



**BIGHORN INDUSTRIAL PARK PHASE 1
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND GRANT OF EASEMENT**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration"), is made as of this 26th day of September, 2016, by Bighorn Farm, LLC (hereinafter called "Declarant"), with reference to the following:

RECITALS

A. Declarant is the owner of that certain real property situated in the County of Kootenai, State of Idaho, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property").

B. It is the desire and intention of Declarant that the Property be developed as a Light Industrial Park with manufacturing, warehousing, assorted commercial development and other related uses.

C. Declarant is about to sell and convey some or all of the Parcels (as defined below) and, before selling or conveying any of the Parcels, desires to subject all of the Parcels in accordance with a common plan to certain covenants, conditions, restrictions and easements for the protection and benefit of Declarant and any and all future owners of the Parcels.

NOW, THEREFORE, Declarant declares that it has established and does hereby establish the following general plan for the protection and benefit of all of the Parcels and has fixed and does hereby fix the following protective covenants, conditions, restrictions and easements upon the Property and subject to which each and all of the Parcels shall be hereafter held, used, encumbered, occupied, leased sold and/or conveyed. Each and all of the covenants, conditions, restrictions and easements set forth below shall inure to the benefit of, be binding upon and pass with every Parcel described above and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Declarant in the same.

**ARTICLE I
DEFINITIONS**

As used in this agreement, the words and terms set forth below shall be deemed to have the defined meaning as specified herein.

"Affiliate" shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, any other person. "Control" means the power either by way of ownership, contract or otherwise and whether or not exercised, to direct the policies and management of a person.

"Architectural Director" shall mean and refer to the person or party responsible for reviewing preliminary plans, working drawings, and construction and alterations of improvements within the Property as further outlined in Article III.

"Building Area" shall mean all those areas on each Parcel on Exhibit "A" attached hereto and incorporated herein by this reference, which are from time to time covered by a building or other any industrial or commercial structure in accordance with an approved Site Plan and in compliance with applicable laws, rules and regulations.

"County" shall mean and refer to the County of Kootenai, State of Idaho.

"Industrial Park" shall mean Industrial Park Phase I and the Parcels shown on Exhibit "A" collectively, and located within the area shown on Exhibit "A" as "INDUSTRIAL PARK PHASE I AND LIMIT LINE OF AREA FOR GENERAL RESTRICTIONS ON USE", subject to the rights of the Declarant, at any time and from time-to-time, to remodel, expand, contract, add, delete, multi-deck or otherwise alter or change any portion or portions of the entire Industrial Park, other than the Building Area of a specific Owner, without the consent of the Owners, pursuant to section 4.13, below.

"Declarant" shall mean and refer to Bighorn Farm, LLC and their successor, if Declarant assigns to such successor the rights of Declarant hereunder and if such successor assumes the obligations of Declarant hereunder by means of an assumption agreement recorded with the County Recorder of Kootenai County, Idaho.

"Declaration" shall mean and refer to this Declaration as it may from time to time be amended.

"Floor Area" shall mean the total number of square feet of floor space in a building, whether or not actually occupied, including basement, subterranean, balcony and mezzanine space. Floor area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non- structural components.

"Force majeure" shall mean any period of delay caused by strikes, lockouts, or other labor disputes, shortages of materials, fire, flood, or other casualty, the elements, including unusually inclement weather, or acts of God, refusal or failure of governmental or quasi-governmental authorities to grant necessary permits and approvals for the construction of the Improvements contemplated hereunder or other governmental orders or regulations, embargoes, (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control (collectively "Force Majeure"). In order to avail itself of the Force Majeure provisions set forth herein, the party

intending to assert same must have given to the other party notice of the event of Force Majeure within fifteen (15) days of learning of such event, which such notice shall reasonably estimate the time by which performance may be delayed by the event in question, which such notice shall be modified from time to time as to when the estimated delay may be increased or decreased.

"Improvement" shall refer to any building, wall, sign, water line, sewer, electrical and gas distribution facility, external lighting, parking facility, walkway, driveway, landscaping, irrigation system, fence, or similar improvement, including any exterior changes or alterations of any existing improvement.

"Improvement Plans" shall have the meaning given to it in Section 3.1.

"Lienholder" shall mean any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

"Mortgagee" shall mean and refer to the beneficiary of a deed of trust as well as the mortgagee of a mortgage encumbering a Parcel.

"Non-Domestic Waste Water (NDWW)" : That wastewater not originating from typical domestic use of toilets, sink and showers. NDWW includes commercial vehicle wash water.

"Owner" means and refers to the person or persons, who are alone or collectively the record owner of a fee simple title to a Parcel, including Declarant, but excluding those having any such interest merely as security for the performance of an obligation. The term "Owner" shall include both the vendor as the vendee under an installment land sales contract, as well as the holder of a leasehold estate having a term of ten (10) or more years, exclusive of renewal periods.

"Owner's Property": The real property within the Industrial Park owned by an Owner

"Parcel": Shall mean and refer to any separate lot or parcel of land shown upon any recorded subdivision map of the Property, which has been made subject to this Declaration, subject to the rights of the Declarant, at any time and from time-to-time, to adjust lot or parcel lines with the consent of the Owners pursuant to section 4.13, below.

"Permitted Persons": Declarant, each Owner and its respective successors, and assigns; the employees, representatives, agents, licensees, business visitors, customers, and invitees of the Owner; and the tenants of the Owner and employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants. "Owner's Permitted Persons" and similar terms shall mean the

Permitted Persons, whose rights under this Declaration derive from that particular Owner. A Permitted Person shall not include an invitee, whose purpose in visiting the Industrial Park is not in connection with the conduct, or furtherance, of business with an occupant of the Industrial Park, e.g. a visitor intending to conduct a rally or petition campaign.

"Person": shall mean any individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal, or any other form of business or legal entity.

"Plans": shall have the meaning given to it in Section 3.1.

"Prime Lessee" shall mean an Owner of a Parcel, who sells said Parcel to an unaffiliated third party and thereafter enters into a net lease for said Parcel with such third party or its lessee or sub-lessee. Prime Lessee includes the successors and assigns of said Prime Lessee, but does not include the sub-lessees, licensees or concessionaires of said Prime Lessee.

"Required Period" shall have the meaning given to it in Section 3.7.

"Restrictions" shall mean the easements, covenants, conditions, restrictions, liens and encumbrances contained in this Declaration.

"Site Plan" shall mean the layout and configuration of Building Area, Expansion Area and other potential improvements as shown on Exhibit "A" attached hereto. Declarant reserves the right, at any time and from time-to-time to modify the Site Plan to expand, contract, add, delete, multi-deck or otherwise alter or change any portion or portions of the entire Industrial Park, other than the Building Area of a specific Owner, without the consent of the Owners.

"State" shall mean the state of Idaho.

"Working Drawings" shall have the meaning given to it in Section 3.1.

ARTICLE II GENERAL COVENANTS AND RESTRICTIONS

2.1 **General:** There shall be constructed and maintained on each Parcel only those Improvements which are in compliance with the restrictions contained in this Declaration and which have received prior written approvals in accordance with the provisions of this Declaration.

2.2 **Permitted and Prohibited Uses:** Each Parcel shall be used only for such light industrial, commercial and related compatible uses as are in conformity with (I) all applicable federal, state and County zoning and use ordinances, and (ii) any more restrictive agreements

contained herein or subsequently agreed to between Declarant and any Owner and which are not in violation of previous agreements between Declarant and other Owners. Parcels may be used for such additional purposes which may be allowed by the Declarant, and which are permitted hereunder.

2.3 **Maintenance of Parcels:** Non-Domestic wastewater (NDWW) may not be disposed of on site without the written approval by Panhandle Health District (PHD) and/or the Idaho Department of Environmental Quality (IDEQ). Any business within Bighorn Industrial Park whereby the nature of their business will produce NDWW must submit an acceptable plan for disposal and/or treatment to the PHD and/or IDEQ. Such Plan shall be approved by PHD and/or IDEQ and may be subject periodic review and monitoring by such agencies.

The exterior of all buildings and other structures, all exterior lighting, exterior signs, lawns and landscaping, and all other improvements on each Parcel shall be maintained by each Owner in good order, repair and condition.

2.4 **Modification of Grades and Drainage:** Unless specifically approved in writing by the Architectural Director, the grade or drainage of any Parcel shall not be modified, altered or otherwise changed. No Owner of a Parcel will in any way interfere with the established drainage pattern over its Parcel from adjoining or other Parcels, and each Owner of a Parcel shall make adequate provisions for proper drainage in the event it becomes necessary to change the established drainage over its Parcels. For purposes hereof, "established drainage" is defined as the drainage which occurred at the time of the overall grading of the Parcel in accordance with the most recently County approved grading plans submitted by Declarant.

All surface water in the Industrial Park is to be disposed of in a method and through a system approved by applicable governmental regulation. Each Owner shall maintain and repair all grassy swales and associated surface water drainage facilities in accordance with the maintenance specifications as set forth by the Architectural Director, Kootenai County, and any other regulatory authority having jurisdiction thereof.

Any Owner who changes the established drainage, subsequent to the completion of the initial construction on its Parcel, shall be responsible for any damages which might result to its Improvements or for damages caused to any third party, including any other Owner.

Each Owner will permit free access by other Owners of adjacent or adjoining Parcels to slopes or drainage ways located on its Parcel, which affect said adjacent or adjoining Parcels, when such access is essential for the maintenance of permanent stabilization of slopes or maintenance of the drainage system or facilities for the protection and use of property other than the Parcel on which the slope or drainage way is located.

If the Architectural Director does approve any changes in the grade and/or drainage of any Parcel, the provisions of Section 3.11, "Non-liability for Approval of Plans," shall apply.

**ARTICLE III
ARCHITECTURAL
APPROVALS**

3.1 **General:** No Improvement shall be constructed, erected, installed or maintained upon any Parcel, nor shall any exterior addition or change be made to any Improvement until the architectural elevations and schematic drawings ("Preliminary Plans") and detailed construction drawings ("Working Drawings") shall have been submitted to and approved in writing by the Architectural Director, pursuant to this Article. Any approvals made by the Architectural Director, hereunder, are subject to Section 3.11, "Non-Liability for Approval of Plans," and Section 3.13, "Compliance with Governmental Regulations," of this Article. The Preliminary Plans and the Working Drawings shall sometimes hereafter collectively be called the "Improvement Plans" (and any or all of which may be referred to simply as "Plans").

3.2 **Architectural Director:** Declarant hereby establishes an Architectural Director for the purpose of reviewing construction and alteration of Improvements within the Property as set forth in this Article and for the purpose of performing such other functions as are required pursuant to this Declaration. The Architectural Director shall be Declarant or any successor and/or assigns designated by Declarant.

3.3 **Submission of Improvement Plans to the Architectural Director:** Prior to the commencement of any construction, excavation, refinishing, alterations or landscaping on any Parcel, each Owner or the authorized agent of each Owner shall deliver to the Architectural Director two sets of Improvement Plans in such form and containing such information as may be required by the Architectural Director. The Improvement Plans shall be submitted to the Architectural Director prior to the submission of such Improvement Plans to any government agency for approval or application to any government agency for permission to perform construction, excavation, refinishing, alterations or landscaping with respect to any Improvements. The Improvement Plans shall be prepared by a licensed architect or engineer and comply with the requirements of this Declaration.

3.4 **Architectural and Design Guidelines:** It is the intent of this Declaration to avoid a mixture of architecture which would create disharmony of design and appearance as determined by the Architectural Director. In furtherance of this objective, the Architectural Director shall have the authority to adopt Architectural and Design Guidelines and to augment, amend, or otherwise modify such Guidelines from time to time; provided that they shall at all times are consistent with this Declaration and any requirements imposed by any governmental agency having jurisdiction. The Architectural and Design Guidelines shall be maintained by Architectural Director. The Architectural Guidelines shall be advisory only, with the Architectural Director having full discretion to exempt certain improvements from the Guidelines, and to impose additional requirements not set forth in the Guidelines, as determined by the Architectural Director as being in the best interests of the project. The Preliminary Plans shall be accompanied by a review fee as required by the Architectural Director.

3.5 **Submission of Working Drawings:** After approval of the Preliminary Plans, each Owner shall deliver to the Architectural Director two (2) sets of Working Drawings and specifications consistent with the approved Preliminary Plans and shall also deliver samples of the exterior materials, colors and paints.

3.6 **Approval of Improvement Plans:** Approval of the Plans shall be based, among other things on the degree to which the design of proposed building and Improvements are in harmony with existing and planned buildings and Improvements.

If the Architectural Director disapproves the Plans submitted to it, the Architectural Director will set forth in writing with reasonable particularity the reasons for such disapproval and the changes that the Architectural Director requires. The disapproval shall be delivered to the owner by registered mail. The Owner may resubmit to the Architectural Director revised Plans that appropriately deal with the reasons specified by the Architectural Director in disapproving earlier Plans.

3.7 **Time Periods for Review:** The Architectural Director shall approve or disapprove in writing any Plans within thirty (30) days after the Architectural Director receives the complete sets of Plans ("Required Period"), whether Preliminary Plans or Working Drawings and whether original or resubmitted plans. Any submittals not complete as to required number of copies, information or payment of fees, shall be deemed not submitted so long as the Architectural Director notifies Owner in writing of any such incompleteness within fourteen (14) business days after Owner submits what purports to be a complete set of Plans. All submittals, approvals and denials shall be sent adhering to the requirements of Section 9.10, "Notices," below. In the event the Architectural Director fails to approve or disapprove any such Plans within thirty (30) days after all documents and information requested by the Architectural Director have been received by it, the Owner requesting said approval may submit a written notice to the Architectural Director advising the same of the Architectural Director's failure to act. If the Architectural Director fails to approve or disapprove any such Plans within fourteen (14) business days after the receipt of said notice from Owner, said Plans shall be conclusively deemed approved.

3.8 **Commencement of Improvements:** No Improvements shall be commenced or erected, nor shall any exterior structural alterations or additions be made on any Parcel, except pursuant to the approved Working Drawings. Once the work is commenced, the Owner shall diligently proceed with the commencement and completion of all Improvements in accordance with the approved Preliminary Plans and Working Drawings.

3.9 **Completion:** Improvements approved hereunder shall be completed within Twenty four (24) months following the commencement of construction; provided, however, such period of time shall be extended automatically for delays caused beyond Owner's reasonable control, such as a labor strike, material shortage, fire, casualty, governmental delay, national emergency, natural calamity or other intervening force beyond the reasonable control of Owner, ("force major" delays), or except as may be extended in writing by the Architectural Director pursuant to request made prior to the expiration of said twelve (12) month period.

"Completion of construction of a building" as defined herein means obtaining a certificate of occupancy, or the equivalent thereof, from the governmental agency having jurisdiction over construction of Owner's building.

3.10 **Maintenance and Alteration:** All Improvements shall be maintained by Owner in accordance with the approved Plans, unless the prior written approval of the Architectural Director to make any alterations, Improvements, additions or replacements are

obtained in the manner provided herein.

3.11 **Non-liability for Approval of Plans:** Neither Declarant nor the Architectural Director shall be liable in damages or otherwise by reason of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the good faith approval or disapproval of any improvement, Plans or any item submitted to the Architectural Director. Every person, who submits Plans or any item to the Architectural Director for approval agrees by such submission, and every Owner of any interest in the Property agrees by acquiring title thereto or any interest therein, that it will not bring any action or suit against Declarant or the Architectural Director to recover any damages arising out of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the Architectural Director's good faith approval or disapproval of any such Plans or other items.

Each Owner hereby agrees to indemnify and hold harmless Declarant and the Architectural Director from and against any and all costs and expenses, including, but not limited to, reasonable attorney's fees, it may incur in connection with or as a result of any actions or claims brought against the Declarant or the Architectural Director on account of its good faith approval or disapproval of any improvement, Plans or other items submitted to it by or on behalf of such Owner; provided, that the indemnification obligations under this Section 3.11 will be a charge on each Parcel and the indemnification costs will be allocated to Parcels in proportion to their relative percentage of gross land area within the Industrial Park; and further provided, that Owners' indemnification obligations are on the condition, as to any particular event, that (I) Architectural Director will notify Owners in writing as soon as possible after notice of any claim is received; (ii) Architectural Director will take no steps (such as admission of liability), which will operate to bar an Owner from obtaining any protection afforded by any policies of insurance an Owner may hold or which operate to prejudice the defense in any such legal proceedings or otherwise prevent Owner from protecting itself against such claim, demand, or legal proceeding. It is understood that Owners shall have the sole and exclusive right to conduct the defense of any such claim, demand, or legal proceeding, provided that the selection of defense counsel is reasonably acceptable to the indemnified parties; and (iii) such indemnities by Owners shall not apply to any claim with respect to which Architectural Director may be covered by insurance, provided that the foregoing exclusion does not invalidate the insurance coverage.

In reviewing and approving Improvements, Plans and other matters pursuant to this Declaration, neither Declarant nor the Architectural Director shall be deemed to have made any representation or warranty regarding the suitability, adequacy or completeness of such Improvements, Plans or other matters. No approval shall be considered an approval from an engineering perspective or a determination that the Improvements, Plans or other matters are suitable to meet building, environment or engineering design standards or that the Improvements have been built in accordance with such Plans or other items. Neither Declarant nor the Architectural Director shall be liable for any damage, loss or prejudice suffered or claimed on account of or in connection with (a) the approval or disapproval of any Plans or other items, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved Plans or other items, or (c) the development of any part of land within the Property.

3.12 **Compliance With Governmental Regulations:** Nothing herein is intended, nor shall it be construed, as a warranty or guarantee by the Declarant or the Architectural Director that an Owner's Improvements are consistent or in accordance with applicable law. Each Owner shall at all times comply with all legal requirements, and shall be solely responsible for complying with all applicable federal, state and local laws, rules and regulations relating to its Improvements and the use of its Parcel or Parcels. The Architectural Director shall have the right to disapprove any use or Improvements, which are inconsistent with any applicable governmental rules, requirements, regulations, restrictions or ordinance, including, without limitation, any use in violation of zoning, subdivision, combination of lots, air pollution, water pollution, hazardous waste and toxic waste laws. The Architectural Director's approval of Plans does not relieve an Owner from responsibility to seek and obtain approvals from the County and others as may be required by applicable laws and regulations.

Each Owner of each Parcel shall have the sole responsibility for obtaining and/or renewing any and all permits, license, certificates and other approvals as may be required by any governmental entity with respect to such Owner's development and/or use of such Owner's Parcel.

3.13 **Architectural Director's Approval:** All applications, permits, plans and other documents required to be submitted to the County in accordance with County ordinances by the Owner, shall also be submitted to the Architectural Director for reasonable approval. The Architectural Director's signature on such documents shall evidence its approval of the same.

ARTICLE IV BUILDING AND SITE DEVELOPMENT

4.1 **Type and Design of Building:**

a. General Standard: Each building in the Industrial Park, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including without limitation signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Industrial Park. Pursuant to Section III of this declaration, no building may be constructed and no exterior of any existing building may be changed in any way (including without limitation signs and color) without the prior written approval of the Architectural Director. Notwithstanding the conditions set forth in this section, each lot must meet or exceed the minimum development standards set forth by all regulatory agencies having jurisdiction thereof.

b. Exterior: Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class Industrial parks. All facilities, within the Building Area or adjacent thereto, shall be attractively screened from view from the parking areas and shall be maintained in a quality condition comparable to that of a first-class Industrial park.

4.2 **Building Design and Construction Limitations:** Temporary or Accessory

Buildings. Temporary or accessory buildings are prohibited unless submitted with schedule and approved by Architectural Director. Temporary buildings will be allowed during construction.

4.3 **Building Design and Construction Limitations:** Intersection Visibility. Each Owner shall comply with all applicable federal, state and/or local laws, rules and regulations relating to intersection visibility.

4.4 **Building Design and Construction Limitations:** The Owner shall remove from the property all surplus excavation materials and dispose of it off-site at a lawful disposal site at Owner's sole cost and expense.

4.5 **Variation:** the Committee shall have the authority to approve plans and specifications which do not conform to these restrictions in order to: (1) overcome practical difficulties; or (2) prevent undue hardship from being imposed on an Owner as a result of applying these restrictions. However, such variations may only be approved in the event that the variation will not, in the Committee's sole opinion: (1) detrimentally impact on the overall appearance of the development; (2) impair the attractive development of the subdivision; or (3) adversely affect the character of nearby Lots or Common Areas. Granting such a variation shall not constitute a waiver of the restrictions articulated in this Declaration. Variation shall only be granted if the Committee determines that the variation would further the purposes and intent of these restrictions. Violations shall only be granted in extraordinary circumstances, and at the discretion of the Committee.

4.6 **Damage and Destruction or Condemnation Affecting Parcels Duty of Rebuild:** If all or any portion of a Parcel or any Improvement on any such Parcel is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Parcel, immediately upon such Owner obtaining the necessary governmental approvals (which such Owner will diligently seek to obtain) to rebuild, repair or reconstruct the Parcel and the Improvements thereon in a manner, which will restore them to the original condition and appearance approved by the Architectural Director all in a manner satisfactory to the Architectural Director. Prior to the commencement of rebuilding, repairing or reconstructing the Parcel and the Improvements thereon, the Owner responsible for doing so shall remove or cause to be removed the damaged portion of each Improvement together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such manner as not to adversely affect the drainage of the Development or any portion thereof, shall be covered by a one-inch asphalt dust cap and shall be kept weed-free and clean at the Owner's sole cost and expense, until buildings are reconstructed thereon. The Owner of any Parcel on which damaged Improvements are located shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause demolition, clean up and/or reconstruction to commence within three (3) months after approval is obtained from the Architectural Director, if approval is required, or within three (3) months after the date of the damage or destruction, if no approval is required and to be completed within twelve (12) months of said dates, unless prevented by "force majeure" delays. If Owner contemplates rebuilding the damaged improvements in a manner that results in any material change to the Plans approved in the construction (compared to the Plans approved for the improvements that were damaged), or if the Owner desires to make changes during the course of construction any

material change to previously approved plans, Owner will obtain the prior approval of the Architectural Director to such material change prior to making it.

The Architectural Director's approval shall be required when Owner contemplates any material changes of any nature from the previously approved Plans. If the Owner elects not to rebuild, repair or reconstruct the damaged, destroyed or condemned Parcel or Improvement, as the case may be, and does not commence to rebuild, repair, or reconstruct same within ninety (90) days of the event giving rise to the need for such action, and if the Owner does not complete such rebuilding, repair or reconstruction within twelve (12) months following commencement of construction, then Declarant shall have the option to purchase the Parcel, which such option shall be exercised, if at all, by the giving of notice to the Owner within thirty (30) days following the expiration of the ninety (90) day period herein above specified in this paragraph. If the option is so exercised, closing of the purchase shall take place within sixty (60) days following notice of intent to exercise the option. The purchase price shall be eighty-five percent (85 %) of the purchase price paid by the Owner for its Parcel, less the costs to Declarant for razing any Improvement, which Declarant in its sole discretion deems necessary to be razed. "Commence" and "complete" shall have the same meanings as "commencement of construction" and "completion of construction" as defined in Sections 3.8 and 3.9 hereof, respectively.

4.7 **Indemnification:** Each Owner hereby agrees to indemnify, defend and hold harmless Declarant, Architectural Director and the other Owners of the Industrial Park from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any building constructed on the indemnifying Owner's Parcel, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

4.8 **Changes to Industrial Park:** Declarant reserves the right, at any time and from time-to-time to remodel, expand, contract, add, delete, multi-deck or otherwise alter or change any portion or portions of the entire Industrial Park, other than the Building Area of an Owner, without the consent of the Owners.

4.9 **Landscaping: General Requirements.** All areas shall be landscaped in accordance with the Kootenai County Zoning ordinance, with an effective combination of street trees, trees, ground cover, shrubbery and other plant materials, and shall be maintained, to avoid weeds and dust. Undeveloped and screened areas proposed for future expansion or current storage shall be maintained in a weed free and dust controlled condition, and shall be landscaped if required by the Architectural Director. The Landscape area shall include swales to contribute to the required landscape area for purposes of compliance with applicable storm water control regulations. All landscaped areas shall be fully and adequately irrigated by a permanent underground automatic system. All landscaping set forth in this Article shall be completed by Owner within sixty (60) days of the issuing of a Certificate of Occupancy weather permitting.

All plant material used in landscaping and screening shall be maintained in a healthy growing condition and planted in areas suitable for the plant material's requirements by the Owner. Dead or dying plant material shall be replaced immediately and the planting areas shall be

maintained reasonably free of weeds and trash.

All chain link fencing shall be new vinyl coated fencing with colors such as green, brown, or black or such colors as approved by the Architectural Director.

The site plan of the proposed landscaping, walls, fences, berms and screening, shall show location, detail, shape, grades and kind of planting materials, and be submitted and approved before construction is commenced, in accordance with Article III of this Declaration.

4.10 Landscaping: Parking Area. All parking area landscaping shall be in conformity with the Kootenai County Zoning Ordinance. All landscaping shall be subject to the review and approval of the Architectural Director per Section III.

4.11 Landscaping: Screening.

(a) *Utility Service.* Owners shall place underground all outside utility services and equipment capable of being so placed. All utility services and equipment not placed underground shall be screened from public view. Owner's plan for placement of utility equipment and service shall be submitted and approved by Architectural Director prior to the commencement of construction.

(b) *Trash Receptacles.* A trash receptacle enclosure shall be provided by Owner and shall be of a size capable of holding the number of trash receptacles required to adequately serve the lot. All trash or garbage collection areas shall be enclosed on three sides by architectural walls, of sufficient height to visually screen, totally, the receptacle and contents, or be placed within an enclosed building structure. On any outside collection areas there shall also be solid steel doors of approved design. Adequate vehicular access to and from such areas for collection shall be provided by Owner. Landscaping shall be planted at or near the wall to partially camouflage (at least 50% within 2 years of planting) the enclosure.

4.12 Landscaping: Vacant Lots. Any lots held by Owner without construction or completion must be maintained in a neat and safe condition. Such lot, if held for longer than one year without commencing construction, shall have weeds controlled and ground cover maintained, so as not to detract from the aesthetics of the Development. This provision shall not apply to lots owned by Declarant, or relate to undeveloped phases of the Industrial Park.

4.13 Landscaping: Maintenance. If the Owner of developed or undeveloped property fails to maintain his property in the manner provided herein, the Declarant shall have the authority to enter onto the property and maintain the same and costs for such maintenance shall be paid by the Owner, in addition to interest from the date of expenditure until paid computed at 3% over the Wall Street Journal published Prime Rate.

4.14 **Parking: General Requirements.** There shall be no on-street parking. Property Owners must provide sufficient off-street parking. Intersection visibility must be maintained (See Section 4.7). The parking plan shall be submitted and approved in accordance with Article III herein.

4.15 **Parking: Maintenance.** The Owner of property used for sidewalks, parking and/or loading shall maintain such area in good condition and repair, free of all dust, trash, snow and other debris.

4.16 **Parking: Paving.** The required number of parking and loading spaces, together with driveways, aisles and other circulation areas, shall be improved as required by Kootenai County.

4.17 **Parking: Drainage.** All parking and loading areas shall provide for proper drainage of surface water to prevent pooling on parking area and prevent the drainage onto adjacent properties or walkways. On site percolation swales are required for disposal of storm water run-off and shall be completed in accordance with governmental requirements and approved plans per Section *iii*.

4.18 **Parking: Lighting.** Parking area shall be illuminated with high pressure sodium type light fixtures with cutoff or shielded lenses or such other lighting selected and approved by Architectural Director. Light poles shall be a maximum height of 30 feet and shall be of the standard acceptable type, which has been established for use in the Industrial Park. All lights used to illuminate a parking lot or other property areas shall be so arranged to reflect light away from the adjacent property. Parking lot illumination shall be designed to meet requirements by the Kootenai County and any other regulatory agency having jurisdiction thereof.

4.19 **Parking: Access.** All parking areas shall be designed so that any vehicle leaving or entering the parking area to the street or from the street shall be traveling in a forward motion. Access driveways for parking areas or loading spaces shall be located in such a way that any vehicle entering or leaving shall be clearly visible to a pedestrian or motorist approaching the access or driveway from a public or private street.

4.20 **Signs: General Requirements.** All signs should be done in accordance of the Kootenai County Zoning Ordinance. Signs should be unobtrusive, conservative, and harmonize with the development. All signs shall be properly maintained and kept in a neat and proper state of repair. To assure sign quality and design format, all exterior building signs, freestanding Pylon Sign Structures, monument signs, directional signs or other signage within the Industrial Park shall be subject to written approval, in accordance with criteria established by the Architectural Director.

The Owner shall promptly maintain and repair, or replace its sign as reasonably required by the Architectural Director. In the event of change of use of building, Owner shall remove any sign related to the prior use from the building and repair any damage caused by such removal, and restore the original building face to its original condition to the full satisfaction of the Architectural Director at owner's sole cost.

4.21 **Uses and Operation: Specific Uses Prohibited.** Unscreened storage

yard, (all storage must be indoors or totally screened.

- a. Storage of petroleum products or harmful chemicals to people or the environment not in conformity with local, state and federal regulations;
- b. Generation of non-domestic wastewater (NDWW) without a method approved of by Panhandle Health Department (PHD) and/or Idaho Department of Environmental Quality (IDEQ) for handling and disposal of the same. NDWW includes industrial vehicle wash water.
- c. General Residential Uses;
- d. Uses generating undesirable noise, odor and emissions, including, but not limited to, stockyards, slaughterhouse, distillation of bones, fat rendering, soap manufacture, wood scouring and cleaning, cotton textile sizing, scouring, leaching, dyeing and similar uses, varnish manufacture, creosote and products manufacture;
- e. The production of corrosive and noxious chemicals, including, but not limited to, acids, acetylene gas, ammonia, chlorine and bleaching compounds except where these processes will not have a negative effect on the environment and as approved by Declarant or Architectural Director per Article III;
- f. The production and refining process, including, but not limited to, coal, coal tar, petroleum and petroleum products except where these processes will not have a negative effect on the environment and as approved by Architectural Director per Article III;
- g. The extraction preparation and processing of dust-producing mineral products including, but not limited to, abrasive, cement, lime, fertilizer, plaster, crushed stone, mining of sand, gravel, topsoil; [except by Architectural Director for a period not to exceed five (5) years from the recordation of this Declaration];
- h. The smelting and reduction of metallic ores including, but not limited to, blast furnaces, open hearth, and electric furnaces, Bessemer converters and non-ferrous metal smelters except where these processes will not have a negative effect on the environment and as approved by Architectural Director per Article III;
- i. The manufacture and storage of explosive products, including, but not limited to dynamite, commercial explosives, T.N.T., military explosives, and fire works;
- j. Dumping, disposal incineration, reduction of garbage or refuse, except that created on the premises;

k. Any nuisance as defined in Idaho Code Title 52 Chapters 1-4 or successor statutes.

4.22 **Uses and Operation: Hazardous Uses.** Hazardous activities involving toxic wastes, flammable materials, explosive material, chemical pesticides, radioactivity, air pollution, erosion, etc., must be in compliance with federal, state and local laws and regulations. Approval for such activity is borne solely by the appropriate governmental agency or agencies. The burden of seeking approval is upon the Owner of the Lot, where questionable activity occurs. Any activity of a hazardous nature must be brought to the attention of the appropriate governmental agency.

4.23 **Water Association:** A non-profit corporation has been formed under the laws of the State of Idaho for the purpose of establishing a Water Association ("the Water Association"). The name of the Water Association is Pleasant View Water Association, Inc., and the purpose of the Water Association shall be to operate a water distribution system for the purpose of providing fire protection water, and for distributing domestic and irrigation water to the members of this corporation. Each parcel shall be governed by the Articles of Incorporation and Bylaws of that non-profit corporation. Each parcel in the Industrial Park, **and such other parcels as may be added by the Declarant, or its assigns, at its sole discretion,** shall have one membership in the Water Association at the time that the owner of the parcel pays to the Water Association the one-time water connection fee. However, the Declarant shall have one membership in the Water Association, for each parcel in the Industrial Park that the Declarant owns, and for each such other parcel as added by the Declarant, without payment of the one-time water connection fee to the Water Association. The qualifications for a member to vote shall be determined by the Bylaws of the Water Association.

4.24 **Water:** The Water Association, or its assigns or successors, shall lease from Declarant, and shall operate and maintain, a domestic water system that will meet all regulations and requirements of, and be approved by, the Idaho Department of Water Resources and the Idaho Department of Environmental Quality, and shall charge on a metered basis for said water. Each parcel owner in the Industrial Park shall be required to be a member of the Water Association, and membership shall be made available to **all other parcels as may be added by the Declarant at its sole discretion.** Declarant reserves the right to sell or transfer (at its option) the water system to a legally organized water district, or to a private individual or corporation who would agree to operate such water system under the guidelines of the Idaho Public Utilities Commission. The Water Association shall be required to secure, maintain, and pay the premiums for a policy of comprehensive general liability insurance, in an amount not less than \$1,000,000 per occurrence of bodily injury and property damage combined, or in a greater amount as reasonably determined by Bighorn Farms, to insure the Water Association, with Bighorn Farms as an additional insured, against liability arising out of the maintenance and operation of the water system.

Domestic water will be available for tap-on within the confines of the roadway adjacent to the parcels or in the utilities area reserved by Declarant and referred to hereinbefore. Each parcel owner shall pay the water hook-up fee, the tap-on fee, service charges, and special assessments. The Water Association shall have a lien upon each parcel from the time when each monthly service charge and each special assessment is assessed against the parcel, including a reasonable interest

charge and late charges for each such monthly service charge and special assessment, which shall accrue from the date of assessment.

The water source and system provided by the Declarant shall be the exclusive source of water for the Industrial Park and no other systems are allowed. Any future amendment concerning the extension, alteration, or deletion in whole or part of these covenants shall not affect this paragraph nor its subparts. No individual water supply system shall be permitted on any parcel. No parcel owner, except for the Declarant, shall identify any such parcel as the point of diversion or as the subject of beneficial use, of any water right or license.

Each parcel shall have installed, and maintain as required by law and regulation, the required cross-connection and backflow prevention devices for the water system on each such parcel. The Water Association shall have a lien upon each parcel for any expense incurred by the Water Association for enforcement of this provision, and/or for the installation and/or maintenance of any such devices on any parcel from the time that each such expense is incurred, which shall also include a reasonable interest charge and late charge.

Each parcel owner shall install at their own expense a separate irrigation meter downstream from the service meter as to be able to isolate and monitor flows used specifically for irrigation purposes.

ARTICLE V EASEMENTS

5.1 **Easement in Favor of Declarant and Architectural Director:** Declarant hereby reserves to itself and to the Architectural Director, together with the right to grant and transfer the same to a succeeding Declarant, its successors and assigns, a non-exclusive easement for ingress, egress, construction, maintenance and repair purposes over such portions of the Industrial Park and any Parcel, as may be reasonably necessary for Declarant and the Architectural Director to enjoy their rights as herein created and to discharge their obligations as described in this Declaration; provided, however, such easement shall not impair Owner's right to construct any Improvements on Owner's Parcel that Owner is otherwise permitted by this Declaration to construct. No such Improvements so constructed on any Parcel shall be deemed to be an encroachment to such easement, and such easement shall be subordinate to the Improvements.

5.2 **Utility Lines and Facilities in the Industrial Park:**

(a) **Grant of Easement for Utility Lines and Facilities.** Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel in the Industrial Park belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, conduits and lines, electrical conduits or systems, gas mains and other public or private utilities. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved portions of the

Industrial Park or with the normal operation of any business in the Industrial Park. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Parcel resulting from such use, and within thirty (30) days after construction of any utility lines and facilities is completed, shall provide as-built plans for all such lines and facilities to the Owners of all Parcels upon which such utility lines and facilities are located. No easement shall be deemed to be granted hereunder within any area, which is in, under or above a Building Area or Expansion Area, as shown on Exhibit "A" attached hereto.

(b) **Relocation of Utilities.** At any time and from time to time, the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement, which is then located on the land of such Owner.

**ARTICLE
VI
DEFAULT**

6.1 **Attorney's Fees:** In any legal or equitable proceeding (including arbitration) for the enforcement, or to restrain the violation, of this Agreement or any provisions hereof, the losing party shall pay to the prevailing party the reasonable attorney's fees, costs and expenses incurred in connection with the prosecution or defense of such action (including, without limitation, any appeal therefrom and/or in connection with any bankruptcy proceeding). All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.2 **No Waiver:** The failure by Declarant or any Owner to enforce any provision of the covenants or restrictions herein contained or to seek redress for any breach thereof shall in no event be deemed a waiver of the right to do so thereafter.

6.3 **Breach Shall Not Permit Termination:** It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies, which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

6.4 **Declarant's Right of Self Help:** Whenever an Owner shall be deemed in default hereunder and without limiting any other rights or remedies to which Declarant is entitled, Declarant, its successors and assigns shall have the right to perform the obligation of Owner giving rise to such default, provided that Declarant first gives the defaulting Owner at least ten (10) days notice of Declarant's intention to perform the obligation and provided that Owner has not notified Declarant prior to the expiration of said ten days that Owner has commenced the curing thereof. In the event Declarant performs the defaulting Owner's obligation as provided hereunder, then Declarant shall be entitled to reimbursement for all of its

costs and expenses in connection therewith, including reimbursement for interest from the date of the payment by Declarant to and including the date the cost is paid by Owner at a rate equal to the lesser of (I) the highest rate allowed by law, or (ii) the rate three percent (3%) above the reference rate of interest, i.e. the prime rate charged from time to time to corporate borrowers of the highest credit standard as published by the Wall Street Journal. The reimbursement by Owner shall be made promptly on Declarant's invoice to Owner in connection therewith. In the event that Owner fails to reimburse Declarant within twenty (20) days of the receipt of such invoice, Declarant shall have a right to file a lien against Owner's Parcel(s) to secure payment of the outstanding invoice(s); provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree, arbitration or mutual agreement; and provided further, however, that the disputed amount either shall be placed in an escrow with a disinterested third party with instructions to disburse said amount upon joint instructions of the parties or upon a court or other tribunal order, or in lieu thereof the party disputing such amount shall post a surety bond or other security reasonably satisfactory to the other party assuring payment of the disputed amount when and if a court or other tribunal having jurisdiction thereof determines the proper amount due. The lien provided for shall only be effective, when filed for record by the curing Owner or curing party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Industrial Park is located, signed and verified, which shall contain at least:

An itemized statement of all amounts due and payable pursuant hereto;

A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;

The name of the Owner or reputed Owner of the property, which is the subject of the lien; and

The name and address of the Curing Owner or Curing Party.

ARTICLE VII HAZARDOUS MATERIALS

7.1 Compliance With Law; Permits: Each Owner shall at all times maintain its property and conform its activities and the activities of its Permitted Persons on the Owner's Property in compliance with all applicable requirements under applicable Environmental Laws (as defined below) with respect to the containment, clean-up or remediation of Hazardous Materials (as defined below), the protection of the environment, the control of hazardous wastes, and the use, analysis, generation, manufacture, transport, storage, disposal, removal and treatment of Hazardous Materials (as defined below). Each Owner shall comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the Owner's use of any Hazardous Materials in or about the Owner's Parcel in conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. As used in this Declaration, the term "Hazardous Material" shall mean any materials, which because of their quantity, concentration or physical, chemical or infectious characteristics

may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of or otherwise managed under applicable laws and regulations presently in effect. The terms shall include, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Development is located under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Federal Water Pollution Control Act (FWPCA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Clean Air Act (CAA) and any and all other federal and state statutes applicable to the protection of human health or the environment (the "Environmental Laws"). All critical materials must be handled and stored in compliance with "Best Management Practices associated with Panhandle Health Departments critical materials rule."

7.2 **No Placement of Hazardous Materials Outside Parcel:** No Owner shall place or allow any hazardous materials used on such Owner's Parcel to affect any other portion of the Property.

7.3 **Removal of Hazardous Material:** Upon termination of use of Hazardous Materials, the Owner shall cause all Hazardous Materials placed in or about the Parcel to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Hazardous Materials Laws.

7.4 **Indemnification:** Each Owner shall indemnify, defend, protect, and hold Declarant and each other Owner and their partners, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including attorney's fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part by the presence in or about the Property of any Hazardous Materials placed in or about any portion of the Property by the indemnifying Owner or at such indemnifying Owner's direction, or by such indemnifying Owners failure to comply with any Hazardous Materials Law or this Article.

ARTICLE VIII GENERAL PROVISIONS

8.1 **Covenants Run With the Land:** Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof, and shall run with the land.

8.2 **Successors and Assigns:** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title, but shall remain liable for all

obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner, who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

8.3 **Assignment of Declarant's Rights and Duties:** All (but not less than all) of the rights, powers, duties and reservations of Declarant herein contained may be assigned to any person, partnership, corporation or association, at the sole and absolute discretion of Declarant and subject to notice provided to the Owners of the Industrial Park. Such assignment shall be made by the recordation of an assignment instrument executed by Declarant and such assignee. When such assignee evidences its consent in writing to accept such assignment and assume such duties, such assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein and Declarant shall be relieved of any further liability with respect thereto. The rights, powers, duties and reservations of Declarant may not be separated or assigned to multiple parties.

8.4 **Construction By Declarant:** Nothing in this Declaration shall limit the right of Declarant to alter the Parcels owned by Declarant or to construct such additional Improvements on the Property as Declarant deems necessary or advisable. Such right shall include, but shall not be limited to erecting, constructing and maintaining on the Property then owned by Declarant such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time to establish on the Property then owned by Declarant additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary for the proper development and disposal of the Property, provided that no such additional licenses, reservations or rights-of-way shall unreasonably interfere with the use and enjoyment of any Owner's Parcel.

8.5 **Owner's Liability Subsequent to Sale:** Subsequent to Owner notifying Declarant of such sale and subsequent to the transferee expressly assuming the ongoing obligations and restrictions hereunder upon sale of a Parcel, the Owner so selling shall not have any further liability for the obligations thereon, which accrue against the Parcel sold after the date of the conveyance; provided, however, that nothing herein shall be construed so as to relieve an Owner of any Parcel from any Liabilities or obligations incurred prior to such sale pursuant to this Declaration. Furthermore, any such sale shall not enlarge or extend the time for commencement of construction of a building upon a Parcel.

8.6 **Duration:** Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof. At the end of the sixty-five (65) year initial term, this Declaration shall be deemed automatically renewed for consecutive terms of ten (10) years each unless, at least six months prior to the end of the initial term or any such consecutive term, the Owners of seventy-five percent (75%) of the total square footage of the Industrial Park, which seventy-five percent (75 %) must include the Declarant's, consent in writing to termination of this Declaration.

8.7 Modification and Premature Termination: Declarant shall have the authority to modify and/or amend this Declaration at any time in Declarant's sole discretion.

8.8 Protection of Mortgagees: A breach of any of the provisions of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to any Parcel, or any portion or portions thereof, but such provisions shall be binding upon and effective against any Owner or Owners of any such Parcel, or any portion or portions thereof, whose title is acquired by foreclosure, trustee's sale or otherwise. Nothing in this Declaration shall be deemed to invalidate or render unenforceable against any Owner any covenant made by that Owner to its Mortgagee.

8.9 Notices: (a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Industrial Park is located. All notices shall be directed to Declarant, Architectural Director or Owner's at the places that they may declare, from time to time, to be their respective addresses. Until further notice, their respective addresses shall be deemed, in the case of an Owner, the address given to Declarant at the time such Owner first acquired its Parcel; and in the case of Declarant or Architectural Director, their address shall be deemed their principal office in the state of Idaho.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (I) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver, the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

8.10 Management by Declarant: Development Period shall mean period of time from the date of recording the Declaration until: (1) the thirtieth (30th) day after transfer of title to purchasers of Lots represent one hundred percent (100%) of the total voting power of all Lot Owners as then constituted, including any annexed property, or (2) the date on which Declarant elects to permanently relinquish all of Declarant's authority under this Article by written notice to all Owners, or (3) a date not more than thirty (30) years from the date of recording this Declaration, whichever of the preceding date is first occur. Until termination of the Development Period, either upon the sale of required number of Lots, the expiration of the stated time period, or at the elect of the Declarant, the Property shall be managed at the sole discretion of the Declarant.

8.11 Annexation: Declarant reserves the absolute and unfettered right, but is not obliged, to add Other Parcels to the Properties. Declarant reserves the absolute and unfettered right to determine the number and location of any Lots within the Other Parcels. The use of the

word "Declarant" in this section shall also equally apply to any assigns of Declarant of Declarant's rights hereunder.

If any other Parcels are added to the Properties, all of the Other Parcels shall be governed by this Declaration if Declarant so elects. The character of the improvements which may be later added to the Properties on Other Parcels shall be compatible with improvements already existing on the Properties; Provided, However, that Declarant may develop the Other Parcels for any lawful purpose that is allowed by applicable land use laws and regulations. All easement for ingress, egress, utilities and use of facilities, unless, otherwise specifically limited, shall exist in favor of all Lot Owners in the Other Parcels.


The addition of any Other Parcels to the Properties shall occur when the Declarant files for record a Declaration of Annexation to this Declaration, legally describing the Other Parcels and stating that the Other Parcels are annexed to the Properties and subject to the provisions of this Declaration. If Other Parcels are added to the Properties, the Association shall file for record a Declaration of Annexation to this Declaration legally describing the Other Parcels and stating that the Other Parcels are added to the Properties and subject to the provisions of this Declaration.

The voting rights of the existing Lot Owners shall be adjusted at the time Other Parcels are added to the Properties only to the extent that the total number of votes is increased by the number of Lots added, and the percentage which one vote bears to the total is thus diminished.

8.12 **Amendment.** This Declaration and By-Laws may be amended during the initial sixty five (65) year period if seventy-five percent (75%) of the members vote to amend particular provisions of the instrument, Provided However, this Declaration may be amended at any time by an instrument signed by the Declarant so long as the Declarant or the Declarant's assigns owns one (1) or more lots. The provisions expressly referring to the Declarant may not be amended without the Declarant's approval. All amendments must be filed with the office of the Kootenai County Auditor.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

For Bighorn Farm, LLC


RICHARD T. DAHM
Managing Member

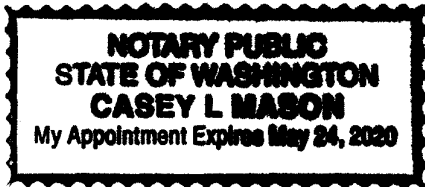
STATE OF WASHINGTON

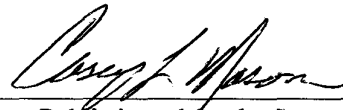
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COUNTY OF SPOKANE

On this day 26th, day of September, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard T. Dahm, known to me to be the Managing Member of Bighorn Farm, LLC. and he is authorized to execute this instrument and acknowledged to be a free and voluntary act for purposes mentioned in this instrument

Dated: 9-26-2016




Notary Public in and for the State of
Washington Residing at
Liberty Lake, WA
My appointment expires: 5-24-2020