

# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

## IRONWOOD INDUSTRIAL PARK

12<sup>th</sup> THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this day of October, 2011, by Sonya M. Owan and Mark M. Owan (collectively referred to herein as "Declarants").

### RECITALS

- A. Declarants have established this Declaration of Covenants, Conditions and Restrictions ("Declaration") to provide a governance structure for the overall development, administration, maintenance, and preservation of the IRONWOOD INDUSTRIAL PARK SUBDIVISION as shown, set forth, and described on the Final Plat thereof filed among the records in the office of the Recorder for Williams County, North Dakota, hereinafter referred to as the "Property".
- B. Declarants, as the owners of the Property intend by recording this Declaration to establish covenants, conditions, and restrictions ("Covenants") for the purpose of protecting the value and desirability of the Property.
- C. Declarant further intends that all of the Property shall be owned, held, sold, conveyed, encumbered, leased, used, occupied and developed subject to these covenants, conditions, and restrictions.

NOW, THEREFORE, Declarants do hereby establish, dedicate, declare, publish and impose upon the Property the following Covenants which shall run with the land and shall be binding upon and be for the benefit of all persons claiming such Property, their grantees, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, commercial and business use, control of development, maintenance of improvements, safety and other purposes set forth in these Covenants for the Property. Such Covenants shall apply to the entire Property, and all improvements placed or erected thereon. Said Covenants shall inure to and, pass with each and every parcel, tract, lot, improvement, condominium unit or division. Said Covenants are as follows:

#### Article I. Definitions.

- A. "Declarants" shall mean and refer to Sonya M. Owan and Mark M. Owan, their heirs, successors and assigns.
- B. "Final Plat" shall mean the plat of the Ironwood Industrial Park Subdivision as approved by the Williams County Commission and as recorded in the records of Williams County, Montana.
- C. "Lot" shall mean and refer to any of the parcels described as Lots and, which land is shown upon the Final Plat.

D. "Owner" shall mean and refer to the record Owner, whether, whether one or more persons or entities, of a fee simple title to any Lot, including contract buyers and owners of a beneficial interest, but excluding those having such interest merely as security for the performance of an obligation.

E. "Property" shall mean all of the real property included in the Ironwood Industrial Park Subdivision as set forth in the Final Plat which includes the real property described as follows:

Lot 3R located in the NE¼ of Section 3, Township 154 North, Range 101 West of the 5<sup>th</sup> Principal Meridian, Williams County, North Dakota, according to the recorded Plats thereof on file in the office of the County Recorder for said County and State, and

Sublot #4 located in Sublot #3, NE¼ of Section 3, Township 154 North, Range 101 West of the 5<sup>th</sup> Principal Meridian, Williams County, North Dakota, according to the recorded Plats thereof on file in the office of the County Recorder for said County and State. This property is now known as Lots 1 through 13, both inclusive, Block 1, of IRONWOOD INDUSTRIAL PARK SUBDIVISION, WILLIAMS COUNTY, NORTH DAKOTA, according to the recorded Plat thereof. SMO WWS

**Article II. Use Restrictions.**

A. All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the Property lies are considered to be part of and enforceable hereunder, and all of the Owners shall be bound by such laws, rules and regulations. In the event there is a conflict between the Covenants and the applicable zoning, the most restrictive provision of either shall apply.

B. Use of Lots within the Property shall be limited to and comply with the regulations for M-1: LIGHT INDUSTRIAL DISTRICT described in the Zoning Ordinance for the City of Williston currently in effect.

C. No junk vehicles, junk equipment or other miscellaneous junk shall be allowed to accumulate on any Lot within the Property.

D. No Lot can be used as a dumping or outdoor storage ground for rubbish, nonworking cars, ashes, or any unsightly material. All garbage, ashes, trash, and rubbish shall be disposed of by Owners in a legally acceptable manner.

E. No noxious, offensive, or hazardous activities shall be permitted upon any portion of the Property nor shall anything be done on or placed upon any portion of the Property, which is or may become a nuisance to others.

F. Commercial animal raising operations, feeding operations, and wrecking yards are prohibited on any Lot.

**Article III. Building Restrictions.**

A. All buildings are to be set back a minimum of 40 feet from the front of the property line of any Lot and a minimum of 10 feet set back from the side and rear property lines. Lot 6 has 40 foot setbacks from both the west and southern boundary.

B. All fences will be built of wood, metal pipe, or PVC. No barbed wire or woven wire shall be used on any portion a Lot or the Property.

C. All buildings and structures must be constructed in accordance with standard building codes and applicable laws, regulations, zoning and covenants.

#### **Article IV. Sewage and Water System.**

A. All Lots producing wastewater shall utilize an on-site sewage treatment system in accordance with local, state and county standards.

B. All Lots requiring water shall install a well in accordance with local, state and county standards.

#### **Article V. Ironwood Industrial Park Owner's Association**

A. **Creation.** The Association of the Lot Owners shall be created after fifty percent (50%) of the Lots are sold by Declarants. Until such time Declarants shall have all the authority vested in the Association.

B. **Purpose of Association.** The purpose of the Association will be to enforce these Covenants and to operate the Association for the benefit of all members therein.

C. **Membership in Association.** Every person, group of persons, partnership, corporation, or other entity who is a fee owner of a Lot within the Property shall be a member of the Association. By this provision, each Lot as shown on the Final Plat and amendments thereto shall entitle the Owner to one membership interest in the Association. Multiple Owners of a single Lot would have collectively one such membership or voting interest. If an Owner owns more than one Lot, that Owner would have one membership or voting interest for each separate Lot. Membership interest in the Association shall run with the land so that said interest is an incident to ownership beginning when ownership rights are acquired and terminating when such rights are divested. Accordingly, no Member shall be expelled, nor shall he be permitted to withdraw or resign while possessing a membership interest.

D. **Voting Rights.** The Association shall have one class of voting membership. The Members shall be all Owners with the exception of the Declarants. Members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

E. **Board of Directors.** The initial Board of Directors shall consist of at least three (3) directors appointed by the Declarants. Until seventy-five percent (75%) of the Lots have been sold and title transferred to Owners, the Declarants reserve the right to appoint and remove all directors and to exercise the powers and responsibilities otherwise assigned by the Declaration to the Association. By express written declaration, Declarants shall have the option to at any time to turn over to the Association the total responsibility for electing and removing members of the Board. Upon Declarants

turning over responsibility to the Association, the Association shall elect a new Board of Directors consisting of at least three (3) directors, all of whom shall be Lot Owners.

The Board of Directors and its officers, assistant officers, agents and employees acting in good faith on behalf of the Association:

- a. shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;
- b. shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- c. shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith; and
- d. shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

**F. Notice and Quorum for Authorized Action.** All Board of Director meetings shall require the presence of directors entitled to cast a minimum of fifty-five percent (55%) of all votes of the directors. The presence of directors entitled to cast fifty five percent (55%) of all votes of the Board of Directors shall constitute a quorum.

**G. Meetings.** There shall be a minimum of one (1) meeting per year called by the Board of Directors at a date, time and place as shall be determined by the directors. In addition, the President of the Board of Directors has the right to call as many meetings as the President deems necessary in order to perform all functions of the Board of Directors in an efficient and professional manner.

**H. Hired Officers and Contractual Agreements.** The Board of Directors shall have the authority to hire additional professional officers or other personnel which they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to a manager, secretary, treasurer, accountant, and maintenance personnel. The Board of Directors shall also have the authority to make contractual arrangements with outside entities, including but not limited to an attorney, accountant, engineer, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

## **Article VI. Covenant for Maintenance Assessments**

**A. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed consents to the creation of a lien against the Owner's real property to the extent of non-payment of any assessment for maintenance or otherwise levied by the Association, therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these Covenants and agrees to pay to the Association:

- (a) Operating assessments or charges; and

- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The operating and capital assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, shall be the personal obligation of the entity or person who was the Owner of such property at the time when the assessment fell due, and shall be a continuing lien upon the property against which each such assessment is made.

**B. Purpose of Assessments.** The assessments levied by the Association shall be used for the improvement, repair, and maintenance of: (1) the roads adjacent to the south and west boundaries of the Property (i.e. 49<sup>th</sup> Street and 22<sup>nd</sup> Avenue); and (2) for maintaining any fenced, landscaped common areas for which the Association is responsible, for maintenance of any common structures, for providing for snow removal, noxious weed management, for the establishment of a reserve fund, and for promoting generally the enjoyment, standard of living and property values of the Members of the Association.

#### **Article VII. General Provisions.**

A. There is reserved along each Lot line, an easement ten feet (10') in width for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities, cables and sewer lines, drainage facilities, including but not limited to, those providing water, sewer, gas, communications, television and electric power.

B. Approaches shall be installed in such a manner as to maintain the existing drainage pattern of the Property. Culverts shall be installed of sufficient size if needed to ensure proper drainage around or under approaches.

C. Each Lot Owner is responsible for the costs of bringing electricity, gas, telephone services to his or her improvements from the primary line near his or her Lot, including any additions to the primary line which may be required by location of the improvements on the Lot. All utility lines shall be underground.

D. Owners shall be responsible for snow removal within the confines of their Lots.

E. Any generation, handling, storage or disposal of hazardous waste shall comply with all local, state and federal laws and regulations.

F. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

G. All of the Lots shall be subject to the restrictions and Covenants set forth herein whether or not there is a specific reference to the same in a deed or conveyance instrument.

#### **Article VIII. Duration, Enforcement and Amendment.**

A. The term of the provisions of these Covenants shall be perpetual, subject to deletion, amendment and termination of any or all of the Covenant provisions in accordance with the provisions

of these Covenants. The Covenants contained herein are to run with the land and shall be binding on and shall also inure to the benefit of all parties and the heirs, successors and assigns of the respective parties.

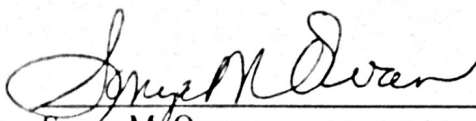
B. Enforcement.

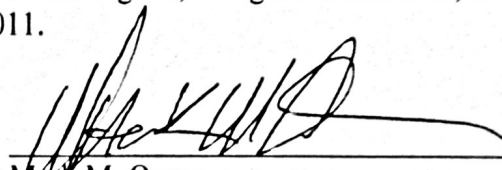
(a) Enforcement of these Covenants shall be by proceedings either in law or in equity against any person or persons violating or attempting to violate any Covenant; and the legal proceedings may either be to restrain violation of these Covenants or to recover damages or both. In the event of any action to enforce these Covenants, the prevailing party shall be entitled to costs and attorney's fees to be set by the Court. Any Lot Owner or Declarants may enforce these Covenants.

(b) The failure of any Owner or the Declarants 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.

C. Pursuant to the provisions of §47-04-25.1 of the North Dakota Century Code, the Covenants created and established in this instrument for the benefit of the Property and the Lot Owners, may be waived, terminated, varied, or modified as to the whole of the Property, or any part of it, with the written consent of the Owners of more than fifty percent (50%) of the Lots subject to these Covenants. No modification, waiver, termination or variance herein shall be effective until the proper instrument in writing shall be executed and recorded in the office of Recorder (Register of Deeds) for Williams County, North Dakota.

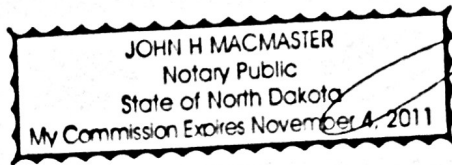
IN WITNESS of its terms and conditions, the undersigned, being the Declarants, have caused this Declaration to be executed on October 12, 2011.

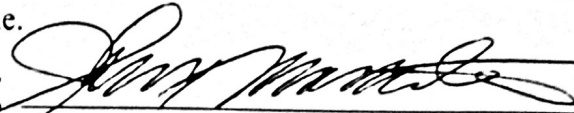
  
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Sonya M. Owan

  
\_\_\_\_\_  
Mark M. Owan

STATE OF NORTH DAKOTA    )  
  ):ss  
COUNTY OF WILLIAMS    )

On this 12 day of October, before me personally, a Notary Public for the State of North Dakota, personally appeared Sonya M. Owan and Mark M. Owan, and executed the within instrument and acknowledged to me that they executed the same.



  
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Notary Public for the State of North Dakota  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
Commission expires: \_\_\_\_\_