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## RESUBDIVISION OF LOT 2, MEANS INDUSTRIAL PARK

A Subdivision of Campbell County, Wyoming

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

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This Declaration is made by Magna Real Estate Development, LLC, a Colorado limited liability company ("**Declarant**"), duly registered and authorized to do business in the State of Wyoming, as of the date set forth below.

**ARTICLE I - INTRODUCTION**

A. Declarant is the owner of certain real property more fully described on Exhibit A attached hereto and incorporated herein by reference (the "**Property**").

B. In order to establish a general plan for the improvement and development of the Property, Lots (as defined below), Access Lane (as defined below), and Common Area (as defined below), Declarant desires to subject the tracts to certain covenants, conditions, and restrictions (the "**Covenants**"), to which all of the Lots shall be subject to, held, improved, and conveyed.

C. Declarant will convey said Lots subject to certain protective covenants, conditions, restrictions, liens, and charges as set forth in this Declaration.

D. Declarant declares that all Lots shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with the Lots and be binding upon all parties having any right, title, and interest in the Lots or any part thereof and their respective heirs, successors, and assigns, shall inure to the benefit of each Owner, and which are intended not to be merely personal.

**ARTICLE II - DEFINITIONS**

A. "Access Lane" means the lane more fully described on Exhibit B attached hereto and incorporated herein by reference.

B. "Articles" means the Articles of Incorporation of the Association, as such may be amended from time to time.

C. "Association" means Magna Energy Industrial Park Landowners Association, Inc., a Wyoming non-profit corporation.

D. "Board" means the Board of Directors of the Association.

E. "Bylaws" means the Bylaws of the Association.

F. "Common Area" means all the real property, including improvements thereon, owned or hereafter acquired by the Association for use as a common area or declared as such in any recorded Subdivision Plat of the Property, or any public access easement provided for in the Subdivision Plat, and intended to be devoted to the common use and enjoyment of the public, including any maintenance associated with said property.

G. "Declaration" means the Declarations of Covenants, Conditions, and Restrictions applicable to the Property, as recorded in the real estate records in the County of Campbell, Wyoming, as such may be amended from time to time.

H. "Director" means a member of the Board.

I. "Lot" means any lots or tracts shown upon any recorded Subdivision Plat of the Property, but not including land designated as Common Area.

J. "Member" means an Owner who holds a membership in the Association by virtue of its ownership of one (1) or more Lots.

K. "Owner" means the owner(s) of fee simple title, whether one (1) or more persons or entities, acting as one collective unit, but shall not mean a mortgagee unless and until such mortgagee acquires fee simple interest in a Lot. Owner shall also mean the purchaser of a Lot under an agreement or contract for deed. The term Owner does not include persons or entitled who hold an interest merely as security for the performance of an obligation.

### ARTICLE III – NATURE AND PURPOSE OF COVENANTS

The Covenants constitute a general scheme for the development, protection, and maintenance of the Property, Access Lane, and Common Area and to enhance the value, desirability, and attractiveness of the Lots and Common Area. The Covenants are for the benefit of all Lots and shall be binding upon each Owner of the Lots. The Covenants shall be a burden upon and a benefit to not only the original Owner of each Lot, but also its heirs, successors, and assigns. The Covenants are intended as and are declared to be covenants that run with the land and are perpetually binding in nature.

### ARTICLE IV – PROPERTY RIGHTS

4.1 Each Owner shall have a right and an easement of enjoyment and use in and to the Common Area, if any, and a non-exclusive easement over, through, and across the Access Lane, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

4.1.1 The right of the Association to assess and charge a reasonable maintenance, operation, and usage fee and to impose such charge or assessment as a lien against any Lot for which such charge or lien has not been paid in accordance with this Declaration, the Bylaws, and Articles, if any.

- 4.1.2 The right of the Association to suspend the voting rights of an Owner of any Lot whose assessment against its Lot remains unpaid or upon any material infraction of the Covenants.
- 4.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or entity, but only with the permission of the agency, authority, or entity for such purposes and subject to such conditions as may be agreed by the Members. No such dedication or transfer shall be effective unless such dedication or transfer is approved by two-thirds (2/3) of the votes of the Members.
- 4.1.4 The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving or operation of the Common Area or Access Lane and to mortgage the Common Area, provided that the rights of any mortgagee of any Common Area shall be subordinate to the rights of the Members.
- 4.1.5 The right of the Association, through its Board, to adopt and publish rules and regulations and usage fees with respect to the Common Area, if any.
- 4.1.6 No Owner may sue to partition any Common Area. The Common Area is for the benefit of all Owners and not for a particular individual.

#### ARTICLE V – USE OF LIGHT INDUSTRIAL LOTS

5.1 Each Lot within the Property, except for any Common Area, shall be constructed, improved, used, and occupied only for industrial purposes consistent with the Zoning Regulations for Campbell County, Wyoming and the Covenants in effect on the date that said construction, improvement, use, or occupation begins.

5.2 No Lot shall be further subdivided or split.

5.3 No building structure of any kind, including windbreaks or sheds, shall be erected, placed, or altered on any Lot until the construction plans, specifications, materials, and plan showing the location of the structure have been approved by the Board. In the event the Board fails to approve or disapprove within thirty (30) days after plans, specifications, and plat plans have been submitted, or in completion thereof, approval will not be required, and the related covenants shall be deemed to have been complied with.

5.4 All construction on the Lots shall be done with new materials, including utilities, and shall meet the building codes for Campbell County, Wyoming in effect on the date construction begins.

5.5 Any perimeter fencing on the Lots must be approved by the Board prior to being erected and, at a minimum, must conform to the Zoning Regulations of Campbell County, Wyoming in effect on the date the fencing is erected.

5.6 No Lot shall be used or maintained as a dumping or collecting ground for rubbish, trash, or garbage. All rubbish, trash, and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. Each Owner shall be responsible for arranging for private pick-up and removal of rubbish, trash, or garbage at least one every two (2) weeks and for paying all costs associated therewith. All refuse containers, storage areas, machinery, and equipment shall be maintained in a clean and sanitary manner and secured so trash containers or garbage may not be blown or scattered in any manner.

5.7 No nuisances or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance, nor shall anything be done or permitted which will endanger any person. No speeding or reckless driving will be permitted on the Property. Loud music and loud noises will be considered an annoyance and nuisance and shall constitute a violation of the Covenants. Any condition considered an eyesore by a majority of the Directors of the Board must be corrected upon notification to the offending Owner within thirty (30) days.

5.8 No Owner shall place any permanent structure, foundation, accessory building, or object over any Common Area or the Access Lane.

5.9 Signs shall be permitted in accordance with the statutes, regulations, codes, and ordinances of Campbell County, Wyoming.

5.10 No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out-building shall be used on any Lot at any time as a residence, either temporary or permanently.

5.11 No hunting shall be allowed on any Lot.

5.12 Declarant has installed a water main to service the Lots. The Owner shall provide the required service line to service the Lot, including but not limited to directional boring, pipe, connection fittings, and installation. The Owner shall pay the required tap fee to the Means First Extension Water & Sewer District for the water meter, meter pit and the right to tap into the water main. The installation of the meter and meter pit shall be the responsibility of the Owner.

5.13 The Property is a light industrial subdivision. No part of any Lot shall be used or caused to be used for residential activity.

#### ARTICLE VI – MEMBERSHIP AND VOTING

6.1 Member. Each Owner subject to assessment under this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

6.2 Voting. Each Lot shall be entitled to only one (1) vote to be cast by an Owner of a Lot. Notwithstanding anything herein to the contrary, Declarant shall have two (2) votes per Lot until all of the Lots are sold. In the event there are multiple Owners of a Lot, such Owners shall provide written notice to the Association as to which Owner is authorized to cast the single vote for the Lot. Written proxies shall be on a form approved by the Association. An Owner may revoke a proxy given under this Section only by written notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.

## ARTICLE VII – ASSESSMENTS

7.1 Lien. Each Owner of a Lot, by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual, or more frequent if necessary for operating reasons, assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided. The assessments, together with interest, cost, and attorneys' fees, shall be the personal obligation of each Owner of such Property at the time when the assessment fell due.

7.2 Purpose. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the occupants of the Lots and for the maintenance, preservation, replacement, and operation of the Access Lane, any Common Area, and Association costs.

7.3 Maximum Annual Assessment. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment for each Lot shall be Fifteen Hundred Dollars (\$1,500.00) per year. Declarant does not pay annual or special assessments on a per Lot basis until five (5) Lots are sold.

7.3.1 From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by the Board up to an amount equal to ten percent (10%) of the maximum assessment for the previous year.

7.3.2 From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by an amount greater than ten percent (10%) of the maximum assessment for the previous year upon the affirmative vote of two-thirds (2/3) of the votes of the Members at a meeting duly called for such purpose.

7.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement to the Access Lane or any Common Area, provided that such assessment shall have the assent of at least two-thirds (2/3) of the votes of the Members at a meeting duly called for such purpose.

7.5 Rate of Assessment. Both annual and special assessments must be fixed at uniform rates

for all Lots and may be collected on a monthly basis, provided that Declarant shall not pay annual or special assessments on a per Lot basis until five (5) Lots are sold.

7.6 Commencement Date. The annual and special assessments provided for in this Declaration shall commence as to each Lot on the first day of the month following the conveyance of such Lot by Declarant. The Board shall fix and give written notice of the amount of the annual assessment, not to exceed the limitations set forth in Section 7.3 above, against each Lot at least thirty (30) days in advance of each annual assessment period. The due dates and collection methods shall be established by the Board, and unless otherwise provided, the Association or its assigns shall collect each month from the Owner of each Lot one-twelfth (1/12) of the annual assessment of such Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment stated to have been paid.

7.7 Nonpayment of Assessments.

7.7.1 Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its sole discretion, require the Owner to pay a late charge in an amount determined by the Board, but not to exceed twenty-five dollars (\$25) per each delinquent assessment, plus interest at a rate of ten percent (10%) per annum.

7.7.2 The amount of all delinquent regular and special assessments plus interest and any expenses incurred in collecting and/or enforcing such assessments, including attorneys' fees and costs, shall be and become a lien upon the Lot so assessed, which shall attach to the Lot as of the time the Association causes to be recorded in the office of the County Clerk of Campbell County, Wyoming a Notice of Assessment Lien. The Notice of Assessment Lien shall be signed by an officer of the Association. The assessment lien shall be deemed to secure all of the foregoing items which shall become due and/or incurred relative to the Lot after the recording of the Notice of Assessment Lien until completion of the enforcement of the lien or the payment of the full amount secured by the lien, or other satisfaction to be made in connection therewith. No proceeding or action shall be instituted to foreclose the lien until the notice of intention to proceed to foreclose the lien has been delivered by the Association to the Owner of the Lot affected by the lien at least thirty (30) days prior to the commencement of any such proceeding. The assessment lien may be enforced by judicial foreclosure; provided, however, that said method of enforcement shall not be exclusive, but shall be in addition to any other rights or remedies which the Members or the Association may have by law or otherwise. The Association shall also have the right to bid on any such foreclosure sale and to hold, lease, mortgage, and convey such Lot upon its purchase. Upon repayment of the full amount secured by an assessment lien, including all authorized charges in accordance with the foregoing, or upon any other satisfaction duly made, the Association shall cause to be recorded a notice setting forth the fact of such

payment and/or satisfaction and of the release of the assessment lien. Any assessment lien as to any Lot shall at all times be subject and subordinate to any mortgage or deed of trust on any Lot which is created in good faith and for value and which is recorded prior to the date of recordation of the assessment lien. In the event any assessment lien is destroyed by reason of the foreclosure of any prior mortgage or deed of trust on a Lot, the interest in the Lot of the purchase at the foreclosure sale may be subjected to a lien to secure assessments levied on the Lot in the same manner provided in this Section 7.7.2.

- 7.7.3 Upon timely curing of the default for which a notice of claims or lien was filed by the Association, the officers of the Association are authorized to file or record, as the case may be, an appropriate release of such notice, upon payment of the defaulting Owner of a fee to be determined by the Board, but not to exceed fifty dollars (\$50), to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest, or fees as shall have been incurred.
- 7.7.4 The assessment lien and the rights to judicial foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have in this Declaration or by law, including a suit to recover a money judgment for unpaid assessments.
- 7.7.5 No breach of the Covenants, nor any lien so created, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said Covenants shall be binding upon and effective against the Owner whose title is derived through foreclosure of trustee's sale, or otherwise.

7.8 Insurance. The Board, or its duly authorized agent, shall have the authority to obtain insurance on property owned or maintained by the Association. Premiums for all such insurance shall be common expenses. In the event of damage or destruction by any casualty to any property covered by such insurance, the Board shall upon receipt of the insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the property. In the event insurance proceeds, if any, are insufficient to pay all the costs of rebuilding or repairing the property, the Board may levy a special assessment against the Owners in such proportions and the Board deems fair and equitable in light of the damage sustained to make up any deficiency. In the event any insurance proceeds exceed the cost of reconstruction or repair, such excess may be paid over to the Owners in such proportions as the Board deems fair and equitable.

#### ARTICLE VIII – GENERAL PROVISIONS

8.1 Enforcement. The Association shall have the exclusive right to enforce, by any proceeding at law or in equity, all Covenants, reservations, liens, or charges provided for in this Declaration. Enforcement shall be by proceedings at law or in equity against any person or persons in accordance with the provisions of this Declaration. Failure by the Association to enforce any Covenant shall in no event be deemed a waiver of the right to do so thereafter, nor

shall it be a cause of action against the Association or any Owner.

8.2 Severability. If any provision of this Declaration or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Declaration and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

8.3 Duration and Amendment. The Covenants are perpetual in nature, shall run with the land, and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date the Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by no less than two-thirds (2/3) of the Members has been recorded in the Campbell County, Wyoming real estate records agreeing to the change or abrogation of said Covenants in whole or in part.

8.4 Attorneys' Fees. If any action is taken to enforce the Covenants, or if any Owner sues the Association, or its officers, Directors, or Board, the prevailing party shall be entitled to collect its costs, including attorneys' fees and costs.

8.5 Binding Effect. The Covenants are binding upon and inure to the benefit of the heirs, successors, and assigns of Declarant and the Owners. The lease, rental, or execution of a contract for deed or similar agreement, regarding a Lot does not relieve the Owner of any liability or the responsibility to comply with the Covenants, which liability and responsibility shall survive any delegation, lease, rental, contract for deed or similar agreement, and is binding upon each Owner.

*[Signature Page Follows.]*



DATED this 30 day of January, 2013.

**DECLARANT:**

**MAGNA REAL ESTATE DEVELOPMENT, LLC**  
a Colorado limited liability company

By: N. V. Nicoll  
Neville Vere Nicoll, Manager

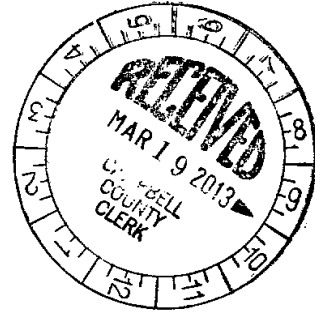
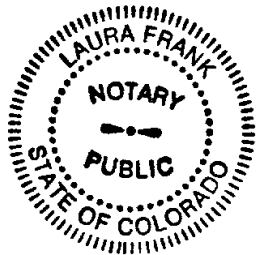
STATE OF Colorado )  
COUNTY OF Broomfield ) ss:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of Jan., 2013, by Neville Vere Nicoll, as a manager of Magna Real Estate Development, LLC.

Witness my hand and official seal.

My commission expires: 2-16-14

Laura Frank  
Notary Public



980959 Recorded on 3/19/2013 at 9.34.00 Fee 32.00  
Book 2779 of PHOTOS Pages 185 to 193  
Susan F. Saunders, Campoell County Clerk by: A. SNIDER

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