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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
SKYLINE COUNTRY WEST,  
DOUGLAS COUNTY, NEBRASKA**

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
6/12/2006 10:10:25.92



2006065266

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") made this 26 Day of May, 2006, by Gottsch Land Company, a Nebraska corporation ("Declaration").

WITNESSETH

WHEREAS, Declarant is the owner of certain real estate legally described as Lots 1-6 Skyline Country West, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Property"); and

WHEREAS, By virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in the Property or any portion thereof, whether or not such deed or other conveyance of such interest, and every owner of the Property or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consent to the terms hereof.

WHEREAS, Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Property and shall be binding on the present owners of the Property or any portion thereof and all its successors and assigns and all subsequent owners of the Property and any improvements thereon, together with their grantees successors, heirs, executors, administrators, devisees and assigns.

Gottsch Enterprises  
20307 W. 10th Ave, Suite 100  
Elkhorn, NE 68022

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NOW, THEREFORE, In consideration of the recitals set forth above and the covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares as follows:

ARTICLE I  
USE RESTRICTIONS

1.1 Nuisances: Objectionable Activities. No owner, lessee or other person shall create a nuisance or use the Property or any portion thereof for any activity or purpose which is objectionable due to sound, odor, visual effect or physical impact and which will disturb or tend to disturb other owners, lessees or occupants of the Property. Declarant may waive this provision for any use in Declarant's sole discretion, including, but not limited to, uses as a family fun center or amusement center.

1.2 Compliance with Laws. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property which is in violation of any applicable governmental law, regulation, rule, ordinance or code, including without limitation all zoning and other ordinances, regulations and codes of the City of Elkhorn, Nebraska, or its successors and assigns.

1.3 Convenience Store Prohibited. No portion of Lot 1 shall be used for the operation of a convenience store or petroleum/gasoline sales; provided, however, this restrictive covenant shall not prohibit the operation of a store, or department within a store, for the sale of food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats, or delicatessen products or any other business operation that is not reasonably classified as a convenience store or motor fuels station.

ARTICLE II  
BUILDING RESTRICTIONS

2.1 Approval of Improvement Plans. No improvements shall be constructed, erected, placed, maintained or permitted to remain on the Property until plans and specifications for such improvements and alterations, which may include without limitation site plans, exterior elevations, grading plans, drainage plans, utility plans, landscaping, and any other information needed to accurately describe the exterior appearance of the proposed improvements (the "Application"), have been submitted to and approved in writing by the Declarant.

2.2. Basis for Approval. The Declarant shall have the right to approve or disapprove the Application submitted to it in its reasonable discretion. The Declarant will be considered among any other relevant items, the following criteria: (i) The building facades shall be composed of any of the following materials: (a) Painted or colored rock face concrete block; (b) Clay brick; (c) Synthetic Stucco (EFFIS); (d) Aluminum frame glass windows and doors; (e) Other similar materials approved by the Declarant; (ii) At least 20% of the building facade shall consist of glass and accent materials; and (iii) Garage doors (if any) shall be located at the rear of the building (away from public streets), must have approval of the Declarant, must be painted or pre colored, and must be screened from view to any public streets by landscaping or other screening acceptable to Declarant.

2.3 Time for Decision. The Declarant shall approve or disapprove each Application within fifteen (15) days from the receipt thereof. If the Declarant fails either to approve or disapprove the Application within said fifteen (15) day period; then it shall be irrevocably deemed that the Declarant by certified mail (return receipt requested).

2.4 Disclaimer of Liability. Neither Declarant, nor any member thereof, nor any agents, officers or employees of Declarant, shall be liable in any way for any damage, loss or prejudice suffered or claimed by an owner, lessee or any other person who submits an Application until this Article II. Any person or entity who submits an Application shall for ever defend, indemnify and hold the Declarant, the members thereof, and the employees, officers and agents of each, harmless from all damage, loss or liability (including reasonable attorney's fees) suffered or claimed by any third party on account of (I) any defects in any plans, drawings, specifications or other documentation submitted in any Application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; or (ii) the construction or performance of any work, whether or not pursuant to any approved Application.

2.5 No Representations or Warranties. In no event shall an approval by the Declarant of any Application, or any written or oral statements made by the Declarant or any office or employee of the Declarant, be deemed to constitute in any way representations or warranties of any kind, express or implied, with regard to the Application and any plans, drawings, specifications or other documentation constituting a part of the Application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use laws, or compliance with any other applicable codes, regulations and laws, or with regard to fitness for a particular purpose.

### ARTICLE III MAINTENANCE AND OPERATION

3.1 Outdoor Storage. No article of merchandise (except merchandise offered for sale) shall be kept, stored, or displayed outside the confines of a walked building, unless it is screened by fences, walls or plantings so that it cannot be seen from any public way. In no event shall any part of the Property be used for storage or abandonment of any property that is not screened from any public streets, private drives or adjoining property, unless the owner has obtained the express written approval of the Declarant.

3.2 Maintenance of Completed Improvements. The owner of the Property shall maintain or cause to be maintained, at its expense and all improvements completed thereon in a well-maintained, clean, neat and attractive condition at all times and shall comply with all governmental health, fire, building, and safety ordinances, codes, regulations and requirements applicable thereto.

### ARTICLE IV DURATION, MODIFICATION AND TERMINATION

4.1 Duration of Covenants. This Declaration, and all covenants, conditions, and

restrictions herein shall continue and remain in full force and effect at all times with respect to the Property and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and terminate as provided in Section 4.2 below) for a period of twenty (20) years, commencing on the date this Declaration is recorded in the Office of the Register of Deeds of Douglas County, Nebraska. Thereafter this Declaration shall automatically renew for successive ten (10) year periods.

4.2 Termination or Modification. This Declaration, or any provisions hereof, may be terminated, modified, or amended with respect to all or any portion of the Property, by the terms of a recorded document executed by Declarant in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter, this Declaration may be terminated, modified, or amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots covered by this Declaration. For the purposes of establishing the number of votes, each owner, including the Declarant, shall have one vote for each Lot owned.

## ARTICLE V ADDITIONAL PROVISIONS

5.1 Constructive Notice and Acceptance of Declaration. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any references to this Declaration is obtained in the instrument by which such person or entity acquired an interest in the Property.

5.2 Governing Law. This Declaration shall be governed by and constructed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Douglas County, Nebraska, and each person with rights hereunder hereby waives the right to sue or be sued in any other place.

5.3 Benefited Property. This Declaration is made for the benefit of the Declarant and each owner of the Benefited Property; shall create equitable servitudes in favor of the Benefited Property; and shall be binding upon all grantees of the Property, their heirs, successors and assigns.

5.4 Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

5.5 Effect of Invalidation. In any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

5.6 Notices.

5.6.1 To Declarant. Any and all notices, or other communication made pursuant hereto,

shall be in writing and shall be deemed properly delivered, given to or received by Declarant (a) when personally delivered against receipted copy, or (b) four (4) business days after being mailed by certified or registered mail, postage prepaid; in either case to the Declarant at the following address:

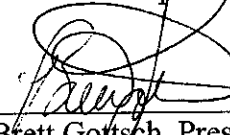
Gottsch Land Co  
1015 North 204<sup>th</sup> Street  
Elkhorn, NE 68022

(Note: Declarant will be moving shortly after recordation of these covenants. A reasonable search should be inquired as to the current location of Gottsch Enterprises.)

5.6.2 To Owners. A notice to the owner of the Property shall be deemed duly given, delivered and received (a) when personally delivered against receipted copy, or (b) four (4) business days after mailing by certified or registered mail, postage prepaid; in either case to the address of the Owner's Lot or to such other address as the Owner has specified in writing to the Declarant.

5.7 Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City of Elkhorn, Nebraska, on the Property. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City of Elkhorn, Nebraska, its successors and assigns, then the more restrictive requirement shall govern.

DECLARANT:  
GOTTSCH LAND COMPANY, a  
Nebraska corporation,

  
\_\_\_\_\_  
Brett Gottsch, President

State of Nebraska     )  
                                  )ss.  
County of Douglas    )

*May* The foregoing instrument was acknowledged before me this 26 day of \_\_\_\_\_, 2006 by Brett Gottsch, President on behalf of Gottsch Land Company, a Nebraska corporation.

  
\_\_\_\_\_  
Notary Public

