# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

### **COLLEGE VIEW COMMERCIAL PARK**

# KNOW ALL MEN BY THESE PRESENTS:

These conditions, covenants, and restrictions apply to the commercial subdivision within the corporate limits of the City of Rock Springs, Wyoming known as "College View Commercial Park".

THIS DECLARATION is made this <u>21</u> day of <u>December</u> 200<u>s</u>, by Western Wyoming Community College District, State of Wyoming, Hereinafter called the "DECLARANT";

### WITNESSETH:

WHEREAS, Declarant is the owner of the real property described herein, and is desirous of subjecting the real property described herein to the conditions, covenants and restrictions hereinafter set forth, all of which are for the benefit of said property and for the owners thereof, and shall inure to the benefit of and pass with said property, and each parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof;

WHEREAS, the General Purpose of this Declaration is to help assure that College View Commercial Park will become and remain an attractive place to do business; to assure the most appropriate improvement of each Lot; to guard against the erection thereon of poorly designed or proportioned structures; to promote and maintain the highest and best uses of the lands commensurate with the zoning and use classifications and demographics of College View Commercial Park, to maintain aesthetic compatibility with the grounds, structures and other improvements of Western Wyoming Community College, and to prohibit certain uses incompatible with the purpose and mission of Western Wyoming Community College;

NOW, THEREFORE, the Declarant hereby declares that the real property described herein is, and shall be, held, transferred, or sold, subject to the conditions, covenants, and restrictions hereinafter set forth:

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### **ARTICLE I – DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article I shall as used in this Declaration, have the meaning herein set forth:

### 1.0 Adult Entertainment

The term "Adult Entertainment" means any premises in which the dissemination, sale or rental of books, magazines, newspapers, movie films, videotapes, devices, slides or other photographic or written reproduction showing the following specified sexual activities, any premises in which motion pictures, slides, videotapes or similar photographic reproductions showing the following specified sexual activities, any premises in which instruments, devices or paraphernalia which are designed for use in connection with the following specified sexual activities are sold or distributed, except for legitimate medically required contraceptives, or any premises in which primary entertainment consists of actions or performances of actors, employees or other persons portraying sexual activities such as: (1) human genitals in a state of sexual stimulation or arousal; (2) explicit acts of human masturbation, sexual intercourse or sodomy is conducted as a principal use of the premises or as an adjunct to some other business activity, but which constitutes the primary or a major attraction to the premises; and any premises in which primary entertainment consists of the actions or performances of actors, employees or other persons who appear nude or in a state of nudity or seminude, as a principal use of the premises or as an adjunct to some other business activity, but which constitutes the primary or a major attraction to the premises.

### 1.1 Board of Trustees

The term "Board of Trustees" shall mean the governing board of the Western Wyoming Community College District.

# 1.2 College View Commercial Park

The term "College View Commercial Park" shall be synonymous with the term "subject property" and shall mean all of the real property now or hereafter made subject to this declaration.

### 1.3 Declarant

The term "Declarant" shall mean the Western Wyoming Community College District, State of Wyoming, its successors and assigns.

### 1.4 Declaration

The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for the College View Commercial Park as it may from time to time be amended or supplemented.

# 1.5 Improvement-Improvements

The term "improvement" or "improvements" shall include buildings, outbuildings, roads, sidewalks, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas, and all other structures, construction, installations and landscaping of every type and kind, whether above or below the land surface.

### 1.6 Lot

The term "lot" shall mean a fractional part of the subject property as subdivided on subdivision or parcel maps recorded from time to time in the Office of the County Clerk of the County of Sweetwater, State of Wyoming.

# 1.7 Net Acreage

The term "net acreage" shall mean the total number of square feet of land of the subject property, less any square feet of land included in dedicated streets, roadways, parks, or natural open spaces.

# 1.8 Occupant

The term "occupant" shall mean a lessee or licensee of an owner, or any other person or entity other than an owner in lawful possession of a lot with the permission of the owner.

# 1.9 Owner

"Owner" shall mean: i) the person or persons holding record fee title to any portion of the property; or ii) the lessee or lessees entitled to occupy all of a parcel under a lease for a fixed term of thirty (30) years or longer, in which case the fee owner of the parcel demised by such lease shall not be deemed to be the owner of such parcel for purposes of this declaration during the term of said lease. In the event that the ownership of the land, whether by lease or by deed, is encumbered by mortgage, lien, or otherwise, only the owner of the improvements shall be deemed an owner hereunder and shall

be entitled to act on behalf of the owner of the land for all purposes hereunder.

# 1.10 Property Line

The term "property line" shall mean the boundary of each lot.

### 1.11 Record-recorded-recordation

The term "record," "recorded," or "recordation" shall mean, with respect to any document, the recordation of said document in the Office of the County Clerk of the County of Sweetwater, State of Wyoming.

# 1.12 Sign

The term "sign" shall mean any structure, device or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted, or otherwise fastened or affixed.

### 1.13 Street or Streets

The term "street" or "streets" shall mean any street, highway, road, or thoroughfare within or adjacent to the subject property and shown on any recorded subdivision, or recorded survey, whether designated thereon as street, boulevard, place, drive, road, court, terrace, way, lane, circle, or otherwise.

# 1.14 Subject Property

The term "subject property" shall be synonymous with the term "College View Commercial Park" and shall mean all of the real property now or hereafter made subject to this Declaration.

### ARTICLE II-SUBJECT PROPERTY

# 2.1 General Declaration

Declarant hereby declares that all of that real property located in the City of Rock Springs, County of Sweetwater, State of Wyoming, known as College View Commercial Park subdivision is, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved or

transferred in whole or in part, subject to this Declaration. All of the covenants, conditions and restrictions set forth herein are declared and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the subject property and every part thereof. All of said covenants, conditions and restrictions shall run with all of the subject property for all purposes and shall be binding upon and inure to the benefit of Declarant and all owners, occupants, and their successors in interest as set forth in this declaration.

### ARTICLE III-USE OF THE PROPERTY

# 3.1 Uses Permitted and Uses Prohibited

Pursuant to this Declaration of Covenants, Conditions and Restrictions, the College View Commercial Park is designated for certain uses permitted in what is now known as the B-2 (Community Business Zone) Zoning District of the City of Rock Springs, Wyoming, as such B-2 Zone may be amended from time to time. This section may be amended from time to time to allow other and different uses, if such amendment is consistent with applicable zoning restrictions established by the City of Rock Springs, Wyoming.

Notwithstanding the above, the following operations and uses shall not be permitted on any property subject to this Declaration:

3.1.1	Automotive and Truck Repair Facilities, except as may be part of a "big box" retail store
3.1.2	Bus Terminals
3.1.3	Lumber Yard
3.1.4	Mobile Home Sales
3.1.5	Pawn Shop
3.1.6	Self-Service Laundry
3.1.7	Tattoo Parlor
3.1.8	Tire Recapping and Retreading
3.1.9	Tire Sales, Repair and Mounting, except as may be part of a "big box" retail store
3.1.10	Utility Trailer Rental
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3.1.11	Sales and Repair of Vending Machines
3.1.12	Woodworking Shops and Cabinet Making Shops
3.1.13	Heliports
3 1 14	Automobile Drive-in Theatres

3.1.15

3.1.16

3.1.17

Juvenile and Adult Residential Treatment Centers

Overnight Campgrounds

Mini-Warehouses and Warehouses

- 3.1.18 Automobile Body Repair and Painting
- 3.1.19 Adult Entertainment

# 3.2 Public Utilities

Public utilities shall be placed within easements so granted for such uses in the College View Commercial Park. Declarant reserves the right to approve above-ground utility lines across the subject property or any portion thereof on a temporary basis for the purpose of construction.

# 3.3 Utility Lines and Antennas

No sewer, drainage, or utility lines shall be constructed, placed, or maintained anywhere in or upon any portion of the subject property, unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under buildings or other All telephone connections and installations of secondary electrical wires to buildings shall be made underground from the nearest available power source. No transformer shall be located on any power pole nor hung on the outside of any building, but the same shall be pad-mounted on the surface in industry-approved cabinets. Any design variances therefrom for such installations shall require the prior written approval of the Committee. Nothing contained herein shall be deemed to forbid the erection or use of temporary power. Towers and other related permanent communication or other devices pertinent to the conduct of the owner's business or operations shall be subject to the approval of the Committee.

# 3.4 Other Operations and Uses

Operations and uses which are neither specifically prohibited nor specifically authorized by this declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing, by Declarant. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this declaration or upon the occupants thereof, but shall be in the sole discretion of Declarant.

### ARTICLE IV-ARCHITECTURAL REVIEW COMMITTEE

# 4.1 Formation of Committee

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Declarant hereby establishes an Architectural Review Committee (the "Committee"), consisting of three individuals, for the purpose of reviewing construction and alteration of improvements within the subject property and to determine compliance with permitted uses as set forth in Article 3.1 and for the purpose of performing such other functions as are required pursuant to this Declaration. The three committee members shall consist of the President of the Board of Trustees, the College President, and the College Dean of Administration.

# 4.2 Rules of Procedure

The Committee may adopt rules and regulations from time to time governing its activities not inconsistent herewith. The Committee shall meet at the convenience of the members and as often as necessary to transact its business, acting on the concurrence of two out of three members. However, should the President of the Board of Trustees cast a dissenting vote on a matter before the Committee, the matter shall be brought before the Board of Trustees for a final decision.

In the event any member of the Committee shall have a conflict of interest concerning a matter before the Committee, that member shall be replaced for such purpose by an independent person affiliated with the College appointed by the President of the Board of Trustees, unless the conflicted member is the President of the Board of Trustees, in which case the appointment shall be made by the Vice President of the Board of Trustees.

# **ARTICLE V-CONSTRUCTION OF IMPROVEMENTS**

# 5.1 Approval of Plans Required

No improvements shall be erected, placed, materially altered, maintained, or permitted to remain on any lot by any owner or occupant until final plans and specifications shall have been submitted to and approved in writing by the Architectural Review Committee. Such final plans and specifications shall be submitted in two (2) sets over the authorized signature of owner or occupant, or both, of the lot, or the authorized agent thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the committee, but shall in any event include the following:

5.1.1 A site development plan of the lot showing the nature, grading scheme, kind, shape, composition, and location of all structures with respect to the particular lot (including proposed front, rear,

and side setback lines), and with respect to structures on adjoining lots, drainage plan, and the number and location of all parking spaces and driveways on the lot;

- 5.1.2 A landscaping plan for the particular lot;
- 5.1.3 A plan for the location of signs and lighting; and
- 5.1.4 A building elevation plan showing dimensions, materials, and exterior color scheme in no less detail than required by the appropriate governmental authority for the issuance of a building permit. Material changes in approved plans must be similarly submitted to and approved by the Committee.

# 5.2 Basis for Approval

Approval shall be based upon the compatibility of the proposed plans with the overall objectives of the Declarant, as may be set forth in a design policy approved by the Committee and the Board of Trustees. Approval shall also be based upon acceptance of the plans by the appropriate governmental regulatory bodies. Among other things, plans must address adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning, or other roof-top installations, and conformity of the plans and specifications to the purpose and the intent of this No plans will be approved which do not provide for the Declaration. underground installation of power, electrical, telephone, and other utility lines from the property line to buildings, and the pad-mounting of all transformer and terminal equipment. Except as otherwise provided in this Declaration, the Committee shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

- 5.2.1 Failure to comply with any of the restrictions set forth in this Declaration;
- 5.2.2 Failure to include information in such plans and specifications as may have been reasonably requested by the Committee;
- 5.2.3 Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;
- 5.2.4 Objection on the ground of incompatibility of any structure or use with existing structures or uses upon other lots, or other property in the vicinity of the subject property;
- 5.2.5 Objection to the location of any proposed structure with reference to other lots or other property in the vicinity;
- 5.2.6 Objection to the grading or landscaping plan for any lot;

- 5.2.7 Objection to the lighting plan; or
- 5.2.8 Any other matter which, in the judgment of the Committee, would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property or with improvements located upon other lots or other property in the vicinity within said development.

# 5.3 Approval

The Committee may approve plans and specifications as submitted, or altered or amended, or it may grant its approval to the same, subject to specific conditions. Upon approval or conditional approval by the Committee of any plans and specifications submitted, a copy of such plans and specifications, together with any conditions, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same.

# 5.4 Declarant and Architectural Control Committee Not Liable

Declarant and the Architectural Control Committee shall not be liable for any damage, loss, or prejudice suffered or claimed by any person on account of:

- 5.4.1 The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
- 5.4.2 The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or
- 5.4.3 The development of any lot within the College View Commercial Park.

# 5.5 Construction Without Approval

If any improvement shall be erected, placed, or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with the approval by the Committee, pursuant to the provisions of this Article V, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this Declaration. Upon written notice from the Committee, any such improvement so altered, erected, placed, maintained or used upon any lot in violation of this Declaration shall cease, be removed, or be amended or altered so as to conform to this Declaration. Should such removal or alteration or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the

party in breach of this Declaration shall be subject to the enforcement procedures set forth in Article VIII.

### ARTICLE VI-DEVELOPMENT STANDARDS

# 6.1 Minimum Setback

No improvements of any kind, and no part thereof, shall be placed inconsistent with the prevailing zoning ordinance.

# 6.2 Landscaping

Within ninety (90) days following completion of construction or by the date each improvement is occupied, whichever first occurs, or no later than June 1 if winter weather has prevented completion within the preceding times, each lot shall be landscaped in accordance with the approved plans and specifications.

After completion, the landscaping shall be maintained in a sightly and well-kept condition. If, in Declarant's or the Architectural Review Committee's reasonable opinion, the required landscaping is not maintained in a sightly and well-kept condition, Declarant or the Committee shall be entitled to the remedies set forth in Article VIII.

# 6.3 Signs

No sign shall be permitted on any lot unless approved by the Committee, in writing, with respect to design, materials, location, size, height, colors, and lighting.

# 6.4 Parking Areas

Off-street parking adequate to accommodate the parking needs of the owner or occupant, and the employees and visitors thereof, shall be provided by the owner or occupant of each lot. The intent of this provision is to eliminate the need for any on-street parking; provided, however, that nothing herein shall be deemed to prohibit on-street parking of public transportation vehicles if allowed by the City of Rock Springs. If parking requirements increase as a result of a change in the use of a lot or in the number of visitors, or in the number of persons employed by the owner or occupant, additional off-street parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

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- 6.4.1 Required off-street parking shall be provided on the lot, on a contiguous lot, or within such distance from the lot as the Committee deems reasonable.
- 6.4.2 Parking areas shall be paved so as to provide dust-free, all weather surfaces. Each parking space provided shall be designated by lines painted upon the paved surface and shall be adequate in area. All parking areas shall provide, in addition to parking spaces, adequate driveways and space for the movement of vehicles.
- 6.4.3 No parking spaces shall be located on or permitted within setback areas adjacent to a street, as set forth in the prevailing zoning ordinance, except that parking spaces may be located on or parking permitted within such area if the Committee's written permission is first obtained and if such parking is approved by the City of Rock Springs.

# 6.5 Storage and Loading Areas

All storage, maintenance, and loading areas must be constructed and used in accordance with plans approved by the Committee. All storage, maintenance, and loading areas must be kept clean and in good condition and repair and be screened in accordance with prevailing ordinances applicable to B-2 zoning uses.

# 6.6 Site Coverage

The maximum building coverage on any lot shall be limited by the site requirements set forth in Section 6.1 through 6.5; provided however, that the maximum combined areas of building(s), structure(s), and storage and parking areas shall not exceed ninety percent (90%) of the area of that lot.

# 6.7 Building Height

The maximum height of all structures within the subject property shall be thirty-five (35) feet. Some lots, however, may be appropriate for taller buildings. Any structure proposed to exceed thirty-five (35) feet shall require the written approval of the Committee and must conform to B-2 zoning requirements.

# 6.8 Screening

Special screening on the southwest side of lots 1, 4, 5, 8, 9, 12, 13, and 16, will be required. In addition to any fencing required by the zoning ordinance

or by the Committee, there must be planted across the entirety of the rear lot lines of such lots white fir trees, blue spruce trees, or any other trees approved by the Committee, approximately six (6) feet tall when planted, planted thirty-five (35) feet apart (trunk to trunk). These plantings must occur during the time of landscape installation and are considered part of the landscape plan and must be properly watered and otherwise maintained in accordance with approved landscape plans.

Screening for garbage and trash containers must be approved by the Committee.

# 6.9 Fences

All fences must be approved by the Committee. Wooden fences are prohibited.

# 6.10 Retaining Walls

All retaining walls must be approved by the Committee.

# ARTICLE VII-OWNER'S MAINTENANCE RESPONSIBILITY

# 7.1 Owner's Maintenance Responsibility

Each owner of a lot shall be responsible for the maintenance of such lot and the improvements constructed thereon, including the maintenance or repair of any utility lines which service said owner's lot and/or improvements.

### ARTICLE VIII-ENFORCEMENT

# 8.1 Covenants, Conditions and Restrictions

The conditions, covenants, restrictions and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of the Declarant and owners of every part and parcel of the premises. These conditions, covenants, restrictions and reservations may be enforced, as provided hereinafter, by the Declarant as well as by the Architectural Review Committee acting for itself and as representatives of the Declarant. Violation of any condition, covenant, restriction or reservation herein contained shall give to the Declarant the right to bring proceedings in law or equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions and reservations, to enjoin them from so doing, to cause any such violation to be remedied, or to recover

damages resulting from such violation. In addition, violation of any such covenants, conditions, restrictions and reservations shall give to the Declarant the right to enter upon the premises and remove at the expense of the owner thereof any structure, thing, improvement or condition that may be, or exist thereon, contrary to the provisions hereof. Every act, omission to act, or condition which violates the covenants, conditions, restrictions and reservations herein contained shall constitute a nuisance and every remedy available in law or equity for the abatement of public or private nuisances shall be available to the Declarant. In any legal or equitable proceeding to enforce the provisions hereof or to enjoin their violation, the party or parties for whom judgment is entered shall be entitled to costs and reasonable attorney fees in such amount as may be fixed by the court in such proceeding. Such remedies shall be cumulative and not exclusive.

# 8.2 Subject to Applicable Law, Ordinance or Regulation

Each owner and/or occupant of the subject property is required to comply with, and shall be personally responsible for determining compliance with, applicable law, ordinance or regulation. Where such applicable law, ordinance or regulation is more restrictive than the conditions, covenants and restrictions herein, the former shall control.

### 8.3 Venue

Any and all suits for any and every breach or interpretation of this Declaration shall be instituted and determined only in the Courts of the State of Wyoming in the County of Sweetwater without removal to any federal court; and this Agreement shall be governed by the laws of the State of Wyoming, both as to interpretation and performance.

# ARTICLE IX-VARIANCES, AMENDMENTS AND SEVERABILITY

### 9.1 Variances

The Committee or Declarant shall have the right to waive or grant variances, both temporary and permanent, from the covenants and restrictions set forth in this Declaration if, in their reasonable discretion, such waiver or variance is warranted in a particular instance, provided that no waiver or variance shall be granted where the result of such waiver or variance would be contrary to or inconsistent with any applicable zoning ordinance, or zoning agreement, or other governmental law, ordinance, rule or regulation,

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### 9.2 Amendments

This Declaration 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 College View Commercial Park. However, no such amendment may be executed unless approved by the Board of Trustees as to form and content, irrespective of any ownership in College View Commercial Park at such time by the Declarant. The Board of Trustees' approval may be withheld in its sole, absolute and unrestricted discretion.

# 9.3 Covenants Binding

Each of the covenants set forth above shall continue and be binding upon each owner, the Declarant, and upon their successors and assigns, and upon each of them, and all parties and persons claiming under them.

# 9.4 Severability

The invalidity or unenforceability of any provision of this Declaration shall not affect the validity or enforceability of any other provision of this Declaration. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this Declaration shall be interpreted and construed as if the invalid provision had never been included in this Declaration.

State of Wyoming By: **COLLEEN THOMAS • NOTARY PUBLIC COUNTY OF** STATE OF SWEETWATER WYOMING Dick Boettcher, Board President My Commission Expires. State of Wyouing County of Sweetwater Acknowledged Subscribed and sworn/affirmed to before me this \_\_\_\_\_\_ day of Dick Boethcher \_\_\_\_ 20<u>05</u>\_\_, by \_\_\_\_\_ **Notary Public** Marsh My Commission Expires: \_\_\_\_\_ Attest: By: Notary Shannon Honaker, Board Secretary Kandy R. Frink State County of Wyoming State of Wyoming County of Sweetwater Acknowledged Subscribed and sworn/affirmed to before me this 131 day of 2006, by Shannon Honaker November 18, 2009 My Commission Expires: \_\_

Western Wyoming Community College District.

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