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Index to: DECLARATION OF COVENANTS

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**FIRST AMENDED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

FOR

“DRIGGS CENTRE,” A BUSINESS PARK

DATED OCTOBER 8, 2008

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**FIRST AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DRIGGS CENTRE**

This First Amended Declaration of Covenants, Conditions and Restrictions is made this _____ day of October, 2008, by Driggs Professional Park, LLC, hereinafter referred to as **“Declarant,”** as owner of the real property in Teton County, State of Idaho, described in **“Exhibit A”** attached hereto and incorporated by reference herein. This First Amended Declaration of Covenants, Conditions and Restrictions amends the Declaration of Covenants, Conditions and Restrictions by Declarant dated June 26, 2007.

RECITALS

- A. The property described in Exhibit “A” is hereby subject to these Covenants, Conditions and Restrictions and will be known as Driggs Centre, (herein referred to as “Driggs Centre”).
- B. Driggs Centre is being developed as a planned industrial subdivision and professional office park. Except where this Declaration of Driggs Centre conflicts with applicable government municipal regulations, this Declaration shall be binding upon all owners, lessees, licensees, occupants and users of the property subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance for the County of Teton, the more restrictive standard or requirement of the applicable County of Teton ordinance, policy or requirement shall apply.
- C. The Rego Group, LTD, (an Illinois Sub-S Corporation), and Action Gravel Enterprises, LLC, (an Idaho Limited Liability Company), are joint venturers under an Idaho Limited Liability Company known as the Driggs Professional Park, LLC, and individually own certain property (see Exhibit “A”), and each hereby consent and agree to all terms and conditions of this Declaration.

SECTION 1. DEFINITIONS

- 1.1 **“Block”** - shall mean those areas designated as Blocks on subdivision or partition maps according to the records of Teton County.
- 1.2 **“Declarant”** - shall mean Driggs Professional Park, LLC, or its successors in interest.
- 1.3 **“Declaration”** - shall mean this Declaration of Covenants, Conditions and Restrictions for the Driggs Centre.

- 1.4 **“Design Review Committee”** - A Committee formed by Declarant and responsible for the approval of plans and specifications for the development of, or improvements in the Driggs Centre, and the enforcement of rules governing the use and maintenance of Lots and improvements thereon.
- 1.5 **“Improvements”** - shall include but is not limited to, any buildings, outbuildings, private roads, driveways, parking areas, fences and barriers, retaining walls and stairs, decks, electrical and other utility distribution facilities, hedges, windbreaks, planting, planted trees and shrubs, signs, loading areas and all other structures or exterior landscaping, vegetation, or ground cover of every type and every kind above the land surface.
- 1.6 **“Driggs Centre (DCIP)”** - shall mean all of the real property now or hereafter made subject to this Declaration.
- 1.7 **“Driggs Centre, Owners Committee (DCOC)”** - shall mean the committee of Owners formed pursuant to Section 8 herein.
- 1.8 **“Lot”** - shall mean each lot as shown on the Driggs Centre, plat recorded in Teton County and which is made subject to this Declaration.
- 1.9 **“Owner”** - shall mean and refers to either all holders of fee title to any Lot, or any other person or persons entitled to possession of the Lot pursuant to a contract or lease requiring that such person or persons pay real property taxes on the Lot.
- 1.10 **“Streets”** - shall mean any street, highway or other thoroughfare within or adjacent to the Driggs Centre, and shown on any recorded subdivision or partition map, or survey map or record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

SECTION 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE DRIGGS CENTRE

- 2.1 **General Declaration Creating the Driggs Centre.** Declarant hereby declares that all of the real property located in Teton County, Idaho, described in Exhibit A, is and shall be hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this Declaration. All of said restrictions are declared and agreed to be in furtherance of the general plans of the subdivision, and are established with purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions and Restrictions of Driggs Centre, shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant and all owners, and their successors in interest as set forth in the Declaration.

2.2 Addition of Other Real Property by Declarant.

- A. Declarant may, at any time during the term of this Declaration, add all or a portion of any contiguous land now or hereafter owned by Declarant to the Property which is covered by this Declaration, and upon recording of notice of addition of real property, as set forth below, the provisions of this Declaration specified in said notice shall apply to such added land in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent this Declaration is made applicable thereto, the rights, powers and responsibilities of Declarant and owners of parcels with such added land shall be the same as in the case of the land described in Exhibit A.
- B. The notice of addition of real property referred to above shall contain at least the following provisions:
- (1) A reference to this Declaration stating the date of recording and the recording information where the Declaration is recorded.
 - (2) A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property.
 - (3) A legal description of such added real property.
 - (4) Such other or different covenants, conditions and restrictions as Declarant shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such added real property.

SECTION 3. ARCHITECTURAL CONTROLS

Note: None of the following conditions, restrictions or other requirements shall relieve an Owner or their duly authorized representative from the responsibility of complying with all building codes, permits, charges or other obligations required by the State of Idaho or Teton County regarding the construction, modification, improvement or demolition of a structure or other regulated improvement.

- 3.1 **Approval Required.** No improvements, as defined in Section 1.5 above, shall be erected, placed, altered, maintained or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by Declarant, or at Declarant's discretion, the Driggs Centre, Design Review Committee. It is the intent and purpose of this Declaration to

assure quality of workmanship and materials and to assure harmony of external design with the then existing Improvements as to location with respect to topography and finished grade elevations.

- 3.2 **Procedure.** Any Owner proposing to construct any Improvements within the Driggs Centre, (including any exterior alteration, addition, destruction or modification to any such Improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 4.3 through 4.7 below. Failure to follow such procedures or obtain such approvals as required by paragraphs 4.3 through 4.7 below shall be deemed a breach of this Declaration. The Declarant strongly encourages Owners to submit Preliminary Architectural Review Documents for consideration. This will provide Owners with an opportunity to garner input on their designs prior to expending greater effort and expense. The Preliminary Architectural Review Documents must contain, at a minimum, a site plan sketch (at 1" = 20' scale) and two exterior elevation sketches (at 1/8" = 1'-0"). The exterior materials must be indicated on the elevations.
- 3.3 **Required Final Architectural Review Documents.** (Note: All the documents must be submitted together. Separate submittals are not allowed.) Any Owner proposing to utilize, improve or develop real property within the Driggs Centre, shall submit the following items for review:
- A. A site plan showing the location, size, configuration and layout of any building, structure or facility (or, where applicable, any alteration, addition, modification or destruction thereto) including appurtenant facilities for parking, tanks, storage, loading, deliveries, fences, vehicular and pedestrian traffic and circulation, and utilities plan. The scale of plans shall be 1 inch = 20 feet or larger.
 - B. Architectural plans and drawings showing the nature, style and dimensions of any building, structure, facility, fence, wall, barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof) including the exterior material types, colors, appearance, and the type of screening for roof-mounted fixtures and the type of street screening for exterior equipment and for tanks and other exterior storage areas.
 - C. A landscape plan showing the nature, type, size, location and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed), together with the location of any proposed signing. The scale of plans shall be 1 inch = 20 feet or larger.
 - D. A site grading plan showing the elevation, slope and grade of any site work (including the nature, location and utilization of any removal or filling soil) proposed to be done in conjunction with any proposed

improvements, development, modification or destruction of any building, structure or facility or of any planting, installation or removal of any landscaping, vegetation or ground cover. The scale of the plans shall be 1 inch = 20 feet or larger. The required contour interval is 1'.

E. The Declarant may require the submission of such additional information as may be reasonably necessary to consider any application.

- 3.4 **Architectural Review Fees.** The Declarant will establish and charge reasonable fees for review of applications hereunder and will require such fees to be paid in full prior to review of any application. Compliance fees and deposits will also be required. Preliminary Architectural Reviews are initially established at \$500.00 for each submittal. The Declarant will provide a response to the submittal within two weeks of receipt. The Final Architectural Review Fee is established at \$500.00. The refundable Compliance Fee is initially established at \$1,000.00 with Declarant retaining the right to modify the fee as appropriate. The Compliance Fee will be refunded in full at such time as the Declarant is satisfied, in Declarant's sole discretion, that the improvements have been completed in accordance with the plans and drawings that were approved by the Declarant. Declarant may employ architects, engineers, or other persons as deemed necessary to perform the reviews of plans, drawings, and completed improvements.
- 3.5 **Review.** All plans and drawings identified in paragraph 4.3 above shall be submitted to Declarant for review prior to the performance of any proposed work. No plans shall be reviewed until all items specified in this section and the review fee, if any, are submitted. Within 30 days following receipt of such plans and drawings Declarant shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Driggs Centre, as determined by Declarant in its sole discretion. In the event the owner is not notified as to the conformity of the plans with the 30 day review period, the plans are conclusively presumed to be approved as submitted. In the event any aspect of any of the plans does not conform to the Driggs Centre, development concept, the Owner shall re-submit those non-conforming portions of the plans for review in accordance with the procedures outlined in paragraph 4.3 above, and this paragraph. No work may be performed relating to any Improvement unless and until all aspects of all plans required under paragraph 4.3 above have been approved by Declarant. Any site plans, construction plans or similar plans and drawings submitted to Teton County in connection with the construction of any Improvement in the Driggs Centre, must bear the prior written approval of the Declarant.
- 3.6 **Architectural Guidelines.** Including and in addition to the specific conditions and restrictions set forth herein, the development concept for the Driggs Centre, shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls.

Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to paragraph 4.5 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

- 3.7 **Inspection.** All work related to any building, structure or facility or any landscaping, vegetation, ground cover or other improvements within the Driggs Centre, shall be performed in strict conformity with the plans and drawings approved under paragraph 4.5 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings, and reserve the right to order a stop to all work, if, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith by Declarant that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. The Declarant or officer, director, employee, agent or servant of the Declarant shall not be responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.
- 3.8 **Waiver.** Any condition or provision of paragraphs 4.2 through 4.7 above may be waived by Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the Driggs Centre. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 4.2 through 4.6. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant and delivered by certified mail to the party claiming the benefit of such waiver.

SECTION 4. REGULATION OF IMPROVEMENTS

- 4.1 **Minimum Setback Lines.** No building of any kind, and no part thereof, shall be placed on any site closer than 20 feet to a street or front property line than herein provided. No structure of any kind, and no part thereof, shall be placed on any site closer than 15 feet to a side or rear property line and 20 feet to adjacent land owner's outside Driggs Centre unless having written authority by them to the contrary. The following structures and improvements are specifically excluded from these setback provisions.

- A. Roof overhangs, subject to the specific approval of Declarant in writing.
 - B. Steps and walks.
 - C. Paving, up to the front, side, and rear lot line, and associated curbing.
 - D. Fences, screened by landscaping, except that no fences shall be placed within 20 feet of the front lot line. Fences may be placed on rear and side lot lines.
 - E. Landscaping as per Paragraph 5.5 below.
 - F. Signs identifying the Owner, subject to the specific approval of Declarant in writing.
- 4.2 **Excavation.** No excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded and leveled in accordance with approved plans.
- 4.3 **Fire Resistance.** All buildings constructed within the Driggs Centre Subdivision shall install telemetry heat and smoke detection system linked to local EMS services. Alternate fire protection systems may be installed subject to approval by the Declarant and State and local governing authorities. Bearing walls of every building constructed within the Driggs Centre, Subdivision must have a one (1) hour fire-resistance rating. All buildings constructed within the Driggs Centre, Subdivision shall be set back fifteen (15) feet from the exterior boundary line of the Subdivision and adjacent property owners outside the Subdivision.
- 4.4 **Exterior Construction.** It is the Declarant's intent that the buildings and facilities within this development are designed in a fashion that exudes order, quality and character in keeping with a well-planned and maintained Business Park. Therefore, buildings must be designed with careful thought given to front facade massing, materials and articulation. Building sides must be landscaped. Austere buildings devoid of character will not be approved.
- A. Front facade walls shall be finished with architectural masonry units, natural stone, concrete, or metal panel subject to the approval of the Declarant in accordance with Section 4 herein.
 - B. Eaves, with the exception of flat roof units, shall consist of overhangs that are of appropriate scale relative to height of unit. The minimum overhang shall be two (2) feet. Eave brackets and similar articulations are encouraged.

- C. Roofs materials shall be subject to approval of the Declarant. Metal roofs are required to have a standing seam application, and a 2:12 minimum slope. Composition shingle roofs shall have a minimum slope of 3:12. Steeper roofs slopes are encouraged.
- D. Exterior colors shall be compatible with the colors of the natural surroundings and adjacent buildings and are subject to the approval of the Declarant. Walls should be articulated and with an accent/trim color and roofs shall be of different complimentary color.
- E. HVAC and similar equipment (transformers, electric/gas meters, etc.) must be screened from view whether located on the ground or a roof. Roof mounted equipments must be screened through the use of parapets (on low slope roofs) or approved screening walls, cupolas, etc. (on pitched roofs). Ground mounted equipment may be screened with approved walls or landscaping. Flues, vents, hoods, etc., that are exposed to the view shall be painted to match the adjacent roof color. Efforts should be made to locate such items in a manner that screens them from view from adjacent buildings and public ways.
- F. Overhead doors on the front of buildings must be of wood siding and no larger than 8X8 feet.

4.5 **Landscaping** (See "Landscaping Exhibit" attached).

- A. Every Lot on which a building shall have been placed shall be landscaped according to plans approved as specified herein and maintained thereafter in a sightly and well-kept condition.
- B. The Owner shall landscape and maintain unpaved areas between the property lines and the setback lines. The setback from street property lines shall be used exclusively for landscaping except for walks and driveways bisecting the required landscape area.
- C. Landscaping as approved by Declarant shall be installed within one hundred and eighty (180) days of occupancy or completion of the building, whichever occurs first. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Declarant.
- D. All areas within improved Lots proposed for future expansion shall be maintained in a weed-free condition.

4.6 **Signs.**

- A. One sign or monument shall be permitted, other than the following:
 - (1) Those identifying the name, business and products of the person or firm occupying the premises, and
 - (2) Those offering the premises for sale or lease when specifically approved by Declarant in writing.
- B. Signs shall conform to setback lines with one (1) ground monument sign allowed per lot.
- C. Signs and identifications on building sites shall be prepared by a professional sign company, be a minimum of four (4) square feet and a maximum of twenty-four (24) square feet in size, and use a maximum four color design as specifically approved by Declarant in writing, and be ground mounted between the front sidewalk and front of building, with a maximum height not to exceed 8 feet. For multi-tenant buildings, each tenant may be allowed one additional wall mounted sign not to exceed 16 square feet. All changes to the above must be requested in writing for approval by declarant.
- D. No sign shall be placed in any window unless specific approval to the contrary is granted by Declarant in writing.

4.7 **Parking Areas.**

- A. **General.** Adequate off-street parking shall be provided to accommodate all parking needs for employee, visitor and company vehicles on the site. The intent of the provision is to eliminate the need for any on-street parking. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be provided to satisfy the intent of this section. All parking shall be in conformance with applicable Teton County ordinances.
- B. Parking shall not be permitted:
 - (1) Between public and/or private street pavement and property line;
- C. The parking requirements may be modified by Declarant as to any particular site, provided such modification is in writing.

4.8 **Storage and Loading Areas.**

- A. No materials, supplies or equipment shall be stored in any area on a site except inside a closed building, or behind a visual barrier, as approved in writing by Declarant, screening such areas so that they effectively reduce visibility from the neighboring property or streets. Screening may be accomplished by dense planting.
- B. Loading docks shall be restricted to the rear and sides of a building unless otherwise approved by Declarant in writing. Loading docks shall be on the rear half of the building unless specifically approved by Declarant in writing.
- C. Refuse collection areas shall be out of site of the main corridor or access, and/or landscaped screened from streets. Declarant, as provided in Section 3 herein, shall approve visibility. No refuse collection areas shall be permitted between a street and the front of any building. Utility meters and installation of meters are restricted to the rear and sides of any building unless screened as approved by Declarant as provided in Section 3 herein.

4.9 **Fences.** Proposed fence designs, with appropriate landscape screening, will be reviewed and approved on a case-by-case basis by the Declarant. Fencing shall be consistent with architectural details of the building and the fencing on adjacent lots. To achieve continuity from lot to lot and throughout the Driggs Centre, the Declarant reserves the right to implement a specific fence standard.

4.10 **Maintenance and Improvement of Grounds.** Each Lot within Driggs Centre, shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, fences, walks and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by Declarant, which approval shall not be unreasonably withheld. Each Owner shall keep all shrubs, trees, grass and planting of every kind on the Owner's Lot neatly trimmed and properly cultivated, and keep all areas of the Lot free of trash, weeds, excess building materials, and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

4.11 **Antennas and Cell Towers.** Over-the-air reception and transmission devices may be permitted within Driggs Centre, subject to non-interference of aeronautical uses, approval of the DRC and designed and landscaped in such a way as to blend in with the natural surroundings or be wholly enclosed within a building structure. Standard TV antennas and satellite dishes are permitted so long

as they comply with applicable restrictions adopted by Declarant, pertaining to the size, means, method and location of their installation.

SECTION 5. REGULATION OF OPERATIONS

5.1 Permitted Operations and Uses.

- A. Unless otherwise specifically prohibited by Declarant herein any industrial or commercial operation and use permitted in accordance with Teton County conditional use approval for Driggs Centre, will be permitted if it is performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to adjacent sites, such as, but not limited to, vibration, sound, electric-mechanical disturbance, radiation, air or water pollution, dust, emission odorous, toxic or non-toxic matter. All lighting is to be shielded and confined with property lines in accordance with Teton County "Night Sky" zoning ordinance.
- B. An exception to applicable portions of paragraph 5.1(a) shall be made during periods when a breakdown in equipment occurs in such a manner as to make it evident that the effect was not reasonably preventable.
- C. Although the Driggs Centre, is zoned M-1 under the Teton County Zoning Ordinance in place at the time of acceptance and recordation of the plat, the following operations and uses are specifically prohibited in the Driggs Centre:
 - 1. Brewery;
 - 2. Campground / RV Park;
 - 3. Commercial fuel storage;
 - 4. Kennel / boarding of animals;
 - 5. Truck stop;
 - 6. Vehicle sales lot;
 - 7. Veterinary clinic / hospital;
 - 8. Airport;
 - 9. Airport landing strip;
 - 10. Gravel pit;
 - 11. Motorcycle race track / club;
 - 12. Processing plant for agriculture products;
 - 13. Salvage yard; and
 - 14. Sanitary landfill / garbage disposal site, public.

- 5.2 Right of Entry.** During reasonable hours, and subject to reasonable security requirements, Declarant, or its authorized representative, shall have the right to enter upon and inspect any building, site or parcel and the improvements thereon, for the purpose of ascertaining whether or not the provisions of the Declaration

have been or are being complied with and neither Declarant nor its authorized representatives shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

- 5.3 **Exterior Lighting Restrictions.** The intent of the lighting restrictions is to reduce the amount of light pollution and to be unobtrusive to neighboring properties. Exterior lighting shall be subdued, understated and indirect. Area lighting shall have concealed light sources and shall be no brighter than a 60 watt incandescent light. Lights shall be shielded so that no light is projected above the horizontal. Lighting shall be “down” type and shall not radiate out from the property. Motion sensor lights are encouraged. In all cases, excessive glare to neighboring properties or circulation shall be avoided. Flashing, blinking, or moving lights shall not be used except for decorative lighting during the Christmas season. Protection of “night skies” is an important benefit of this Exterior Lighting Restriction and is required in accordance with Section 9-4-12, Outdoor Lighting, of the Teton County Subdivision Ordinance, as amended 01-24-05.

SECTION 6. COVENANT FOR ASSESSMENT

- 6.1 **Purpose of Assessment.** The Assessments levied by the Declarant, or the DCOC as the case may be, shall be used exclusively to enforce the terms of this Declaration for the benefit of the Owners and occupants of Lots and to ensure proper operation and maintenance of Lots and Improvements within the boundaries of the Driggs Centre. Eligible uses include the improvement and maintenance and the cost associated therewith, of the roads, fire protection, fencing, landscaping, irrigation, lighting and signage within the road right-of-ways of the Driggs Centre.
- 6.2 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant herein covenants for the Driggs Centre, each Owner of any Lot by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agrees to pay Declarant or DCOC as the case may be, regular annual, special, or other regular periodic assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney’s fees, shall also be the personal obligation of the person who was the Owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

- 6.3 **Nature of Assessments.** The assessments levied by the Declarant shall be used for the operation and maintenance with the boundaries of the Driggs Centre. After consideration of current operating costs and future needs, the Declarant may fix a regular flat assessment upon a monthly, quarterly, or annual basis. The regular periodic flat charges must be fixed at a uniform rate for all Lots not exempt and may be collected on a monthly, quarterly, or annual basis in the discretion of the Declarant, such assessment to be based on each 1/2 acre owned, as compared to the total number of acreage subject to the restrictions (excluding dedicated streets). Except for signed agreements that pre-exist these CC&R's, and then only for the particular signatory/owner listed on the pre-existing agreement and not otherwise transferable to future owners, the landscaping and maintenance assessment for the calendar year 2007 shall not exceed \$500 per year, per acre, or such fraction thereof. In future years, the landscaping and maintenance assessment may be increased by the Declarant or the DCOC, pursuant to Sections 6.1 through 6.3.
- 6.4 **Special Assessments.** Special assessments may be levied by the Declarant or the DOCC as provided herein and may be used for any necessary and proper purpose for the benefit of the Driggs Centre. After consideration of current and future water and other needs, the Declarant has fixed two special assessments: (1) a one time water special assessment of \$4,313.75 to be paid by the Owner of each and every lot at the Lot is first connected to the Driggs Centre water system, and (2) a monthly recapture special assessment of \$106.21 to be paid by the Owner of each and every lot commencing at the initial purchase of the Lot and continuing thereafter for 240 months (monthly for 20 years). In the future, these and other special assessments may be fixed or increased by the Declarant or the DCOC, pursuant to Sections 6.1 through 6.4.
- 6.5 **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Declarant or DCOC, all maintenance of the Lots and structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with standards acceptable to Declarant. The Declarant may assume the maintenance responsibilities of such Owner if, in the opinion of Declarant, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Declarant shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within 30 days after mailing of such written notice, the Declarant may proceed. The expenses of such maintenance by Declarant, shall be reimbursed to Declarant by the Owner, together with interest as provided in Section 6.6 below. Such charges shall be assessments and a lien on the Lot as provided in Section 6.2 herein. A breakdown of any expenses and costs incurred by the Declarant will be provided to the Owner.

- 6.6 **Assessment Dates.** All Lots shall be subject to the annual, quarterly, or monthly assessments provided for herein effective the first day of the month following the month an Owner takes possession of any Lot. The Declarant shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Declarant.
- 6.7 **Remedies for Nonpayment of Assessment.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the lesser rate of 10% per annum or the highest rate allowed by law per annum. The Declarant shall file in the office of the County Clerk of Teton County, State of Idaho, within thirty days after delinquency, a statement of the amount of any such charges or assessments, together with interest, which have become delinquent with respect to any Lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs and expenses, and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the Lot, with respect to which it is fixed from the date the notice of delinquency thereof is filed in the in the office of the County Clerk, until the same has been paid or released as herein provided. Such lien may be enforced by the Declarant in the manner provided by law with respect to liens upon real property, as provided in the Idaho Code. The Owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs and disbursements, including reasonable attorney's fees of the Declarant of the processing and, if necessary, enforcing such liens, all of which expense, costs and disbursements and attorney's fees shall be secured by said lien, including fees on appeal, and such Owner at the time such assessment is levied shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability of the assessments provided for herein by non-use of his Lot.
- 6.8 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien of any first mortgage and/or trust deed now or hereafter placed upon said property or any part thereof. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure thereof, shall extinguish the lien of such assessment as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and prior liens and charges have been satisfied. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

SECTION 7. DRIGGS CENTRE OWNERS COMMITTEE

- 7.1 **Declarant's Control.** Declarant shall exclusively exercise all architectural, landscaping, signing and lighting controls as well as those other duties prescribed under this Declaration, including but not limited to assessments, so long as Declarant holds an interest in Driggs Centre, or until Declarant elects to terminate its interest in the Driggs Centre, as set forth in paragraph 8.2 below (whichever occurs first). The Declarant's exercise of control and approval shall be exercise reasonably. For purposes of this Declaration, Declarant shall be deemed to hold in an interest in Driggs Centre, if any of the following conditions is met:
- A. Declarant holds title to any Lot in Driggs Centre, or
 - B. Declarant elects to exercise architectural, landscaping, signing and lighting controls over any Lot within the Driggs Centre, or elects to exercise any other duties under this Declaration, even though Declarant does not hold title to any Lot with the Driggs Centre.
- 7.2 **Termination of Declarant's Interest.** Paragraph 8.1 notwithstanding, Declarant's interest in the Driggs Centre, shall terminate at such time that seventy-five percent (75%) of the lot acreage with in the subdivision is sold. In addition, Declarant reserves the right to terminate its interest in the Driggs Centre, at any time. At such time that Declarant's interest in Driggs Centre, is terminated (whether voluntarily or involuntarily), Declarant shall cause to be recorded in the Official Records of Teton County, Idaho, a declaration stating that Declarant no longer holds any interest and/or desires not to exercise any further controls over development in the Driggs Centre. Copies of such declaration shall be provided to each Owner of a Lot within the Driggs Centre, contemporaneously with recordation of the declaration. Recordation of such declaration shall formally terminate Declarant's interest in the Driggs Centre, and all rights of architectural, landscaping, signing and lighting controls, as well as any other duties of Declarant under this Declaration (except for those duties prescribed by paragraphs 8.3 below, or as otherwise regulated by Ordinances of Teton County, Idaho.
- 7.3 **Formation of the DCOC.** Upon formal termination of Declarant's interest in Driggs Centre, Declarant shall form an Idaho non-profit organization called the Driggs Centre, Owners Committee (DCOC). DCOC shall be governed by a five-person Board of Directors plus one (1) additional person for every owner of lots in excess of five (5) acres. DCOC shall succeed to all powers, responsibilities and right of Declarant under this Declaration, except those reserved to Declarant.
- A. **Organization of DCOC.** Within 30 days after the commencement date of DCOC, the initial Board of Directors for DCOC shall be elected. Persons eligible for the initial DCOC Board of Directors shall be limited to directors, officers, employees, agents, owners or partners of any corporation, partnership, joint venture or proprietorship owning any Lot

within the Driggs Centre. Declarant shall solicit from, and circulate to all Owners, a list of nominees for the initial Board of Directors' positions within the 30-day organizational period. Declarant shall then conduct an election of the initial Board of Directors. The five nominees obtaining the five highest vote totals shall constitute the initial Board of Directors.

- B. **Calculating the number of eligible votes.** The total number of votes entitled to be cast for each DCOC Director's position shall be based upon the total number of Lots of the Driggs Centre, excluding dedicated streets. Each Lot Owner shall have the right to cast one vote per 1/2 acre owned. The initial Board of Directors of DCOC shall meet within ten days after their election and may at that time adopt any governing documents, including by-laws, guidelines, procedures, rules and regulations relating to DCOC and the Driggs Centre.

- 7.4 **Failure to Organize.** In the event Declarant is unsuccessful in organizing the Board of Directors of the DCOC within the 30-day organizational period specified by paragraph 8.3 above, Declarant shall have no further responsibilities relating to the DCOC and the DCOC Board of Directors shall be organized exclusively by the Owners of Lots within Driggs Centre. Such failure of organization of the DCOC Board of Directors shall not affect the existence of DCOC or the effectiveness of this Declaration.

SECTION 8. DURATION AND AMENDMENT OF THIS DECLARATION

- 8.1 **Duration.** This Declaration shall continue to remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided herein) for a period of thirty (30) years from the date this Declaration is recorded. However, unless within one (1) year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by Owners of not less than seventy-five percent (75%) of each 1/2 acre owned, as compared to the total number of acreage subject to the restrictions (excluding dedicated streets), this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of such period the Declaration is terminated as set forth above in this section.
- 8.2 **Amendment.** This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof with a written consent of the Owners of seventy-five percent (75%) of each 1/2 acre owned, as compared to the total number of acreage subject to the restrictions (excluding dedicated streets), provided, however, that as long as Declarant owns an interest in Driggs Centre, as provided in paragraph 8.1 herein, no such termination,

extension, modification or amendment shall be effective without the written approval of the Declarant. In no event shall any modification or amendment at any time create, limit or diminish special Declarant rights granted to Declarant hereunder without the written consent of Declarant. Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Teton County, Idaho. Provided, further, that the provisions of Sections 5 and 6 hereof shall inure to the benefit of and be enforceable solely by Declarant or the DCOC without the consent of any other Owner, person or entity and shall not give any third party and right or cause of action on account of the terms of this Declaration.

SECTION 9. ENFORCEMENT

- 9.1 **Enforceable by.** This Declaration shall be specifically enforceable by Declarant or by any Owner of any Lot in the Driggs Centre. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.
- 9.2 **Legal Fees.** In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney's fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.
- 9.3 **Nonqualifying Improvements and Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on such Owner's Lot an improvement contrary to the provisions of this Declaration, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Declarant may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Declarant's specific directives for the remedy or abatement, or the Owner and Declarant cannot agree to mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Declarant shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:
- A. **Fines.** Impose reasonable fines against such Owner in the manner and amount the Declarant deems appropriate in relation to the violation.

- B. **Remove Cause of Violation.** Enter onto the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Declarant may assess such Owner for the entire cost of the work done.
 - C. **Suit or Action.** Bring suit or action against the Owner on behalf of the Declarant and other Owners to enforce this Declaration.
 - D. **Interest, Expenses and Attorney Fees.** Any amount not paid to the Declarant when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing prime rate at the time, or such other rate as may be established by the Declarant, but not to exceed the lawful rate of interest under the laws of the State of Idaho. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Declarant, not to exceed thirty percent (30%) of such assessment. In the event the Declarant shall file a notice of lien, the lien amount shall also include the recording fees associated with the filing notice, and a fee for preparing the notice of lien established from time to time by resolution of the Declarant.
- 9.4 **Attorney Fees.** In the event the Declarant and/or DCOC shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder to foreclose a lien the Owner-defendant shall pay to the Declarant and/or DCOC all costs and expenses incurred by it in connection with such suit or action including a foreclosure title report, and the prevailing party in such suit action shall recover such amount as the court may determine to be reasonable as attorney's fees at trial and upon any appeal or petition for review thereof.

SECTION 10. BINDING EFFECT

The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in the Driggs Centre, and shall bind, benefit and burden each Lot in the Driggs Centre, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant, successors and assigns of Declarant and all Owners of any Lot in the Driggs Centre, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title or interest or use in or to any real property in the Driggs Centre. The use restrictions and regulations set forth in Section 5 and Section 6 of this Declaration shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as the Driggs Centre, and their successors in interest as set forth in this Declaration including any person who holds such interest as security payment or an obligation including any mortgagee or otherwise holder in actual possession of any Lot by foreclosure or otherwise and any other person taking title from such security holder.

SECTION 11. DECLARANT'S IMMUNITY

The Declarant has a non-exclusive right and power to enforce the covenants, conditions, and restrictions contained in this Declaration, but the Declarant has no legal obligation to enforce or attempt to enforce the provisions hereof. In the event the Declarant refuses, neglects, fails or is negligent in enforcing or attempting to enforce the Declaration, there shall not exist or be created any cause of action or claim against Declarant, and each Owner or any person or entity claiming by, through or from said Owner hereby releases Declarant from and against any claim arising in connection with the development of the Property or related to Declarant's acts or omissions in preparing, filing or enforcing this Declaration and shall be stopped from making or enforcing any such claim.

DECLARANT:

Driggs Professional Park, LLC

By: _____

David Douglas, Managing Member

STATE OF IDAHO)

: ss

County of Teton)

On this 8 day of October, in the year 2008, before me, a Notary Public in and for said State, personally appeared before me David Douglas, who, being by me first duly sworn, declared that he is President of Driggs Professional Park, that he signed the foregoing document as President of the corporation, and that the statements therein contained are true.



Notary Public for Idaho

Residing At: TETON COUNTY, ID

My Commission Expires: 2/6/2014