

# Declaration of Protective Covenants and Restrictions for the South Rigby Commercial Park

## WITNESSETH

**Whereas**, the Developer now owns certain lands in the Jefferson County, State of Idaho, described as those lands within the South Rigby Commercial Park.

**Whereas**, the Development has been zoned C-2 Commercial pursuant to the Jefferson County Code of Ordinances subject to certain use restrictions.

**Whereas**, the Developer has subdivided the Development into Lots, which subdivision is now known as "South Rigby Commercial Park"; and

**Whereas**, the Developer desires to subject the Development to the conditions, restrictions, covenants and reservations set forth below, which shall encumber the Development of each portion of the Development identified as a lot on a recorded Plat, specifically excluding any outlots (the "Lot" or "Lots") thereof, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

**Now, Therefore**, Developer declares that the Development and each Lot thereof shall be developed, used, held, sold, and conveyed subject to the conditions, restrictions, covenants and reservations set forth below, which shall inure to the benefit of, and encumber the Development and each Lot thereof, and run with the land, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

### Article I - Statement of Purpose

The General Purpose of this Declaration is to help assure that the Development will become and remain an attractive place to do business; to insure the most appropriate improvement of each Lot; to guard against the erection thereon of poorly designed or proportioned structures; and to promote and maintain the highest and best uses of the lands commensurate with the zoning and use classifications and demographics of this Development.

### Article II - Government Restrictions

This Development is already under the control of existing zoning and use restrictions imposed by Jefferson County; and the Developer desires that these existing zoning and use restrictions control, in large part, the nature and use of the lands within the Development. So, the Developer hereby declares that the Government Restrictions shall constitute covenants running with the Development and shall bind the current owners, their successors in interest, any owner thereof, and the owner of any interest therein. Furthermore, these Government Restrictions shall be enforceable at law or equity against any party who has, or acquires, an interest in the Development, by any of the parties who are named below as grantees, promisees, or beneficiaries with enforcement rights hereunder:

- a) Jefferson County.** The government of Jefferson County, Idaho, provided that the Development is under the jurisdiction of zoning ordinances of Jefferson County at the time the enforcement action is commenced; and
- b) Other Lot Owners.** Each of the Owners of the Lots in the Development.

The zoning restrictions may be amended, altered, or terminated in accordance with the Jefferson County Statutes pertaining to such matters at any time by the Developer. If changes by others are desired then all persons or business organizations having the power to convey the fee simple title to a given Lot (the "Owners") must agree to the Amendment, Alteration, or Termination Petition, as the case may be. If the Owners of not fewer than 75% of the number of Lots, consent, in writing, to filing such a Petition with the Jefferson County Clerk, the execution of any such Petition by not fewer than 75% of the Lot Owners shall be deemed to be consented to and executed by all the Owners of the Lots. For as long as the Developer retains title to, or any interest in any of the Lots, a Petition may not be filed with the Jefferson County Clerk unless the Developer has consented, in writing, to such filing.

**Article III - Additional Covenants and Restrictions**

The Ownership, use and development of the Lots, and construction of all improvements thereon, shall be subject to the following conditions, covenants, reservations, and restrictions:

**a) - Setback Requirements.** The following setback requirements shall apply to the Lots:

- i) Building setbacks shall be in accordance with the Jefferson County Code of Ordinances, except as modified herein;
- ii) The site plan must provide vehicular access along at least one side of the building to the rear yard, unless the rear yard abuts a public street or alleyway with access therefrom;
- iii) Rubbish containers and recycling bins shall be in enclosures designed and constructed in a manner compatible with the exterior of buildings and other structures on the Lot;
- iv) - Construction of any structures or other improvements on a Lot, once commenced, shall be diligently pursued to the final completion, and no delays in construction longer than sixty (60) days shall be allowed, subject to delays occasioned by acts of God, weather, seasonal considerations, casualty, war, civil disturbance, shortage of materials, strike, or other reason not within the control of the Lot Owner;
- v) - All areas of Lots not improved shall be graded and seeded in grass; provided , however, that the foregoing requirement shall not apply to Lots held by the Developer for resale or other development.

**b) - Developer Approval.**

For as long as the Developer has title to or any interest in any Lot, no improvements of any kind or nature, including, but not limited to, buildings, outbuildings, parking lots, walls, landscaping or fences, shall be constructed or erected upon a Lot, and no exterior alterations shall be made to any of the improvements unless, and until complete plans and specifications shall have been submitted to and approved by the Developer, or its agent appointed for such approvals, in writing. The Developer shall grant or deny, with reasons, their approval or denial within thirty (30) days after receipt of a complete set of plans and specification for the proposed improvement. If the Developer fails to grant or deny their approval within the thirty (30) day period said approval shall be deemed to be denied. If their approval is granted said approval shall not be construed or interpreted to mean that the plans, specifications, and drawings (including site plans, and architects or contractors notes), and any construction in accordance therewith, is in compliance with any applicable building codes, ordinances, regulations, setback requirements or any other statute, rule, regulation or law applicable thereto. The Lot owner shall be solely and exclusively responsible for determining and insuring such compliance and holds the Developer harmless with regard thereto. The thirty (30) day period shall not begin until a complete set of plans and specifications shall have been received by the Developer to review. In order to be considered complete the plans shall show, at a minimum;

- i) Construction details of all buildings, fences, walls, parking lots, outbuildings and other improvements;
- ii) Proposed elevations of any structure, including colors and building materials to be used;
- iii) A detailed site plan showing the location of all improvements.
- iv) Such other materials and plans as the Developer may deem necessary in order to render their decision.

**c) - Developer Rejection.** The Developer shall have the right to reject any plans and specifications which, in the judgment and sole opinion of the Developer:

- i) are not in conformance with any of the covenants or restrictions in this Declaration.
- ii) are not desirable for aesthetic reasons;
- iii) are not in conformity with the general purposes of this Declaration; or
- iv) for any reason lack merit or are objectionable as business park neighbors.

#### Article IV - Miscellaneous Provisions

These covenants and restrictions, their execution and recording, and the implementation of their provisions shall be further governed by the following:

**a) Amendment by Owners.** These Covenants and Restrictions may be amended at any time by an instrument duly executed and in recordable form by at least 75% of the Owners of the Lots in this Development. For as long as the Developer retains title to, or any interest in, any Lot in the Development, no such amendment may be executed unless approved by the Developer as to form and content. Developer's approval may be withheld at its sole, absolute and unrestricted discretion. This paragraph shall not apply to the Government Restrictions set forth in Article II above.

**b) Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which other provisions shall remain in full force and effect

**c) Nonforfeiture.** Any violation of these restrictions shall not result in a forfeiture or reversion of title to any Lot in the Development.

**d) Additions to Existing Property.** The Developer, its successors or assigns, shall have the right, but not the obligation, to bring within and subject to this Declaration, at such times and such stages as Developer in its sole discretion shall determine, additional lands that are contiguous to the Development, by executing and recording with the Register of Deeds of Jefferson County amended or supplemental declarations of covenants and restrictions with respect to the additional property. Such additional lands shall, upon the recording of such amended or supplemental declarations, be deemed to be a part of this Development. Under no circumstances shall this Declaration or any amended or supplemental declaration bind the Developer, its successors or assigns, to make any additions (except as specifically agreed therein).

**e) Attorney's Fees.** If any suit of action is brought to enforce the provisions of this Declaration, the party who prevails in such action or suit shall be entitled to recover its court costs and attorney's fees from the other party.

**f) - Duration of Covenants.** These Covenants shall continue and remain in full force and effect at all times with respect to all property, and each party thereof, now or hereafter made subject thereto (subject however to the right to make Amendments hereto), until January 1, 2020. However, if, within one (1) year prior to January 1, 2020, there shall be recorded an instrument directing the termination of these Covenants signed by owners of not less than 75% of the Lots then subject to these Covenants, as in effect immediately prior to the expiration date, they shall be continued automatically for an additional period of twenty (20) years and thereafter for successive periods of twenty (20) years unless within one (1) year prior to the expiration of any such period, the Covenants are terminated as set forth herein.

IN WITNESS WHEREOF, the Developer has caused its duly authorized members to execute these Covenants and Restrictions this 3rd day of March, 2006.

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Jim Bernard, LandMark Development Properties, LLC, Developer