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12/31/2007 04:11p 18.00
Pennington County, South Dakota
Donna M. Mayer Misc Real Est

Prepared By:
BY-PASS DEVELOPMENT, L.L.C.
35 South 4th Street
Custer, SD 57730
605-673-2350

**PROTECTIVE COVENANTS
I-90 HEARTLAND BUSINESS PARK**

This Declaration is made this 21st day of December, 2007, by the By-Pass Development, LLC, a South Dakota Limited Liability Company, with its principal office located in Custer, South Dakota, hereinafter called the "Declarant";

WHEREAS, the Declarant intends to develop and offer for sale lots and tracts to be located within the I-90 Heartland Business Park (herein sometimes referred to as the "Development") and is desirous of subjecting the land being further described below to certain covenants, easements, restrictions, conditions and charges as hereinafter set forth;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

The Declarant does hereby impose and charge the following described real property located in Pennington County, South Dakota, with the following covenants, agreements, restrictions and charges as set forth in this Declaration hereby specifying that this Declaration shall constitute covenants running with the land and shall be binding upon:

Lots 4 and 5 of Block 2, Lots 4 through 9 of Block 5, Lots 3 through 6 of Block 6 and Lots 1 and 2 of Block 7; all of I-90 Heartland Business Park, and dedicated public right of way as shown as Seger Drive, Reardon Court and Dakota Craft Drive located in W $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota.

**I.
EASEMENTS & RIGHT-OF-WAY**

The easements, dedicated rights-of-way for utilities, easements for storm sewer drainage purposes and functions, streets and highways shall be as shown on the plat or plats of I-90 Heartland Business Park filed or to be filed by the Declarant and shall be for the uses and purposes as marked and noted on such plat or plats.

The purchasers of lots and tracts within the Development shall, at their own cost and expense, keep and maintain that portion of their property subject to the aforesaid easements and rights-of-way in the same manner as they maintain the surface of the remainder of their property in the Development.

**II.
GRANT OF EASEMENTS**

The Declarant does hereby grant and convey to utility companies their successors and assigns, the perpetual right and easement to utilize the easement areas reserved by the Declarant for the purposes of the construction, operation and maintenance of underground electric and communication cables, service connection cubicles, transformer vaults, transformer poles, wires, guys, stubs, and other fixtures over, across and upon the designated easement area. In consideration of the grant made herein by the Declarant the respective parties to whom this Easement is granted do hereby agree to indemnify and hold harmless the Declarant from any and all liability arising out of the

construction, maintenance and operation by the companies over, upon and across the Easement areas, except for the gross negligence of the Declarant.

III. ARCHITECTURAL CONTROL COMMITTEE:

There shall be formed an architectural control committee, hereafter called the "Committee" initially composed of Michael E. Tennyson of Custer, South Dakota, and Patrick Tlustos and Tom Rau of Rapid City, South Dakota. The aforesaid committee shall be composed of three members who shall act on and make decisions as hereinafter set forth in the following covenants. The power of said committee shall be restricted to only those powers as hereinafter set forth.

A majority of the committee may designate a representative to act for it. In the event of the death of or resignation of any member of the committee, remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then owners of at least one half (1/2) of the square feet area of the land within the Development shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from or to restore to the committee any of its powers and duties.

IV. PROTECTIVE COVENANTS

1. **Land Use.** The property in the Development shall be used only for those purposes as permitted by the zoning ordinances of the City of Rapid City and the environmental laws of the State of South Dakota as the same may be amended or changed from time to time.
2. **Type of Construction.** The exterior walls of all buildings located in the Development shall be fire resistant and shall be constructed of masonry, steel or concrete materials. The kind, type and use of materials shall be subject to the Uniform Building Code as contained in the Revised Ordinances of the City of Rapid City, as the same may be amended or changed from time to time, and paragraph 3 following.
3. **Approval of Plans.**
 - A. Before commencing the construction or alteration (excluding interior alternations) of any buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on any tract or lot, the property owner shall first submit two sets of site plans and complete plans and specifications therefore to the Committee for its prior written approval, which approval the Committee agrees shall not be unreasonably withheld; provided, however, that the building or other structures or improvements shown thereon are harmonious in design and construction with the then existing building, structures and improvements in the Development.
 - B. Submitted plans must include a site plan, drainage plan, landscaping plan, all floor plans, exterior elevations, at least one cross section showing the nature of the construction and materials and a description of any intended outside storage.
 - C. Submitted specifications must contain sufficient data to indicate all materials and finishes for all foundations, exterior walls and roofs of buildings and for all outside storage, fencing and walls.
 - D. When reviewing the plans and specifications, the Committee will utilize the following guidelines:
 - i. On buildings whose walls are essentially metal paneled, the use of masonry or other architectural relief to be installed thereon on the street sides and the use of a good quality and durable finish on the metal panels will be required. All exterior building surfaces shall be painted or installed in earth-tone colors.
 - ii. On buildings whose roofs are essentially metal surfaced, the use of a good quality and durable finish (unpainted or painted galvanized finish being unacceptable) on the metal will be required. Any metal roof shall be a factory painted standing seam metal roof, or equivalent.
 - E. In the event that the Committee shall fail to approve or disapprove site plans or plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, such approval shall not be required and this paragraph 3 shall be deemed to have been compiled with.

- F. Neither Committee, nor any member, employee or agent of Committee shall be liable to an Owner or tenant or to anyone else submitting plans for approval, or to any other action in connection with its or their duties hereunder. Approval of any plans by Committee does not constitute an opinion as to the plans complying with any zoning ordinance or local or federal regulations. Accordingly, it is the Owner's obligation and responsibility to ensure compliance with all such zoning ordinances, local and federal regulations and requirements. Likewise, anyone so submitting plans to Committee for approval, by submitting such plans, and any person when he or it becomes an Owner or tenant, agrees that he or it will not bring any action or suit to recover any damages against Committee or any member, employee or agent of Committee, arising or in any way connected with this Declaration or the approval or failure to approve any plan submitted by anyone. Each Owner and any tenant of any Owner hereby indemnifies and holds Committee harmless from any and all liability, damages, costs, and expenses (including attorneys' fees) arising out of Committee's authority hereunder.
 - G. After approval of the plans and specifications by Committee, no deviation shall be made during construction which would change the scope of the improvements or alter the exterior quality or appearance of the improvements without the prior written approval of Committee.
 - H. Committee shall have the right, but shall not be obligated, to approve a variance in conformance with these restrictions which does not at the sole reasonable judgment of Committee, violate the spirit and intent of these restrictions.
 - I. Once Committee has approved plans and specification in writing for a building or other structure and such building or other structure has been constructed in conformity with such plans and specifications, the approval shall not be withdrawn and such building or other structure shall thereafter be deemed to be in compliance with these restrictions as then in effect or thereafter amended.
4. **Minimum Yard Requirements.** The following minimum yards, measured in feet, shall be required within the Development:
- A. Minimum front, side and rear yard requirements shall comply with any existing zoning requirements of the City of Rapid City.
 - B. The front yard and any side yard abutting on a public street shall be planted with grass, trees, shrubs and other decorative plantings and shall be otherwise appropriate landscaped, except those portions used for driveways or parking.
5. **Parking Facilities.** Owners of tract or lots within the Development shall provide the following minimum parking spaces for their employees:
- A. It will be the responsibility of each Owner to provide sufficient parking and loading facilities on its building site at least to the minimum standards set forth in the City of Rapid City Zoning Ordinances and any other lawful parking standards, as then in effect, and each Owner shall be responsible for compliance with the provisions of such law, regulation or ordinance by its employees, customers, visitors, invitees, licensees and motor carriers serving the building site.
 - B. In no case shall any storage, servicing or dismantling of automobiles or other vehicles, or loading or unloading operation be permitted in the required parking areas. All parking areas shall be hard surfaced with appropriate curb.
6. **Loading Areas.** All loading and unloading operations shall be off-street. No loading or unloading shall be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. Loading areas shall be hard surfaces. No loading docks shall be constructed facing any public street or highway unless the loading dock and every part thereof is a least forty-five (45) feet inside of the lot line of the street or highway on which said loading docks fronts.
7. **Outside Storage.** Any items placed or stored outside for longer than seven (7) days must be screened from view from all sides by means of an approved opaque fence or wall, minimum six (6) feet High, but no less than the highest point of screened items. The language of this paragraph shall not apply to areas used exclusively for employee or customer parking. No storage will be permitted within twenty-five (25) feet of any property line fronting on a street.
8. **Outdoor Signs.** All signs shall comply with any existing outdoor sign ordinances of the City of Rapid City. When submitted to the Committee for approval, the request must include a sign permit issued by the City of Rapid City. Signs shall be restricted to advertising only the person, firm, company or corporation operating the business conducted on the site or the product sold or produced thereon. A multi-tenant building may be permitted one common sign to support individual tenant identification signs. All signs

- which are attached to the buildings must be flush mounted and shall not project above the roof line. Signs painted directly on the exterior surface of a wall shall not be permitted.
9. **Maintenance of Undeveloped Areas.** That portion of each lot or tract that is not improved with buildings, parking facilities, loading facilities or lawn area shall be seeded to a cover planting which is maintained at a height not to exceed approximately six (6) inches, and at all times shall be attractively maintained. No part of any of the land area shall be planted or cultivated row crops.
 10. **Zoning & Building Regulations.** The building regulation as now or hereafter imposed by the provisions of the Zoning & Building Ordinances of the City of Rapid City, South Dakota, shall apply throughout the Development except as the same may be modified by a duly constituted authority.
 11. **Fences.** All fencing for screening, security or other purposes shall be attractive in appearance and shall be either all metal, industrial type of galvanized or nonferrous material or of masonry material. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the building set-back lines set forth above except with the prior written approval of the Committee, which approval the Committee agrees shall no be unreasonably withheld or delayed.
 12. **Replatting or Subdividing.** The owner of any lot or tract within the Development shall never replat, subdivide or resubdivide any lot or tract into a smaller lot or parcel without first obtaining the prior written approval of the Declarant.
 13. **Wastes.** No garbage or decomposable animal or vegetable wastes shall be placed or stored upon any lot or tract except in tightly covered metal or plastic containers. All other refuse shall be placed in containers or enclosures in a manner not constituting a nuisance by reason of wind litter, disorderly appearance or abnormal fire hazards. The owner shall be responsible for the removal of garbage and other refuse from his premises at least once each week.
 14. **Lighting.** All outdoor lighting shall be directed so as not to trespass onto adjoining properties or the rights-of-way of any public streets within or adjoining the Development.
 15. **Compliance with Pollution Requirements.** No occupant shall produce any air, noise or odor pollution above those standards set by the Federal Government, State of South Dakota, or City of Rapid City.
 16. **Exceptions and Modifications.** The Committee shall be authorized to make such exceptions to, or modifications of, these Declarations as unusual circumstances or special situations may warrant; provided, however, that such exceptions or modifications shall not invalidate these Declarations in principal or general objectives. Except for unusual circumstances or special situations, the Committee shall enforce these Declarations in a non-discriminatory manner.
 17. **Duration.** These Declarations shall run with the land and be binding upon all present and future owners of any part of the land within the Development for a period of twenty (20) years from the date of recording of the Protective Covenants Heartland I-90 Business Park on file with the Register of Deeds Office, Pennington County, South Dakota at Book 141 Page 3742 dated February 2, 2005, at which time they will automatically renew for a period of ten (10) years; provided, however, the then owners of at least two-thirds (2/3) of the square feet area of the land within the Development may, by written declaration signed and acknowledged by them and recorded in the Register of Deeds' office, Pennington County, South Dakota, terminate these Declarations at the end of the original twenty (20) year period. Said Declarations will continue to automatically renew for additional periods of ten (10) years; provided, however, the then owners of at least two-thirds (2/3) of the square feet area of the land within the Development may, by written declaration signed and acknowledged by them and recorded in the Register of Deeds' office, Pennington County, South Dakota, terminate these Declarations at the end of any ten (10) year extension period.
 18. **Severability.** If any paragraph or part thereof of this Declaration be declared invalid, illegal or inoperative for any reason, the remaining parts, so far as possible and reasonable, shall remain fully effective and operative.
 19. **Enforcement.** These conditions, covenants, restrictions and reservations may be enforced as herein provided and by Committee, Declarant, any Owner, or any tenant with approval of the Owner of the building site of which the tenant occupies in whole or in part, and violation of any conditions, covenant, restriction or reservation herein contained shall give to Committee and to the Owner or any of them, the right to bring proceedings at law or in equity against the party or parties violating or attempting to violate any of such covenants, conditions, restrictions and reservations; to enjoin them from so doing; to cause such violations to be remedied; or to recover damages resulting from any such violation. Every act, omission to act, or condition which violated the covenants, conditions, restrictions and reservations herein contained shall constitute a nuisance and every remedy available at law or in equity for the abatement of



public or private nuisance shall be available to Committee, Declarant and the Owners. Any legal or equitable proceeding to enforce the provisions hereof or to enjoin their violation, the party or parties against whom judgment is entered shall pay the attorneys' fees for the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceeding. Such remedies shall be cumulative and not exclusive.

20. **Superiority.** All restrictions and other provisions herein contained shall be deemed prior and superior to all leases covering part or all of any building site. If any portion of the land is sold under foreclosure of any mortgage or deed of trust, any purchaser at such sale, and his successors and assigns, shall hold any and all of such properties purchased subject to all of the restrictions and other provisions hereof as fully as if he were an original party to this Declaration and shall duly execute a written consent to this Declaration.
21. **Waiver.** The failure of Committee, Declarant or any Owner to take action to enforce the provisions hereof or to enjoin their violation shall in no event be deemed a waiver of its right to subsequently do so, nor shall it be deemed a waiver of any subsequent default or of the continuation of any existing default.
22. **Invalidation.** Invalidation of any part or parts of this Declaration by judgment or court action or otherwise shall in no way affect any of the other provisions which shall remain in full force and effect.
23. **Notices.** All notices, consent, approvals or other communications (herein called notices) required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail, postage prepaid, if to Declarant, addressed to Declarant at 35 South 4th Street, Custer, South Dakota 57730; if to an Owner, at the address specified in the deed from Declarant to the Owner owning the building site in question, or at such other address as shall be furnished to Declarant by an Owner in writing or to the street address of the building located on a building site. Declarant or any Owner may change the address to which notices are to be sent in the manner hereinbefore provided. Notices shall be deemed given on the date of the registration or certification thereof. Declarant shall not be bound by any change in record ownership of any building site until it has been given notice of such change in ownership, without adequate proof thereof, in the manner herein provided for the giving of notice.
24. **Consent.** Every person who now or hereafter owns or acquires any right, title, estate or interest to any portion of the property covered hereby shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal

this 21st day of December, 2007

By [Signature]
 Title: Member, By-Pass Development, LLC

STATE OF SOUTH DAKOTA)
)SS
 COUNTY OF Custer)

On this the 21st day of December, 2007 before me, the undersigned officer, personally appeared Michael E. Tennyson, who acknowledged himself to be a member of By-Pass Development, a Limited Liability Company, and that he as such being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission Expires: 11/10/11

[Signature]
 Notary Public, South Dakota

