

Moulton Bellingham P.C.
P.O. Box 2559
Billings, Montana 59103



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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
WEST KING COMMERCIAL PARK SUBDIVISION**

This "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WEST KING COMMERCIAL PARK SUBDIVISION" (the "Declaration"), is made by West King Commercial Park LP, a Montana limited partnership (hereinafter "Developer"), P. O. Box 21495, Billings, MT 59104.

Recitals

A. Developer is the owner and developer of the West King Commercial Park Subdivision (the "Subdivision" or the "Property"), which subdivision is situated in Yellowstone County, Montana, according to the official plat thereof filed and recorded as Document No. 3555252 in the office of the County Clerk and Recorder of Yellowstone County, which said plat is hereby referenced and by reference made a part hereof.

B. Developer desires to place building and other restrictions on the Subdivision, including without limitation all lots contained in the Subdivision, for the use and benefit of the present owner of the Subdivision and for all future grantees of the Subdivision or any part thereof and their heirs, devisees, personal representatives, administrators, successors and assigns.

NOW THEREFORE, Developer hereby establishes and declares the following Covenants, Conditions and Restrictions, which shall apply to all of the real estate described hereinabove, shall bind all of the property owners and tenants, and shall run with the land:

1. **Persons Bound by the Covenants and Restrictions.** All persons, corporations, or other entities who shall hereafter acquire any interest in and to the above described real estate or any portion thereof shall be taken and held to agree and covenant with the owners of the lots and their heirs, devisees, trustees, personal representatives, successors and assigns, to conform to and observe the following covenants, restrictions, and stipulations as to the use thereof, and as to the construction and improvements thereon.



2. **Real Estate to Which Covenants Apply.** The covenants shall apply equally to all lots described in the Subdivision.

3. **Purpose.** The following covenants are set forth for the purpose of maintaining fair and adequate values of said land, preventing nuisances, and thereby securing to each such owner, present and future, the full benefit and enjoyment of his land. In consideration of our mutual interest as owners of said real estate, we do hereby covenant and agree that the parties hereto, their heirs, personal representatives, successors, and assigns will be bound by and comply with the restrictive covenants set forth herein.

4. **General Statement of Use of Premises.** Although at the time of development the Subdivision is not required to be zoned, the intent of Developer and thus the usage of the subsequent owners should be generally in compliance with the zoning classification of "Controlled Industrial" as described by The City of Billings and Yellowstone County Zoning Regulations for the Areas Incorporated in to the City of Billings, MT and the Unincorporated Yellowstone County Montana 4 1/2 mile Jurisdictional Area. In the event of a conflict, this Declaration will prevail over said City and County zoning codes to the extent permitted by law.

5. **Specific Uses Disallowed on Premises.** The following specifically proposed uses are not intended to be exhaustive, and Developer retains the right to, in the future, deny any use of the premises that Developer deems inappropriate for the Subdivision:

- a. Fuel oil, gasoline, and petroleum products bulk storage for sale;
- b. Gases or liquefied petroleum gases in approved portable metal storage containers for sale;
- c. Auto Salvage Yards;
- d. Non-operating vehicles, other than those associated with vehicle repair / body shops;
- e. Sawmill, logging, raw materials handling, manufacturing, sandblasting or other activities that are performed outdoors that emit levels of sawdust, dust, dirt, smoke, sand, gravel or other materials that are related to the refinement of the raw materials or other activity described above;
- f. Livestock, animals, or poultry of any kind either raised, bred, or kept on the premises, other than veterinary clinics;
- g. Storage of livestock feed, silage, fertilizers (except packaged feed, fertilizer and indoor fertilizer), or manure other than commercial distributors, i.e., agricultural suppliers or veterinary clinics.



6. **Research Laboratories Permitted.** Research laboratories shall be permitted on the Subdivision, subject to prior approval by Developer of the substances and tangible items that will be handled in said laboratories.
7. **Cell Towers and Mini-Storage.** Developer reserves all cell tower and related development uses and all mini-storage development in the Subdivision. Restrictions set forth herein may be waived by Developer on a case by case basis. A waiver in one instance shall in no way commit Developer to future waivers.
8. **Construction.** The purchaser of any lot of the Subdivision must commence construction on the purchased premises within eighteen (18) months of the closing date of the sale and purchase of the lot, said construction to continue in good faith until the construction is completed and the purchased premises are developed. All construction shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction. In the event the purchaser fails to commence construction within the time set forth herein, Developer may repurchase the premises at the original sales price, less the commission and all closing costs paid by the seller in the original sale between Developer and the purchaser.
- The purchaser of any lot of the Subdivision will be allowed to sell the purchaser's property, but the eighteen (18) month limitation set forth herein will not be waived. Thus, any second or subsequent purchaser must comply with the eighteen (18) month construction rule unless it is extended or waived by Developer. Developer retains sole discretion to not waive the eighteen (18) month construction rule.
9. **Site Size.** Without Developer's approval, property owners shall not subdivide or re-subdivide into smaller parcels, aggregate parcels or move lot boundaries. It is understood that Developer reserves the right to subdivide or re-subdivide the property into smaller parcels, aggregate parcels or move lot boundaries at Developer's discretion.
10. **Building to Land Ratio.** The maximum portion of a site that may be covered by buildings shall not exceed seventy percent (70%), and there shall be provided sufficient off-street parking for the vehicles of all employees, customers, or invitees.
11. **Mineral Rights.** Developer retains all mineral and archeological rights of whatever kind, nature or character, including, without limitation, oil, gas, coal and hydrocarbons, with respect to property located in the Subdivision.
12. **Setbacks.** Unless otherwise required by law, all buildings shall be set back a minimum of twenty (20) feet from the right-of-way line of a road or roads, which provide access to the property. The side yard setbacks must not be less than five (5) feet, and the rear yard setback will be a minimum of eight (8) feet. In the case of corner lots, the side adjacent to street setback shall be no less than fifteen (15) feet. Setbacks for lots adjacent to dry hydrant shall be one



hundred (100) feet from the dry hydrant outlet. Lots adjacent to dry hydrant are Lots 9 and 10 in Block 2, and Lot 8 in Block 3.

13. **Development Standards.**

a. **Buildings**

- (1) All buildings are to be of "earth tone" color hues, or conservative natural colors complementary to adjacent structures, as judged by reviewing authorities as provided by Section 17 herein.
- (2) A minimum of twenty-five percent (25%) of the front of all buildings shall be constructed or dressed with bricks, wood, glass, texturized concrete, tile or block.
- (3) Buildings shall be restricted to three (3) stories above ground level. The maximum height of buildings excluding roof-top air-conditioning units and elevator housings shall not exceed fifty (50) feet from ground level, except any cell towers, which have been reserved by Developer.

b. **Services.** All permanent utilities shall be placed underground.

c. **Loading Areas and Equipment.**

- (1) All loading docks which do not directly or indirectly face a street may be built and used without any special restrictions except as is provided under general architectural review as set forth in Section 17 below. Any loading docks which directly or indirectly face a street must meet the following requirements.
 - (a) The architecture of loading docks must be separately reviewed and approved prior to installation as provided for in Section 17 below; and
 - (b) The use of said loading docks will be restricted against the parking of any one trailer straight truck thirty (30) feet or longer, whether in combination or not, for in excess of twenty-four (24) hours during any continuous seventy-two (72) hour period; and for purposes of determining hours, both working and nonworking hours shall be included as well as weekends and holidays.
- (2) Notwithstanding anything to the contrary stated herein, trailers and straight trucks thirty (30) feet or longer, whether in combination or not, may be parked parallel and adjacent to the side of a building so long as the



trailer or payload carrying portion of the straight truck is parked behind the front of the building.

- (3) Except as allowed, as stated above, during any thirty (30) day period, no trailers and straight trucks thirty (30) feet or longer, whether in combination or not, may be parked on streets adjacent to any lot or upon any lot to the front or side of a building for the purpose of selling therefrom or advertising therefrom for more than twenty (20) hours, whether said hours are consecutive or not.
- (4) The provisions hereof will not be waived due to any failure to enforce provisions for any period or periods of time.

- d. **Signs.** Signs visible from the exterior of any building may be lighted but shall not rotate, blink, or move in any fashion. Signing shall be restricted to advertising only the person, firm, company or corporation occupying the site. Signs must be mounted to the face of the building.

Developer intends to erect monument signs at each entrance to the Subdivision. The initial monument sign will be erected at the King Avenue West entrance, and shall be erected at Developer's cost. The second monument sign may, in Developer's discretion, be erected at the 64th Street West entrance to the Subdivision when that entrance is approved and constructed. The cost for the 64th Street West entrance monument sign shall be shared by the then current lot owners in the Subdivision based on the number of lots owned by that owner compared to all lots in the Subdivision, including Developer. Example: If Developer owns thirty percent (30%) of all lots in the Subdivision at that time, Developer shall pay thirty percent (30%) of the cost for erecting the 64th Street West monument sign. The balance of the cost shall be passed through on an assessment basis to the other owners, and shall be paid on invoice. The maintenance and operation of the signs (power bills, etc.) shall be shared by the business owners on a pro rata basis, meaning on a basis determined by dividing the number of lots owned by one owner divided by all lots in the Subdivision. The size, dimensions and materials of the signs shall be in the discretion of Developer.

- e. **Lighting.** Overhead lights for driveways, parking areas, storage areas, etc. shall not exceed thirty (30) feet in vertical height. All outdoor lighting on the property shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture outside the boundary of the lot line). All outdoor lighting on the property shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.



- f. **Refuse Collection Areas.** All outdoor refuse collection areas shall be visually screened from streets and adjacent property by masonry walls and or wood fences that are complimentary to the building or at the discretion of the Developer.

- g. **Storage of Equipment and Materials.** All materials, parts, equipment, and like items shall be placed inside storage buildings or, if stored outside, shall be kept in a neat and orderly fashion and screened with suitable fences built in conformity with the set back requirements set forth herein; provided, however, that this restriction shall not apply to new or used equipment or machinery held for sale or lease to the public. Such equipment and machinery may be displayed without regard to the set back requirements so long as such displays are in a neat and orderly fashion and do not impede the flow of traffic into and out of the industrial park.

- h. **Landscape Development.** All owners shall be individually responsible for landscaping a minimum of ten percent (10%) of the net area (excluding buildings) of their tract, which landscaping shall first be performed on the area between the front property line and any structure located on the tract. Landscape development shall constitute tree, shrub, lawn, flower plantings, or river rock or other similar aesthetically-pleasing rock. The individual owners shall be responsible for maintenance of their tract or tracts, including keeping area mowed of all grass and weeds to a maximum height of six (6) inches at all times, and keeping their tract free of refuse.

14. **Maintenance.** The property owners shall each maintain their grounds with a neat and trim appearance. Undeveloped areas proposed for future expansion shall be maintained with a neat appearance and shall be weed free.

15. **Developer's Authority.** Developer retains full discretion and decision making authority for all operations, development and other decisions affecting the Subdivision until more than seventy-five percent (75%) of all lots by number and by square footage have been sold. At that time, the Owner's Association will be established as described below.

16. **Owner's Association.** An Owner's Association may be established for the purpose of establishing and maintaining the boulevard (if any) and other landscaping areas and all common areas in the development, as required by this Agreement, whether situated on public or private land, and/or for the purpose of carrying out the other purposes of this Agreement. The manner of establishing said Owner's Association shall be as follows:

- a. The definitions with respect to the establishment of the Owner's Association are as follows:

- (1) **Lot.** A "Lot" is any lot in West King Commercial Park Subdivision.



- (2) Notice. Any "Notice" shall be in written form and shall state the time, place, and purpose of the meeting. Said Notice shall be signed by the persons calling the meeting.
 - (3) Owner. An "Owner" shall be the holder of fee simple title in and to a lot. In the event of a sale by contract or on an installment basis where the purchaser is not the recorded fee owner, the contract purchaser shall be a non-voting member of the Association until such time as the contract or installment purchase of the lot or lots is paid in full. Until such payment in full, the fee owner and seller of such lot or lots shall be the voting member of the Association.
 - (4) Owner's Association. The "Owner's Association" shall be a nonprofit corporation formed as provided for hereunder.
 - (5) Quorum. A "Quorum" shall be reached if there are Owners and/or persons holding proxies present at a meeting which represent in excess of sixty percent (60%) of the lots based by number, and not based by square footage.
 - (6) Proxy. A "Proxy" is a written document executed by the Owner or Owners of a lot authorizing the designated holder thereof to vote the interest of the Owner or Owners so signing. All such proxies must be acknowledged to be valid.
 - (7) Service of Notice. "Service of Notice" means the placing of a copy of the Notice in the first class mail addressed to the last known address of any one of the Owners of a particular lot. The last known address shall be conclusively determined if it is the same as the address specified in the records of the Yellowstone County Assessor's office on the day of service. Service shall be deemed to have been made on the day said Notice is placed in the first class mail.
- b. Unless an Owner's Association is otherwise established based on Section 15 above, the Owners of any ten (10) lots may execute a Notice calling for an election to determine whether or not an Owner's Association should be established and the purpose of said Owner's Association, provided that Section 15 has been satisfied so that at least seventy-five percent (75%) of all lots by number and by square footage have been sold. The Service of Notice shall be made at least ten (10) days prior to the scheduled meeting.
- c. All proxies must be presented to the Owners calling the meeting prior to the meeting. Said Owners shall be present for one (1) hour prior to the meeting for purpose of receiving any such proxies and verifying their authenticity.



- d. The meeting shall be called to order by the Owners of the lots calling the same. Said Owners calling said meeting shall initially determine if a quorum is present. In the event a quorum is present, the meeting shall be authorized to conduct business on behalf of the Owners. Any business so transacted shall be binding upon all Owners and their lots.
- e. The first order of business shall be the election of a chairman and a secretary. The chairman shall preside over the meeting, and the secretary shall keep minutes of the meeting. Roberts Rules of Order shall govern the meeting procedure except where expressly in conflict with these covenants.
- f. The vote of Owners and proxies, present at the meeting and owning a majority of the lots, shall be sufficient to carry any measure properly before the meeting. All votes shall be in writing and shall be cast by the designation of the lot and block number represented thereby. In the event lots are jointly owned, only one (1) vote may be cast relative to such lots and no split votes will be counted.
- g. In the event it is determined at such meeting that an Owner's Association be established, the chairman and secretary shall be authorized to act as representatives of all Owners. They shall have authority to call meetings and make Service of Notice relative to the adoption of corporate articles, by-laws, and governing declarations. They shall be authorized to hire professionals for the purpose of drafting all documents necessary to establish the Owner's Association, and shall be authorized to incur expenses and costs relative to such establishment on behalf of all Owners and their lots.
- h. Any costs, fees, and expenses incurred by the chairman and secretary in organizing the Owner's Association shall be assessable to all lots equally, no matter what their square footage may be, upon establishment of the Owner's Association.
- i. It is understood that all assessments to be charged by the Owner's Association against lots, upon its establishment, shall be on an equal basis, no matter what the square footage of the different lots.
- j. In the event it is not determined at a meeting called for that purpose to establish the Owner's Association, all Owners shall be prohibited from calling a like meeting within six (6) months from the date of the prior meeting.
- k. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure of any proceeding in lieu thereof shall extinguish the lien of such assessment as to



payments which became due prior to the date of the foreclosure. In all other events, the assessments shall remain a valid lien on the property. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. All of the requirements of this paragraph shall be included in any Owner's Association documents adopted in the future.

17. **Construction, Design and Alterations to Structure.** All architectural plans and specifications for the construction and/or alterations of structure on the aforesaid property shall be submitted to Developer, or its designated representatives for review and approval at least thirty (30) days prior to the commencement of construction, either by hand-delivery with a signed receipt or by certified mail, return receipt requested. If formal approval or rejection of the proposed construction is not received by the Applicant within the thirty (30) day period set forth herein, the plans and specifications shall be deemed approved. Developer assumes no liability for design or construction.

18. **Maintenance Enforcement.** The individual Owners shall be responsible for maintenance of their tract or tracts, including landscaping and structures. Any party failing to properly maintain his tract will be notified in writing by Developer or the Owner's Association, in the event it is established, and shall have thirty (30) days in which to correct the deficiency. If not corrected in that time, Developer, or the Owner's Association, if established, may cause the deficiency to be corrected and the costs of such corrective work will constitute a lien on the property affected, and Developer, or the Owner's Association, if established, may proceed to collect the amount due.

19. **Amendment of Agreement.** This Declaration of Covenants, Conditions and Restrictions may be amended by Developer until such time as more than seventy-five percent (75%) of the lots by number and in square footage have been sold. Once more than seventy-five percent (75%) of the lots by number and in square footage have been sold, this Declaration of Covenants, Conditions and Restrictions may be amended only by approval of a super majority of two-thirds (2/3) of the owners, based on square footage and not total lot numbers, agree. Further, no amendment will be effective or binding against Developer regarding Developer's reserved or owned lands or Developer's reserved usage of the lands without Developer's consent.

20. **Effect of Non-Enforcement.** Failure of any party to enforce any restriction, condition, covenant, or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

21. **Duration and Effect of Agreement.** This contract constitutes a mutual covenant running with the land, and all successive future Owners shall have the same right to invoke and enforce its provisions as the original parties hereto. This contract shall take effect and be in full force and effect when executed by the parties hereto, and shall be placed of record in Yellowstone County, Montana; and shall continue in force for a period of twenty (20) years from the date of said filing, and so long thereafter as the Owners shall deem it necessary and reasonable to maintain their property rights purchased and acquired hereunder.



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the date of said filing, and so long thereafter as the Owners shall deem it necessary and reasonable to maintain their property rights purchased and acquired hereunder.

22. **Conveyance in Violation of Agreement.** Any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside by petition of one (1) or more of the parties hereto, and all successors in interest, assigns, heirs, and personal representatives shall be deemed to the same effect as the original signers; and when such conveyance or other instrument is set aside by decree of any Court or competent jurisdiction, all costs and all expenses of such proceedings shall constitute lien against said real estate so wrongfully deeded, sold, leased, or conveyed, until paid, and such lien may be enforced in such manner as the Court may order.

23. **Remedy for Breach.** The parties hereto and every person hereinafter having any right, title, or interest in lands or the Owner's Association, if established shall have the right to prevent or stop violation of any said restrictions by injunction or other lawful procedure, and to recover any damages resulting from such violation. All costs and expenses of such proceedings shall be charged against the violators, and shall be declared by the Court to constitute a lien against the real estate of the violator, until paid, and such lien may be enforced in such a manner as the Court may order. In any action of any kind for the enforcement of these restrictions, the losing party shall be obligated to pay to the prevailing party reasonable attorneys' fees, to be fixed by the Court as additional damages.

24. **Effect of Partial Invalidity.** It is expressly agreed that in the event any covenant, condition, or restriction hereinabove contained, or any portion thereof, is invalid or void, such shall in no way effect any other covenant, condition, or restriction.

25. **Developer's Rights.** The rights, interests, and privileges of Developer inure to and for the benefit of Developer's members, partners, members of partners, affiliates, including but not limited to The White Family LLC.

26. **Neutral Interpretation.** The parties hereby stipulate and agree that this Declaration shall be construed using neutral interpretation, and that this agreement shall not be construed in favor of any party or against any party.

27. **Waiver.** The failure of Developer, Owners' Association, or an owner, to enforce any covenant or restriction contained herein shall not be deemed a waiver or in any way prejudice the rights to later enforce that covenant, or any other covenant thereafter, or to collect damages for any subsequent breach of covenants. The waiver or approval of a variance of a covenant provision in the event of a violation of a covenant by a particular owner shall not be deemed to delete or waive the covenant or enforcement thereof as it pertains to other owners or lots.

28. **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Montana.



29. **No Partnership.** The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between Developer and any owners of property within the Subdivision.
30. **Captions and Headings.** The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Declaration.
31. **Entire Declaration.** This Declaration contains the entire declaration of Developer and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.
32. **Construction.** In construing the provisions of this Declaration, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.
33. **Joint and Several Obligations.** In the event any person referred to herein is composed of more than one person, the obligations of said party shall be joint and several.



DATED the 15 day of June, 2012.

WEST KING COMMERCIAL PARK LP

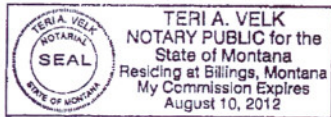
By: West King II LLC, its General Partner

By Patrick J. White
Patrick J. White, Member

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 15 day of June, 2012, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Patrick J. White, known to me to be a member of West King II LLC, general partner of West King Commercial Park LP, the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year in this certificate first above written.



Teri A. Velk
Print Name Teri A. Velk
Notary Public for the State of Montana
Residing at Billings, MT
My Commission Expires: August 10, 2012