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DECLARATION OF COVENANTS

T2718

Berner Mill Tracts

PILOT PEAK LAND AND LIVESTOCK COMPANY, INC., a Wyoming corporation, the Declarant, hereby declares that all of the lands within the **BERNER MILL TRACTS**, as more particularly described and laid out in that certain plat prepared by **COFFEY AND ASSOCIATES, L.L.C.**, approved by the County Commissioners of Albany County on February 15, 2000, and recorded in the Office of the County Clerk of Albany County, Wyoming as Document No. 2000 1022 on March 1, 2000, as said plat was revised by the amended plat prepared by **COFFEY AND ASSOCIATES, L.L.C.** and approved by the County Commissioners of Albany County on November 7, 2000, and recorded in the Office of the County Clerk of Albany County, Wyoming as Document No. 2000 7199 on November 9, 2000, shall be subject to the following covenants:

1. **TRACTS DEFINED.** These Covenants shall apply to Tracts 1, 1A, 2, 3, and 4 of Berner Mill Tracts, as shown on the aforesaid plat, and to any additional parcels as may be created hereafter by division, subdivision, split or partition in accordance with Paragraph 2 (herein "Tracts"). Each covenant herein shall apply to each such Tract, and any portion thereof, and shall be binding upon and run with the land.

2. **SUBDIVISION.** No Tract shall be divided, subdivided, split or partitioned in any manner prior to May 1, 2005. Provided however, after said date, nothing herein shall prohibit Tracts 1, 1A, 2, 3, and 4 from each being divided, split or partitioned into no more than two (2) separate parcels. All resulting parcels shall be subject to the Covenants set forth herein and each such division, subdivision, split, or partition shall fully comply with all applicable land use, subdivision, and zoning laws and regulations.

Notwithstanding any provision herein however, no division, split or partition of any Tract, as allowed above, shall prohibit or restrict the owner(s) of any other Tract(s) the ability to do the same in accordance with this paragraph.

3. **RESIDENTIAL.** All Tracts shall be used only for residential purposes, including any home business or home occupation use as permitted under the applicable zoning regulations of Albany County as now in effect or as hereafter from time to time amended or promulgated. Such home business or home occupation use, however, may not result in an increase in vehicular traffic to that Tract which is above and beyond what would otherwise be reasonable if that Tract were used

exclusively for residential purposes. For purposes of these Covenants, permitted home business or home occupation uses shall include, but not necessarily be limited to the practice of a profession in a home office, teaching horseback riding on a Tract, and teaching music in a home studio.

4. **CONSTRUCTION.** Any building(s) erected on the Tract shall be on-site new construction. No owner of a Tract shall erect or place any mobile homes, factory constructed or other modular residential buildings on a Tract. There shall be no more than one (1) primary residential dwelling constructed on each Tract or each parcel thereof. Trailers shall not be used as permanent residence at any time except during a period of construction of no longer than twelve (12) total months. Temporary structures will be removed upon completion of construction. Mobile homes shall not be used as temporary or permanent residences at any time.

All buildings, fencing and any other improvements shall be appropriate in character, design and architecture for the area, and shall be constructed of new quality materials. All buildings and improvements will be painted or sided in primarily earth tone colors so that they shall blend with the land in the surrounding area as much as possible. No buildings shall be erected, altered, placed or permitted to remain on a Tract other than one (1) detached single-family residential dwelling, a private garage, and maximum of two (2) additional accessory buildings for use as an art or music studio, barn, carriage or guest house, garage, living quarters for domestic employees, recreation (billiards, gymnasium, etc.) room, storage area, etc., or combinations thereof.

Each primary residential dwelling shall have a minimum of 2,500 square feet of above-grade finished floor area on a combination of all levels. No basement area will be considered a part of the finished floor area requirements.

Nothing contained in these Covenants shall preclude the construction of an accessory building containing living quarters which do not meet the aforesaid minimum finished floor area requirements prior to the construction of the primary residential dwelling, provided only that upon construction of a primary residential dwelling, the use of the living quarters in the accessory building shall become an accessory use, such as living quarters for domestic employees or as guest quarters.

5. **GENERAL IMPROVEMENT SET BACK AND SPECIFIC ADDITIONAL SET BACK.**
No improvement (excluding only perimeter fences, earth berms, water retained behind a dam or earth berm, landscaping and similar improvements which would not defeat the purpose of the set back)

shall be constructed closer to any property line or easement line than a distance of fifty (50) feet, save and except that the setback on both sides of that common boundary between Tract 1A and Tract 2 shall be two hundred feet (200'), as shown on the amended plat of Berner Mill Tracts. Eaves, steps and open porches of buildings shall not be considered as part of such improvement. Consideration shall be given to placing structures so as not to disrupt the view of other Tract owners and to provide continuity with the natural surroundings.

6. **EXTERIOR LIGHTING.** Only standard residential lighting shall be used to illuminate the exterior of the Tracts. All outside lighting shall be arranged and shielded so as to prevent any nuisance on or to adjacent roads and/or Tracts.

7. **UTILITIES.** All utilities and service lines installed on Tracts shall be underground to the extent reasonably practicable, considering economic and engineering conditions. It is anticipated, however, that a certain portion of the utilities will be installed above-ground, by and through the installation of above-ground power poles, in a portion of Tract 1 and Tract 4, but such above-ground utilities shall be so installed only the extent reasonably required. Propane tanks must be screened from public view and blend with the adjacent building.

8. **WASTE DISPOSAL.** The owner of each Tract shall adhere to local regulations for disposing of trash and garbage. No rubbish, debris, ashes or trash of any kind shall be placed or permitted to accumulate upon said Tract.

9. **PARKING OF VEHICLES, MACHINERY AND EQUIPMENT.** Vehicles which are not in running condition or are in a state of disrepair, and trailers, campers, boats, recreational vehicles and other like vehicles, machinery and equipment shall not be placed or stored anywhere on the Tracts unless enclosed in a garage or storage building, or screened from the view of the adjoining Berner Mill Tracts by a building or structure, fence, natural vegetation, or by the lay or topography of the land. Private vehicles which are used on a daily basis do not need to be stored in such a manner.

10. **LIVESTOCK AND FENCING.** In the event an owner of a Tract at any time keeps, raises, or maintains livestock on a Tract, it shall be the sole responsibility of that Tract owner to fence said livestock within the boundaries of such owner's Tract. Commercial animal husbandry shall not be practiced in any form, and all livestock shall be maintained for personal and family use only;

provided, however, that horses may be maintained for riding lessons in accordance with a home business or home occupation use.

11. **FIREARMS, FIREWORKS AND HUNTING.** No firearm shall be discharged, and no fireworks shall be displayed or used, and, there shall be no hunting whatsoever, within the Berner Mill Tracts.

12. **HAZARDOUS, NOXIOUS, OR OFFENSIVE ACTIVITIES.** No hazardous, illegal, noxious, or offensive activities shall be permitted within the Berner Mill Tracts, nor shall anything be done or placed within Berner Mill Tracts which is or may become a nuisance.

13. **SOIL CONSERVATION.** Tracts shall be grazed, if at all, in a good husbandlike manner to preserve natural vegetation and prevent soil erosion. Any dam, pond, or irrigation system shall be constructed and maintained so as not to cause any adverse impact upon any neighboring lands, and any owner constructing the same shall be solely liable for any damages thereby to other Tracts and shall further indemnify other Tract owners therefrom. Landscaping, including the introduction and planting of grasses, shrubs, and trees, is permitted, provided only that no crop or grass shall be produced for commercial purposes.

14. **SHERMAN HILL ROAD ASSOCIATION(S).** The Berner Mill Association shall join and participate in any Sherman Hill Subdivision association(s) established for the management, control and maintenance of roads which provide access to the Tracts.

15. **BERNER MILL ASSOCIATION.**

a. **Creation.** The Berner Mill Association (hereinafter referred to as the "Association") is hereby created as an unincorporated, nonprofit association under the Wyoming Unincorporated Nonprofit Association Act, Sections 17-22-101 through 17-22-115, Wyoming Statutes, 1999 Ed., to exercise the powers granted, and to perform the functions imposed, by these Covenants with regard to the Tracts.

b. **Purposes and Powers.** The general purposes of the Association are to enforce these Covenants and to promote the health, safety, and welfare of the residents of the Tracts. The Association shall also have the power to provide such additional services for the Tracts as the owners may from time to time approve. For these purposes, the Association is hereby empowered to:

(i) exercise all of the authority, powers, and privileges delegated to or vested in the Association by these Covenants or as may be reasonably implied as being necessary and proper hereunder, and to perform all of the duties and obligations established by these Covenants;

(ii) fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to these Covenants, and to pay all expenses in connection therewith and all expenses incident to the conduct of the business of the Association;

(iii) adopt and publish rules and regulations governing the use of Berner Mill Road and Laycock Spring Road; and

(iv) employ such firms or persons to perform any or all of the duties and obligations of the Association.

c. **Membership.** Every person who is an owner of a Tract shall be a member of the Association, and such membership shall be appurtenant to and may not be separated from the ownership of the Tract. An owner shall become a member upon conveyance of record to him of his Tract and shall cease being a member upon his conveyance of record of such Tract. No certificate or document, save and except a recorded conveyance to a Tract, shall be required to evidence such membership.

d. **Voting Rights.** Each owner shall be entitled to one vote for each Tract owned, including the owners of any additional parcels created under Paragraph 2, save and except that the voting rights of any owner who is more than 30 days past due on the payment of any assessment to the Association shall be automatically suspended until such assessment, together with interest, costs, and reasonable attorney's fees, is paid in full. When more than one person holds an interest in any Tract, the vote for such Tract shall be exercised as they determine, but in no event shall more than one vote be cast on behalf of any one Tract.

e. **Action.** An action of the Association, or any approval required of the owners under these Covenants, shall require the affirmative and unanimous vote of all owners, excluding the vote of any owner whose voting rights are suspended under Subparagraph d., cast in person or by proxy, at a duly constituted meeting of the Association, or, without a meeting by written approval of such action.

f. **Meetings.** Meetings of the Association may be called at any time by the written request of the owners of any two Tracts. Written notice of each meeting of the Association shall be given by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each owner, addressed to the owner's address last appearing on the books of the Association, or supplied by such owner to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and the purpose of the meeting. Each owner may vote in person or by proxy at all meetings of the Association. All proxies shall be in writing. Every proxy shall be revocable and shall automatically cease upon conveyance by the owner of his Tract.

g. **Books and Records.** Upon prior written request, the books, records, and papers of the Association shall be subject to inspection at a reasonable time and place by any owner and by a mortgagee holding a duly recorded mortgage against a Tract.

h. **Principal Office.** The Association shall designate a principal office from time to time.

i. **Dissolution.** The Association may be dissolved upon the written approval of all of the owners. Upon dissolution of the Association, the assets of the Association shall be distributed to the owners of the Tracts within Berner Mill Tracts in equal shares, or, dedicated to an appropriate public agency or nonprofit organization to be used for purposes broadly similar to those for which this Association was created.

j. **Limitations.** No part of the net earnings of the Association shall inure to the benefit of, or be distributed to, the owners, except that the Association shall be authorized to pay reasonable compensation for services rendered.

16. **Assessments.**

a. **Creation of Lien & Personal Obligation of Assessments.** Each owner of any Tract by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments or charges duly established and collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Tract against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner

of such Tract at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them.

b. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to pay the obligations imposed upon the Association by these Covenants and to promote the health, safety, and welfare of the residents of the Tracts.

c. Annual Assessments. The Association shall establish annual assessments to meet its obligations under these Covenants, including specifically the obligations to maintain Berner Mill Road and Laycock Spring Road, and to pay assessments to other road association(s) under Paragraph 14, and in regard to operating expenses of the Association. The Association shall have the power to include within the annual assessment amounts to meet the costs of any other service duly approved by the Association. Provided however, Tract 1 and Tract 1A shall be exempt from any assessment for any costs relating to Laycock Spring Road.

d. Special Assessments. In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only.

e. Approval of Assessments. All assessments under this Paragraph shall be subject to the approval of the Association as provided in Subparagraph 15.e.

f. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Tracts, except as noted specifically above.

g. Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Tracts on such date as shall be established by the Association under Subparagraph 15.e. The Association shall fix the amount of the annual assessment against each Tract at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Association setting forth whether the assessments on a specified Tract have been paid. A properly executed certificate of the Association as to the status of assessments on a Tract is binding upon the Association as of the date of its issuance.

h. Effect of Nonpayment of Assessments. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The

Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the Tract. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his Tract.

i. **Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first or second mortgage. Sale or transfer of any Tract shall not affect the assessment lien. However, the sale or transfer of any Tract pursuant to the foreclosure of a first or second mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Tract from liability for any assessments thereafter becoming due or from the lien thereof.

17. **VARIANCE.** The owners of Berner Mill Tracts shall have full power and authority, upon unanimous vote of all Tract owners, to grant a variance from these Covenants for good cause shown in order to prevent undue hardship on any owner subject to the Covenants. The variance, if granted, shall not violate the overall theme and appearance of the property subject to these Covenants and shall be in writing.

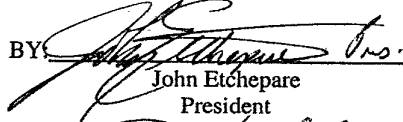
18. **ENFORCEABILITY.** These Covenants may be enforced by the record owner of any Tract or parcel in the Berner Mill Tracts or by the Association, but shall not run to the benefit of any third party.

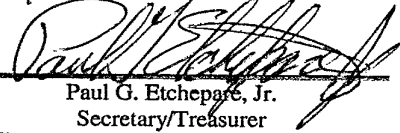
19. **SEVERABILITY.** Invalidation of any one of these Covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

20. **COVENANTS RUN WITH THE LAND; AMENDMENT.** The Covenants shall run with and bind the land. These Covenants may be amended only by an instrument signed by all of the record owners in the Berner Mill Tracts in the Office of the County Clerk of Albany County.

Executed by the undersigned Declarant this 21 day of December, 2000.

PILOT PEAK LAND AND
LIVESTOCK COMPANY, INC.

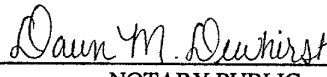
BY: 
John Etchepare
President

BY: 
Paul G. Etchepare, Jr.
Secretary/Treasurer

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

On this 21st day of December, 2000, the foregoing DECLARATION OF COVENANTS was acknowledged to before me by John Etchepare and Paul G. Etchepare, Jr., who appeared before me and was personally known to me, and who, being by me duly sworn, did say that they are the respective President and Secretary/Treasurer of Pilot Peak Land and Livestock Company, Inc., a Wyoming corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and said Secretary/Treasurer acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and official seal.


NOTARY PUBLIC

My Commission Expires: 2-15-04

