Additional Fees. An Owner shall be responsible for any systems development charges, or additional governmental fees assessed by the City during the land use review process caused by the improvement of any Lot and which are not charges or fees for Trips allocated to the Property as stated above in this Section 1.3.

## 2. Architectural Review Committee.

2.1 Creation of Architectural Review Committee. Declarant hereby establishes an Architectural Review Committee ("ARC"). The Declarant shall have the right to appoint the members of the committee until five (5) years after Declarant sells each and every Lot in Sun Ranch. For a period of five (5) years after the date that Declarant sells each and every Lot in Sun Ranch, Declarant shall have the right to continue to select all of the members of ARC, which may include Declarant and a design professional. After such 5-year period, Declarant may select a transition ARC consisting of three members who shall also be entitled to serve for one year after their appointment to the ARC by Declarant. After the transition year, the Board of Directors of the Association shall, by vote, select the members of the ARC, who shall not exceed three in number, unless the Owners determine, by majority vote, that the number of members shall be increased.

The ARC shall be responsible for the review and approval of all plans, and specifications for the development of any Building, structure, or other Improvements on any Lot including landscaping, and to publish Guidelines (defined below) for the construction of Improvements on a Lot.

The ARC exists for the purpose of maintaining high standards in design and development for the Lots subject to this Declaration and for making binding decisions as to the appropriate Building and property use in Sun Ranch. Each application for ARC approval shall at least provide to ARC, the plans, specifications and other documents with sufficient detail, as reasonably requested by ARC, and must be complete and accompanied by an Owner prepared checklist form that will be provided by ARC. An Owner may not construct any Improvement on a Lot without the written approval of ARC. Any Owner who fails to obtain ARC approval may be enjoined by an injunction from building any Improvements on the Owner's Lot. Either ARC or Declarant may initiate an action against an Owner for failure to obtain ARC approval and all costs and attorney fees that ARC or Declarant may incur shall be paid by the Owner. ARC and Declarant shall also have all other rights and remedies available to enforce this Declaration.

2.2 Purpose of ARC. ARC shall implement and administer the Rules and Design Guidelines ("Guidelines"), including without limitation, the control of site design and quality of the Buildings in Sun Ranch. The Guidelines will be prepared by ARC and each Owner will receive a copy of the Guidelines when the Owner signs a purchase and sale agreement. ARC may supplement or amend the Guidelines at any time. The Guidelines shall serve to establish and maintain the design character of Improvements in Sun Ranch by describing building massing, siding and materials which reflect important aspects of the desired architecture for the Project. The overall design and feel of Sun Ranch will be assured through the use of these Guidelines in conjunction with the regulations established by the City's Sun Ranch Business Park Overlay Zone. ARC may, in its discretion, withhold consent of any plans or proposal, which ARC determines is inappropriate for the particular Lot or would be incompatible with the other Building and Improvements in Sun Ranch or with the Guidelines or the terrain in Sun Ranch.

2.3 Review Process. The application of these Guidelines shall be subject to a review by the ARC of any Improvements on a Lot. ARC shall provide a form checklist for each applicant. The design and installation of all Buildings, fences, landscaping (including water features), exposed solar applications, air conditioning, mechanical equipment, antennas, satellite dishes, utility meters, and all other exposed site and building components is subject to review and prior approval by ARC.

ARC shall have the right to consider and approve variances to the Guidelines under the authority set forth in Section 2.11 below. Any variance to the Guidelines must be explicitly requested in writing and must be approved in writing by ARC. The approval of an Owner's plans alone is not sufficient to authorize a variance to the Guidelines. During the review process any variance which is specifically asked for by Owner shall be approved or disapproved in ARC's sole and absolute discretion.

In any event, all construction is subject to all Applicable Laws as may be adopted by the State of Oregon, Deschutes County, and the City, now or in the future. The most stringent Applicable Laws shall apply in the event of a conflict with the Guidelines. Owners are



responsible for identifying all relevant Applicable Laws that impact any Building or other Improvements proposed to be made to a Lot and bringing them to the attention of the ARC during the design review process.

2.4. Preliminary Review. Preliminary Review of any Lot Improvement is required. The preliminary review is intended to evaluate the preliminary Building design and site concept. This will allow ARC to address its concerns or objections to the proposed Improvements at the beginning of the design process and the Owner will incur less costly changes when they are identified at the beginning of the design process.

For the Preliminary Review, an Owner shall, at a minimum, submit a proposed site plan (showing the proposed Building, landscape and parking areas) and proposed building elevations and shall show existing site conditions, existing trees, topography, easements, setbacks and property lines. Comments made by ARC, Declarant and ARC or Declarant representatives during the preliminary review are not binding on ARC in subsequent final plan review. ARC may raise new issues not raised in preliminary review during a subsequent review.

2.5 Review of Plans and Specification. ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by Declarant. After Declarant has no further authority for ARC as provided in Section 2.1, the majority of the Owners, shall select the parties who shall serve on ARC.

The ARC shall have the right to inspect the construction in progress to assure its conformance with plans approved by ARC. No construction, alteration, addition, modification, or reconstruction of an Improvement in the Project (except Site Improvements by Declarant) shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Declarant and approved in writing by ARC. The Owner submitting the plans ("Applicant") shall obtain a written, dated receipt for the plans and specifications from an authorized agent of ARC. Until changed by the Declarant, the address for the submission of such plans and specifications shall be c/o Declarant, 414 W. Washington, Sisters, Oregon 97759. ARC shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of any Common Area or the enjoyment thereof by the Owners, and that the upkeep and maintenance thereof will not become a burden on any other Owners or the City.

ARC may condition its approval of proposals or plans and specifications for any Improvement (1) on such changes therein as it deems appropriate; and (2) upon the agreement

by the Applicant to grant appropriate easements for the maintenance of the Improvements; and (3) upon the Applicant agreeing to install (at its sole cost) water, gas or electrical meters to measure any consumption; and (4) upon the Applicant agreeing to complete the proposed work within a stated period of time; or (5) on all of the above or may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. ARC may in addition to the matters set forth in this Declaration adopt additional rules or guidelines setting forth procedures for the submission of plans for approval, and it may require a reasonable fee to accompany each application for approval. ARC may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alterations or additions contemplated. ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by ARC, of any required plans and specifications, ARC may postpone review of any plan submitted for approval. Decisions of ARC and the reasons for the decisions shall be transmitted by ARC to the Applicant at the address set forth in the application for approval, within sixty (60) days after receipt by ARC of all materials required by ARC. Any application submitted pursuant to this Section 2.5 shall be deemed approved, unless written disapproval or a request for additional information or materials by ARC shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by ARC of all required materials. The Applicant shall satisfy any review or permit requirements of the Declarant and the City prior to making any alterations or Improvements otherwise permitted hereunder. The Applicant shall maintain the Improvements, after construction, so that it complies with the ARC approved plans.

The initial application fee shall be \$1,500 ("Application Fee"). The amount of the ARC Application Fee may be changed at any time by ARC or if additional work is required, ARC may assess an additional Application Fee. ARC shall also require an Owner to post a bond or cash in an amount up to \$5,000 ("Compliance Fee") in order to pay any costs or expenses of the Association, the Declarant or ARC incurred due to an Owner's or its agents' or contractors' failure to construct the Improvements approved by ARC. If the Owner constructs the Improvements on the Owner's Lot as approved by ARC, and ARC has not been required to incur any additional fees, then the Compliance Fee shall be returned to the Owner upon completion of the Improvements. If ARC incurred any additional costs, then ARC may retain all or part of the Compliance Fee to pay for such costs, and the balance, if any, shall be returned to the Owner upon completion of the Improvements in accordance with the plans and specifications approved by ARC and applicable building codes.

2.6 Meetings of ARC. ARC shall meet from time to time as necessary to perform its duties hereunder. ARC may from time to time by resolution unanimously adopted in writing designate an ARC Representative (who may, but need not, be one of its members) to take any action or perform any duties for ARC, except the granting of variances pursuant to Section 2.11. In the absence of such designation, the vote of a majority of ARC or the written consent of a majority of ARC taken without a meeting, shall constitute an act of ARC.

2.7 No Waiver of Future Approvals. The approval of ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent.

2.8 Compensation of ARC Members. The members of ARC shall receive compensation for services rendered out of the Application Fee. The Members shall also be reimbursed for expenses incurred by them in the performance of their duties hereunder.

2.9 Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

- (a) ARC or its Representative may at any time inspect any Improvement for which approval of plans is required under this Section 2. However, the ARC's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed in accordance with the approved Improvements and the respective Owner has given written notice to ARC of its completion and ARC has made its final inspection and accepted the Improvements. If ARC fails to inspect despite a Owner's notice of completion, then the right of inspection shall terminate at the end of the 60-days. ARC's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Lot Improvements have not previously been submitted to and approved by ARC. If, as a result of any inspection, ARC finds that any Lot Improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by ARC, it shall notify the Owner in writing of failure to comply with this SECTION 2 within sixty (60) days from the inspection, specifying the particulars of noncompliance. ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance, and may, if necessary, institute an action and obtain injunctive relief or specific performance or any other right or remedy at law or in equity.
- (b) If upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy the noncompliance, ARC shall hold a hearing with notice to the Owner and shall determine whether there is a noncompliance and the Owner may present at such hearing, evidence of compliance. If there is noncompliance as determined at the hearing, ARC shall judge and determine the nature thereof and the

estimated cost of correcting or removing the same and may assess the amount of the cost to cure based upon a bid from a licensed contractor. The decision of ARC shall be final and binding on the Owner. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of ARC ruling is given to the Owner. If the Owner does not comply with ARC ruling within that period, ARC, at its option may record a Notice of Noncompliance and the Owner shall reimburse ARC, upon demand, for all expenses (including reasonable attorney's fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to ARC, ARC shall levy an assessment against the Owner for reimbursement. ARC has the right to cause the removal of a noncompliant Improvement or otherwise remedy the noncompliance, and such right shall be in addition to all other rights and remedies which ARC may have at law, in equity or in this Declaration.

- (c) If for any reason ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion from the Owner and the Owner has not prevented the ARC from inspecting the Improvement, the Improvements and any part thereof shall be deemed to be constructed in accordance with the approved plans.

2.10 Scope of Review. ARC shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Project generally. ARC may, in its discretion, take into consideration the esthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. ARC's approval or disapproval shall be based solely on its discretion and may consider any matter set forth herein or other appropriate matters, and ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with Applicable Laws.

2.11 Variances. ARC may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of ARC, and shall become effective upon their execution. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted provided that the project authorized by the variance, when built, complies with ARC's approval. The granting of such a

variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and the particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all Applicable Laws affecting the improvement or use of the Lot.

2.12 Binding Nature; Liability of the ARC. This Declaration and any Guidelines adopted by ARC from time to time are binding on Owners of all Lots and provide for minimum standards for all Improvements built, remodeled, or modified on any Lot. Compliance with any Guideline is not guaranteed to ensure compliance with all Applicable Laws. It is the responsibility of each Owner to cause its Lot Improvements to comply with Applicable Laws. The ARC is not liable for any cost, claims, damages, or expenses arising out of or related to the ARC's review of and comments regarding any plans, including (without limitation) costs for redrafting the plans, the ARC's actions in approving plans, any other costs or expenses related to any delay caused by the ARC, and any claims brought by any Owner regarding the Owner's plans.

### 3. Uses and Building Requirements.

3.1 City or Governmental Building Requirements. The City requires that a building permit be obtained prior to beginning construction of any improvements or making additions or changes to an existing structure. An Owner is obligated at its sole cost and expense to verify all City of Sisters requirements with the City's building/planning department and that any Lot Improvement comply with Applicable Laws. All Improvements shall comply with Applicable Laws, including without limitation, the American with Disabilities Act.

3.2 Use of Lots. Lots shall not be used for purposes prohibited by the City. Any use not specifically permitted by City ordinance shall require the prior written approval of the Association.

3.3 Nuisances. No noxious or offensive activity shall be carried upon the Property. No horns, whistles, bells or other sound devices except security devices used exclusively to protect the security of the Building and its contents, shall be placed or used in a Building. No loud noises, electro mechanical disturbance, radiation, electro-magnetic disturbance, vibrations or noxious odors shall be permitted on the Property and the Board of Directors of the Association shall have the right to determine if any noise, vibration, radiation, odor or activity producing such a noise, vibration, or odor constitutes a nuisance or a potential hazard to others. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the use of an Owner's Lot and any Improvements thereon.

3.4 Refuse and Waste. All rubbish, trash, garbage and other wastes shall be regularly removed from each Lot and shall not allowed to accumulate on a Lot. No refuse

container shall be maintained on a Lot other than in the location and manner approved by ARC in accordance with its rules as may be adopted from time to time.

3.5 Hazardous Materials. No Owner or Occupant shall cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property (including Tracts A and B). If the presence of Hazardous Materials on the Property caused or permitted by an Owner or Occupant results in contamination of the Property, or if contamination of the Property by Hazardous Material otherwise occurs for which such Owner or Occupant is legally liable, then, such Owner or Occupant shall indemnify, defend and hold his landlord (if applicable), the Association and all other Owners of Lots in the Property and their respective agents, contractors and invitees harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Property, or any portion thereof, any Lot or any other real property ("Other Property"), damages for the loss restriction on use of rentable or usable space or any amenity of the Property, damages arising from any adverse impact on marketing of space in the Property or the Other Property, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) which arise as a result of such contamination. This indemnification of Owners by such Occupant or Owner includes, without limitation, costs incurred in connection with any investigation of site condition or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by such Occupant or Owner results in any contamination of the Other Property, such Occupant or Owner shall promptly take all actions at its sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials to the Property, provided that the landlord's (if applicable) and the Association's approval of such action shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property or the Other Property. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, material or waste which is or becomes regulated by any local governmental authority, the state of Oregon or the United States, in accordance with Applicable Laws concerning Hazardous Material, hazardous substance or hazardous waste.

4. Utilities. Easements for utilities over and across the Property are set forth on the plat for Sun Ranch and easements are hereby granted, created and established for all utilities that are required for Sun Ranch. The Declarant also reserves for itself and the Association, the right to grant additional utility easements and rights of way over the Property, or part thereof (including Tracts A and B), to utility companies and public agencies, as necessary, for the proper development and disposal of the Property, or any part thereof, including Tracts A and B. All utility easements are perpetual and are for the benefit of the Lots, including Tract C, and to the extent applicable, Tracts A and B. All connections from trunk lines to individual Buildings on a Lot must be underground, except such items as electrical transformers, which are required to be above ground. Each Owner is responsible for verifying the utilities on an Owner's Lot and that service is available. The following utilities should be contacted to confirm availability: Electric

power is currently available from CEC. Propane is available from a number of suppliers. Telephone service is currently available from QWEST. Television cable service is currently available from Bend Cable Communications. The City of Sisters provides water and sewer services.

4.1 Utility Connections. All connections from trunk lines to individual structures must be underground. Unless required by Applicable Laws, exposed plumbing, electrical, and all other utilities and services are prohibited. All areas of excavation for site utility work must be restored (see Landscaping). Utility trenching should be laid out in a manner to minimize the impact on a tree's critical root zone. A critical root zone is determined by the following formula:  $1\frac{1}{2}$  feet times the diameter of the trunk as measured four (4) feet above the ground equals the root zone radius. Each Owner shall be solely responsible for all connection fees and charges assessed by a utility or by the City, and the costs to install utility lines that will serve any Building on the Owner's Lot.

4.2 Utility Meters. All utility meters (gas and electric) should be carefully placed to limit their visibility to motorists, pedestrians or neighbors on roadways or public sidewalks. The meters shall be installed according to the guidelines provided by the utility companies and ARC. All meter housing and junctions must be painted to match the siding color of the Building or accessory structure.

5. General Design Standards. Each Building exterior design must be generally consistent with the design styles determined by ARC. Examples of exterior designs that comply with this requirement will be provided to each Owner upon request. Any examples are not exhaustive, and are only meant to be illustrative. The ARC has the right to prepare, modify, and enforce Design Guidelines. Such Design Guidelines will be provided to an Owner when the Owner enters into an agreement to purchase a Lot. Each Owner will be comply with the Design Guidelines in constructing Improvements on a Lot, unless a Guideline is expressly modified in writing by the ARC for an Owner's particular project. All construction by an Owner shall also comply with the any conditions imposed by the City during its review process.

5.2 Fences. All fences, in addition to complying with the ARC Guidelines, shall also comply with the City Standards set forth in the Findings and Decision of the Sister Planning Commission ("Commission"), Sun Ranch Business Park, file no. SUB05-03.

5.3 Outdoor Lighting. All outdoor lighting shall comply with the City Standards imposed in Commission File no. SUB05-03.

6. Private Access Easements. Many of the Lots in Sun Ranch will have access to the rear of each Lot through a private access easement. Declarant hereby declares, creates and grants perpetual, non-exclusive easements over and across each and every Lot over which each private

access easement will be constructed as shown on the plat of Sun Ranch. The cost of maintenance, replacement and repair for each private access easement shall be paid by the Owners of the Lots that utilize the private access easement in question and on whose Lots the private access easement is located. The Association shall maintain, repair and replace (as necessary) the private access easements. The Association and its agents and contractors is granted an easement to perform such repairs and maintenance. The Board of Directors of the Association shall assess the Lots and their respective Owners in order to pay for such maintenance, repair and replacement of the private access easement on those Owners' Lots. Such assessments may be assessed on a monthly, quarterly or annual basis, and each Owner will pay such assessment when due as determined by the Board. In addition, at the closing of escrow for the purchase of each Lot over which a private access easement will be constructed, an assessment for the private access easement shall be paid by the Person purchasing the Lot and the Person shall pay a pro-rata share of the cost of installing the private access easement for the portion directly on such Person's Lot. The maintenance cost of private access easements, in part, includes the cost of snow plowing and sweeping. All private access easement maintenance, replacement and repair shall be the responsibility of the Owners of the Lots which use the private access easement in question as determined by the Association. If an Owner fails to pay the Owner's pro-rata share of maintenance, repair and replacement costs (the "defaulting Owner"), then the Association shall have all rights and remedies to collect such sum from the defaulting Owner including the right to lien as set forth in Section 10.1, and shall be entitled to attorney fees in any suit or action brought to collect such sum from a defaulting Owner. Each Owner is personally liable for such assessments by the Association. If any sum is not paid within ten (10) days of the due date, the Association may assess interest on any sum at the rate of eighteen percent (18%) per annum or any lesser interest determined by the Board from time to time and may assess a late charge as determined by the Board.

No extended parking, loading or unloading shall be allowed in the private access easements. However, it is expected that each business that uses a private access easement will be able to use the private access easement for deliveries and other purposes related to an Owner's business. Each Owner shall not unreasonably interfere with the other Owners' use of the private access easement and an Owner shall use the private access easement with reasonable regard for the rights of the other Owners. It is each Owner's responsibility to see that their agents, contractors, vendors, guests, invitees, and lessees abide by this condition. The Association may pass rules and regulations to administer the use of the private access easements by the Owners and may enforce such rules and regulations in any manner that the Association may determine to be necessary.

7. Drainage. All site drainage must be retained and disposed of on each Owner's Lot in accordance with and as required by Applicable Laws. The Owner of a Lot shall employ a professional engineer to create a drainage plan that complies with the standards of the City and the DEQ, and the retention unit shall be engineered for a 24 hour/50 year storm event as a condition of approval. The use of drainage retention ponds and/or bio-filtration swales is encouraged. Current DEQ regulations prohibit dry wells, without special permission. Each



Owner shall pay for the installation of all facilities necessary for the collection and disbursement of roof, gutter, site, landscape, walkway and parking lot drainage on the Owner's Lot. Each system must be properly engineered and comply with Applicable Laws..

All or some of the Lot Improvements may be located in such a way that they may be subject to additional water difficulties (from street run-off or other sources) during conditions that exceed Sun Ranch's water disposal system's designed capacity. An Owner is encouraged to investigate the possibilities of a free-draining foundation system around the entire perimeter of the foundation or other effective drainage system(s) as determined by the Owner's engineer. Some areas in Sun Ranch may be susceptible to street drainage and erosion problems during conditions that exceed the capacity of a particular system and an Owner is required to design its system on its Lot to avoid any overload. Each Owner is solely responsible for creating a drainage system on its Lot which will insure proper disposal of water.

8. Driveways and Street Parking. The City requires a permit prior to creating the curb cut for any driveway. Driveways may be concrete, asphalt or masonry paver. Concrete sidewalks and aprons at driveways shall be a minimum 8 inches thick and shall meet ADA requirements. In addition, the City requires an 8 inch culvert across each driveway entrance to a Lot and each Owner will be responsible for the installation of such culvert during the development of the Lot Improvements by the Owner.

No vehicles shall be parked in the street for more than 24 hours at a time. Work vehicles shall be parked in the side or rear parking areas or in the Buildings themselves. Storage of work trucks and vehicles on any street shall be prohibited.

9. Lot Size. Subject to compliance with Applicable Laws, a Lot may be divided or a lot line may be adjusted to meet the size requirements of Owners. Flexibility in Lot size shall provide Owners with the opportunity to conform a Lot to a scale that is based upon configuration and building needs. Some Lots may be broken into smaller parcels with separate Ownership interests (e.g. zero lot line sub-division or commercial condominium with appropriate multiple ownership under Applicable Laws).

10. Maintenance and Repair. Each Owner is required to keep his Lot, landscaping and all Lot Improvements in good repair and attractive condition, including without limitation, maintaining, repairing, replacing and painting all portions of the Building and other Improvements on the Lot, including without limitation, all parking areas (such as striping and re-surfacing parking) and the landscaping. This includes, without limitation, keeping any native areas free of weeds, building materials, and other debris. If an Owner fails to maintain its Lot and Lot Improvements, then the Association shall send a 20-day written notice to an Owner who is not complying with this Section 10. If the Owner fails to take corrective steps within the 20 days to maintain or repair the Owner's Lot and Improvements, or the Board has approved a longer period of time to complete the corrective steps upon application of the Owner before expiration of such 20 days, then the Association shall have the right to maintain and repair an Owner's Lot and

Lot Improvements in good condition and repair. If the Association is required to maintain or repair, then the Owner of the Lot, shall within fifteen (15) days of demand pay to the Association such costs of maintenance and repair incurred by the Association, plus 15% of such costs for a maintenance fee. If an Owner fails to pay within such fifteen (15) days, then the Association shall have the right to collect immediately from the Owner such sum, plus interest thereon at 18% per annum, compounded monthly. In addition, the Association may file a lien as set forth in Section 10.1. Until a Lot is developed, all unimproved portions of a Lot shall be covered by sod, hydro-seed or as otherwise permitted by Applicable Law or ARC and shall be kept weed free and clean at an Owner's sole cost and expense until such time as the Improvements are constructed thereon.

10.1 Lien. Whenever this Declaration provides that the Association has the right to lien an Owner's interest in such Owner's Lot, such lien shall be created and foreclosed in accordance with this Section 10.1.

(a) Creation. A lien authorized by this Declaration shall be created by recording a written instrument ("Claim of Lien" or "Lien ") in the real property records of Deschutes County, Oregon, which (i) references this Declaration, (ii) alleges a specific breach of this Declaration, (iii) states the amount owed by the Owner of the Lot through the recording date of the Claim of Lien, (iv) contains a legal description of the Lot, and (v) is executed and acknowledged by an officer of the Association.

(b) Amount. A Lien created pursuant to this Section 10.1 shall include (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such Lien (including attorneys' fees), (iii) all amounts which become due from the defaulting Owner (or its successors or assigns) to the Association after the date the Claim of Lien is recorded, whether such amounts arise from a contribution of the default alleged in the Claim of Lien or from some other default under this Declaration, and (iv) interest on all of the foregoing at the rate of eighteen percent (18%) per annum, compounded monthly, accruing from the date of default.

(c) Priority. The priority of a Lien created pursuant to this Section 10 shall be established solely by reference to the date the Claim of Lien is recorded; provided, that such Lien shall, in all instances, be subject to and junior to, and shall in no way impair or defeat the lien or charge of any Mortgagee holding any Mortgage recorded prior to the recording date of the Claim of Lien.

(d) Cure. If a defaulting Owner cures its default, and pays all amounts secured by a Claim of Lien created pursuant to this Section 10.1, the Association shall record an instrument sufficient in form and content to satisfy and discharge the Claim of Lien from the title of the Lot encumbered by the Claim of Lien.

(e) Foreclosure. A Lien created pursuant to this Section 10.1 may be foreclosed judicially in the same manner as provided for foreclosure of a mortgage of real

property in the State of Oregon ("Judicial Sale"). Or, the Association may elect to foreclose pursuant to non-judicial foreclosure under power of sale, which shall be conducted in accordance with the requirements of the Oregon Revised Statutes that are applicable to non-judicial foreclosures of deeds of trust under power of sale provided that the Association may appoint its attorney, or any title insurance company authorized to do business in Oregon to conduct the sale in the role of trustee. The Association may credit bid the Lien amount on the encumbered Lot at the sale, and if the Association or any other third party purchaser acquires the encumbered Lot at a Judicial Sale, such purchaser may hold, lease, mortgage and convey the acquired Lot free of all rights of redemption after the non-judicial foreclosure sale. If the defaulting Owner's default is cured before the last day for redemption as described in the Oregon Revised Statutes in the event of a Judicial Sale or five (5) days before the date set for sale of a non-judicial foreclosure, the Association shall promptly record a notice of satisfaction and release of lien and a termination of the foreclosure sale. In order to cure such default, the defaulting Owner shall not only pay the amount stated in the Lien, plus interest to date of payment, but shall also pay all costs and expenses (including, without limitation, all attorney fees and cost of any title foreclosure guarantee) incurred by the Association.

11. Sidewalks. Sidewalks shall be installed by each lot Owner at the time of development of the Owner's Lot. Declarant shall prepare the specifications for the sidewalk in accordance with Applicable Laws and shall provide the specifications to each Owner. Each Owner shall pay for the labor and materials to install the sidewalk in accordance with the specifications. However, should the City require the Declarant to install the sidewalks prior to the sale of the Lot, then the new Owner, at close of Escrow, shall reimburse Declarant for the documented costs of the sidewalk in front of the Owner's Lot at closing of the purchase of such Lot.

12. Street Trees. The Lot Owner shall plant the street trees and shall properly maintain them with spacing that is no greater than 30 feet. The caliper of each required street tree at the time of planting shall be no less than two (2) inches. However, should the City require the Declarant to plant street trees prior to the sale of a Lot, the new Owner, at close of Escrow, shall reimburse Declarant for the documented costs of the street trees on such Lot at closing of such Lot.

13. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time, except during the construction phase of the Improvements on a Lot. Any such temporary structure used during construction of the Improvements must be removed upon substantial completion of the Building and other Improvements on the Lot.

14. Enforcement. In addition to any other rights or remedies under this Declaration or at law or in equity, the Association, ARC, Declarant or any Owner or the Owner of record of any recorded mortgage upon any Lot shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, and covenants now or hereafter imposed by the provisions of

this Declaration. Failure by any of the foregoing parties to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

14.1 Attorney Fees and Costs. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Declaration, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

## 15. Indemnification/Insurance.

15.1 Indemnification. Upon acquisition of a Lot, each Owner agrees to indemnify and save the other Owners harmless from any and all liability, damage, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act or negligence of the other Owner(s), or such other Owner's tenants, agents, employees and contractors.

15.2. Damage to Improvements. If any Improvements located on any Lot are damaged or destroyed by fire or other cause, the Owner of such Lot shall promptly cause either (i) the repair, restoration, or rebuilding of the Building and other Improvement so damaged or destroyed to a condition and an architectural style existing immediately prior to the damage or destruction; (ii) the rebuilding of a completely new Building or other Improvements (subject to the ARC approval process set forth in this Declaration), or (iii) the razing of any damaged Building or other Improvements, the filling of any excavation, and performance of any other work necessary to put such portion of the Property in a clean, sightly and safe condition. All Building Areas on which Buildings are not reconstructed following a casualty or a "Taking" (as defined in Section 16 below) shall within one (1) year of the event shall be (i) graded or caused to be graded by the Owner thereof to the level of the adjoining Lot and in such a manner as not to adversely affect the drainage of the Property or any portion thereof; (ii) covered by sod, hydro-seed or as otherwise permitted by Applicable Laws or ARC, and (iii) be maintained, irrigated and kept weed free and clean at the subject Owner's sole cost and expense until such time as a Building or other Improvements are reconstructed thereon.

15.3. Casualty Damage to Common Area. In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured during the term of this Declaration, the Association shall repair or restore such Common Area at the sole cost and expense of the Owners with all due diligence. The Association may assess a special assessment

against all of the Owners to pay for all costs of restoration and repair. Each Owner will be obligated to pay such sum within thirty (30) days of notice. The Association shall have all rights and remedies against an Owner who fails to pay, including the right to a lien under Section 10.1. In the event such damage or destruction of Common Area is caused wholly by negligent or willful act of an Owner, Occupant or Third Person, the Association has the right to proceed against such other Owner, Occupant, or third person for indemnity, contribution or damages.

16. Eminent Domain.

16.1 Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting an Owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of Improvements located on a Lot, the award attributable to the land and Improvements of such portion of the Lot shall be payable only to the Owner thereof, and no claim thereon shall be made by any other Owners who have no right, title or interest in such Lot.

16.2 Collateral Claims. All other Owners of the Lots may file collateral claims with the condemning authority for their losses, if any, which are separate and apart from the value of the land area of a Lot and Improvements on a Lot taken from an Owner.

16.3 Tenant's Claim. Nothing in this Section shall prevent an Occupant from making a claim against an Owner pursuant to the provisions of any lease between such Occupant and an Owner for all or a portion of any such award or payment.

16.4 Restoration of a Lot. The Owner of any portion of a Lot so condemned shall promptly repair and restore the remaining portion of the Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owners.

17. Consent to Zone Change/Measure 37 Waiver. By accepting title to a Lot, the Owner of a Lot hereby grants written permission to Declarant to file applications to change the comprehensive plan text, map designation and zoning of and relating to the Property including Tracts A and B and an adjacent piece of commercial property that is developed with a bed and breakfast inn (hereinafter referred to, collectively, as the "Zone Change Application") and to replace any existing zoning which is now Light Industrial ("LI") and Commercial with a custom industrial mixed use zoning district of the Declarant's choosing. The Zone Change Application will include an application for a change of the zoning of the real property located immediately to the north of Sun Ranch from light industrial to residential; part of such land is within Tract A. The Zone Change Application will or does ask that some uses currently allowed in the LI zone be prohibited in the new zoning districts, such as mini-storage. The City, in the course of reviewing

the Zone Change Application, may also prohibit some uses currently allowed in the LI zone. Each Owner hereby relinquishes and waives any and all rights to file any legal action, appeal or claims against Declarant, the City or any agent of either based on the change of zoning of an Owner's Lot by reason of such Zone Change Application and the prohibition of previously permitted uses that may occur as a result of such Zone Change Application. This includes, but is not limited to, a waiver of each Owner's right to file Measure 37 claims with the City and State of Oregon for monetary damages, a waiver of the zoning rules adopted as a result of Declarant's Application or any modification of the new zoning rules to conduct uses allowed when the Owner purchased its Lot that have been subsequently prohibited. By accepting title to a Lot, subject to this Declaration, an Owner also agrees that the Owner will not oppose, object to or remonstrate against approval of any zoning ordinance passed by the City as applied for by Declarant. The right of Declarant to file for a Zone Change Application for the Property, excluding Tracts A and B, shall expire upon the earlier of the following: (i) December 31, 2007; and (ii) the date of the transfer of the last Lot to an Owner, other than Declarant. In the event that an Owner objects to or remonstrates against the approval of the Zone Change Application and such Application receives final approval over the Owner's objections, such Owner shall be obligated to pay Declarant for Declarant's attorney fees and costs incurred to obtain the approval of the necessary land use approvals pursuant to the Zone Change Application, including filing fees. In the event that the City or an appellate body denies Declarant's Zone Change Application after an Owner has objected to or appealed the approval of the Zone Change Application, Owner shall pay Declarant for all of Declarant's legal fees and other costs and application fees plus damages for any loss in potential increased value to Tracts A and B and to the adjoining Hitchcock/Barclay/Conklin property that would have occurred if the zoning district was approved as applied for by Declarant under its Zone Change Application.

Declarant also intends to ask the City, in its Zone Change Application, to allow any Owner to develop its Lot with a mixed use of residential housing and industrial buildings. The intention of such request in the Application is to provide second-story housing or other accessory residential uses that will be compatible with the other allowed uses of the Lots.

In the event that residential housing is approved by the City and then proposed by an Owner for development on such Owner's Lot, the Owner shall construct the housing units with sound proofing materials and windows to minimize sounds and odors. ARC may also create residential guidelines for all such residential units and may enforce them as provided in Section 2. Central heating and cooling in residential units may also be required by ARC to minimize the chance of industrial or commercial noise or odors disturbing residential residents. In the event an Owner elects to develop or purchases a Lot with residential development approval, Owner agrees that Owner shall not remonstrate against the construction of light industrial uses allowed in the new mixed zoning district provided they are carried out in a manner allowed by law or ARC nor will Owner remonstrate against the accepted and approved business uses of light industrial allowed in the zoning district as applied for in the Zone Change Application or as allowed by the City. If residential uses are allowed by the City, each Owner or Occupant of a residence on a Lot shall not object to or remonstrate against any light industrial use permitted in the zoning district

for the Property (including Tracts A and B). Declarant or the Association may require any residential Owner or Occupant to sign a waiver of remonstrance upon acquisition of such residential unit. Further, if residential uses are permitted, Declarant may without approval of any other Owner amend this Declaration, to impose additional covenants, conditions and restrictions on the residential units.

18. Association of Lot Owners. Following the recording of this Declaration, an association of Lot Owners shall be organized to serve as a means through which the Lot Owners may take action with regard to the administration, management and operation of Such Ranch. The name of this association shall be "Sun Ranch Business Park Association," and the Association shall be an Oregon non-profit corporation.

18.1 Membership; Board of Directors. Each Lot Owner shall be a member of the Association. The affairs of the Association shall be governed by a board of directors as provided in the Bylaws.

18.2 Powers and Duties. The Association shall have such powers and duties as may be granted to it by the Oregon Non-Profit Corporation Act, together with such additional powers and duties afforded it by this Declaration or the Bylaws.

18.3 Adoption of Bylaws, Declarant Control of Association. Following the filing of Articles of Incorporation, Declarant shall adopt the Bylaws for the Association. Declarant may record the Bylaws. Declarant may also appoint an interim board of directors of the Association, which directors shall serve until their successors have been elected as provided in the Bylaws. In addition, while Declarant owns a Lot, it shall have the right to consent to any amendment to the Declaration or the Bylaws.

19. Severability. Invalidation of any one of these covenants or restrictions or by any term or condition of this Declaration, judgment or court order shall in no ways effect other provisions of this Declaration which shall remain in full force and effect.

20. Amendment. The terms, conditions, covenants and restrictions of this Declaration shall run with and bind the land, and shall insure to the benefit of and be enforceable by the Owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Declaration is recorded, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded. In addition, such covenants and restrictions of this Declaration, may be amended during the first 25 years or any extension thereof by a vote or proxy or written consent of at least 75 percent of the Owners. However, no easement may be altered unless the Owner(s) who benefit from the use of such easement consents in writing. Two officers of the Association may sign such amendment. Notwithstanding the foregoing, Declarant shall have the right without consent of the other Owners to amend this Declaration so long as Declarant owns one or more Lots in Sun Ranch and as otherwise provided in this Declaration.

All such amendments must be in writing and recorded in the appropriate Official Records of Deschutes County, Oregon to be effective.

21. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a light industrial park (and if approved by the City mixed use industrial and residential development) and any violation of this Declaration shall be deemed to be a nuisance.

22. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

23. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents, or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with Applicable Laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a light industrial project or a mixed use project, except as specifically and expressly set forth in this Declaration.

24. Non-liability and Indemnification. No right, power, or responsibility conferred on the Association or its Board or the ARC by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Declaration, the Board, the Association, the ARC, any member of the Board or of the Declarant or of the ARC, or any other officers, employee or agent of the Association or Declarant. No such Person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's gross negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

(1) The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;

(2) In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

(3) In the case of an action or threatened action by or in the right of the



Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 24 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association, provided that the Person to be indemnified shall not be entitled to vote. Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 24 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by Applicable Laws. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

25. Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Lot or to any general partner of a partnership or any member of a limited liability company (LLC) owning a Lot shall be deemed delivery to all co-owners or to the partnership or to the LLC, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a partnership, corporation or LLC shall be deemed delivery to the corporation, partnership or LLC. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Lot. Such notice shall be deemed delivered three (3) business day after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors in which case the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

26. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

27. Benefit of Provisions; Waiver. The provisions contained in this Declaration shall bind and insure to the benefit of and be enforceable by the Declarant and the owner or owners of any portion of the Property, and their heirs and assigns, and each of their legal representatives. Failure by Declarant, the Association or by any of the Lot Owners or their legal representatives, heirs, successors, or assigns, to enforce any of such conditions, restrictions or covenants herein contained, shall in no event be deemed a waiver of the right to do so.

*[Remainder of Page Intentionally Left Blank]*



Exhibit "A"

Real property in the County of Deschutes, State of Oregon, described as follows:

A tract of land located in the Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of section 4, TOWNSHIP 15 SOUTH, RANGE 10, EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon, described as follows:

Commencing at the North Quarter (NW¼) corner of said Section 4; thence South 00°05'01" East along the North-South center section line, 2590.59 feet to the Center Quarter (C¼) corner; thence leaving said North-South line South 89°49'54" West along the East-West center section line, 362.43 feet to the True Point of Beginning, said point also being on the West line of that certain tract described in Book 191, Page 178, Deed Records; thence South 89°49'54" West along said East-West section line, 957.79 feet, said point being the Southeast corner of that tract of land described in Book 110, Page 534, Deed Records; thence leaving said East-West line, North 00°04'19" West, 988.59 feet to the Northeast corner of said tract; thence North 00°04'19" West, 327.65 feet to the Northwest 1/16 corner of said Section 4; thence South 89°55'37" East along the North line of said Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of said Section 4, a distance of 251.38 feet; thence South 00°05'01" East, 162.99 feet; thence North 89°54'59" East along the South line of that certain tract and a Westerly projection thereof as described in Book 194, Page 563, Deed Records, 1068.57 feet to a point on said North-South line and further being on the centerline of Wilt Road (Camp Polk Road); thence along said North-South line and along said centerline of Wilt Road, South 00°05'01" East, 910.24 feet; thence leaving said North-South line and centerline, South 89°49'54" West, 362.43 feet to the Northwest corner of said parcel as described in Book 191, Page 178, Deed Records; thence South 00°01'01" East, 240.38 feet to the True Point of Beginning and terminus of this description.

Tax Parcel Number: 195298