



**Filed for Record at Request of
and Copy Returned to:**

HJ Bayview Gateway LLC
c/o Hughes Investments
23 Corporate Plaza, Suite 245
Newport Beach, CA 92660
Attn: William W. Hughes, Jr.

**ATHOL EAST DECLARATION OF COVENANTS AND RESTRICTIONS AND GRANT
OF EASEMENTS**

THIS ATHOL EAST DECLARATION OF COVENANTS AND RESTRICTIONS AND GRANT OF EASEMENTS (this "AE DEC") is made as of the 25th day of November, 2019, by HJ GRATHOL, a California general partnership (together with its successors and assigns that become owners of any Parcels, "Owner").

RECITALS

WHEREAS, Owner is the owner of that certain real property located in Athol, Idaho, as more particularly described in the legal description, Exhibit "A" attached hereto and incorporated herein by reference (the "Real Property");

WHEREAS, the Real Property shall comprise Lots 1 through 22, inclusive (collectively, the "Parcels"), as shall be depicted on and subdivided pursuant to "THE CROSSINGS AT ATHOL" plat ("Subdivision Plat") to be recorded in the official records of Kootenai County after the recording of this AE DEC. The terms "Parcel" and "Lot" have the same meaning and are used interchangeably in this AE DEC and in Subdivision Plat;

WHEREAS, Lot 1, Lots 13 through 18, inclusive, and Lots 20 through 22, inclusive, on the Subdivision Plat are collectively referred to herein as the "Athol East Parcels".

WHEREAS, AB Crossing LLC, an Idaho limited liability company, and Owner entered into that certain Project Declaration of Restrictions and Grant of Easements recorded in the official records of Kootenai County on June 12, 2017 as Instrument No. 2598135000 (the "Project DEC"), which was recorded against the Parcels and Parcel A (as defined in the Project DEC), which are sometimes collectively referred to herein as the "Project";

WHEREAS, the Project DEC (i) grants an easement for the benefit of the Athol East Parcels over the Access Road located in the Shopping Center for the purposes of ingress and egress by vehicular and pedestrian traffic, (ii) grants certain utility easements for the benefit of the Athol East Parcels with respect to the Utility Infrastructure located in the Shopping Center, (iii) creates and establishes certain use restrictions upon and against the Athol East Parcels,

(iv) provides for the maintenance of and certain cost sharing obligations with respect to the Access Road and the Utility Infrastructure, and (v) sets forth certain other matters and agreements regarding the Project, all as more particularly set forth in the Project DEC; and

WHEREAS, it is the intent of the Parties and the purpose of this AE DEC to supplement the Project DEC by (i) granting certain non-exclusive perpetual access and utility easements across the Athol East Parcels and Lot 19 on the Subdivision Plat (“**Parcel 19**”), which is not a part of the Athol East Parcels, (ii) creating and establishing certain restrictions upon and against certain Athol East Parcels, and (iii) setting forth certain other matters and agreements regarding the Athol East Parcels and Parcel 19, all as more particularly hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PRELIMINARY.

1.1 Incorporation. The above Recitals are hereby incorporated herein and made a part hereof.

1.2 Definitions.

- (a) “**Access Easement**” shall mean (i) the 30 foot strip of land within Parcels 13 and 14 and depicted on the Subdivision Plat as “30’ Access Easement”, and (ii) the strip of land of varying width within Parcels 16 through 22, inclusive, and depicted on the Subdivision Plat as “Athol Crossings Road”.
- (b) “**Access Road**” shall have the meaning assigned to that term in the Project DEC.
- (c) “**AE DEC**” shall have the meaning set forth in the introductory paragraph above.
- (d) “**Applicable Laws**” shall mean applicable laws, rules, regulations and ordinances of any applicable Governmental Authorities, including without limitation any applicable building codes and SWPPP.
- (e) “**Approving Party**” shall mean the original Owner entity named herein, so long as it owns all or any part of the Parcels. The original Owner entity named herein may assign its Approving Party position to any other Party that owns all or any portion of the Parcels, by a written instrument reciting the date, book and page of recordation hereof and duly recorded in the office of the Recorder of Kootenai County, Idaho.

- (f) **“Athol East Parcel Owner”** shall mean the owner of an applicable Athol East Parcel.
- (g) **“Athol East Parcels”** shall have the meaning assigned to that term in the Recitals above, and **“Athol East Parcel”** shall mean any of the Athol East Parcels or any legally subdivided portion of the Athol East Parcels owned by a Party.
- (h) **“Car Wash”** shall have the meaning set forth in Section 3.1 below.
- (i) **“Gas Station”** shall have the meaning set forth in Section 3.1 below.
- (j) **“Governmental Authorities”** shall mean all federal, state and local governments, and subdivisions thereof, together with all other governmental or quasi-governmental authorities having jurisdiction over the Project and/or any improvements thereon.
- (k) **“Hazardous Materials”** shall mean any substance or material that is defined, included in the definition of, or otherwise classified as hazardous, toxic or radioactive, or words of similar import, by any federal, state or local law, ordinance, regulation, order or decree now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous, including without limitation petroleum and natural gas products.
- (l) **“Owner”** shall have the meaning set forth in the introductory paragraph above.
- (m) **“Parcel 13”** shall mean Lot 13 on the Subdivision Plat.
- (n) **“Parcel 19”** shall have the meaning assigned to that term in the Recitals above.
- (o) **“Parcel 19 Owner”** shall mean the owner of Parcel 19.
- (p) **“Parcels”** shall have the meaning assigned to that term in the Recitals above, and **“Parcel”** shall mean any of the Parcels or any legally subdivided portion of the Parcels owned by a Party.
- (q) **“Party”** shall mean each signatory hereto and their respective successors and assigns who become owners of any Parcel.
- (r) **“Permittees”** means each of the Parties and their tenants, and each of their respective customers, licensees, agents, employees, suppliers, contractors and invitees.

- (s) “**Project DEC**” shall have the meaning assigned to that term in the Recitals above.
- (t) “**Project**” shall have the meaning assigned to that term in the Recitals above.
- (u) “**Sewage Treatment System**” shall mean a wastewater treatment system designed to serve the entire Project and any other property as from time to time determined by the owner of such system, including but not limited to equipment/processing areas, storage lagoons, conduits, ground water application areas, structures and any other components.
- (v) “**Shopping Center**” shall have the meaning assigned to that term in the Project DEC.
- (w) “**SWPPP**” shall mean the federal/state mandated Stormwater Pollution Prevention Plan and all related requirements including planning, permits, permit maintenance and notice of termination.
- (x) “**Utilities**” shall mean gas, electricity, storm drainage and storage, sanitary sewer, domestic water, fire service water, irrigation water, telephone, CATV, gas, and all other private or public utilities.
- (y) “**Utility Infrastructure**” shall have the meaning assigned to that term in Section 2.2 below.

2. EASEMENTS.

2.1 Ingress and Egress. Each Athol East Parcel Owner and Parcel 19 Owner, with respect its Parcel, hereby grants to each other Athol East Parcel Owner and Parcel 19 Owner as grantee, for the benefit of each grantee Party, its Permittees and each grantee Party’s Parcel, and as a burden on each grantor Party’s Parcel, a perpetual non-exclusive easement appurtenant to each grantee Party’s Parcel, upon, over, across and through any portion of the Access Easement located on grantor Party’s Parcel, for the purpose of ingress and egress by vehicular and pedestrian traffic between each grantee Party’s Parcel, on the one hand, and the Access Road or E. Howard Road, as applicable, on the other hand. Such traffic on each grantor Party’s Parcel shall be subject to reasonable, non-discriminatory rules as may be posted from time to time by such grantor Party on its Parcel, provided that such rules do not conflict with the terms of this AE DEC and are approved by Approving Party. Each grantor Party agrees that it will not place, or cause to be placed, any buildings or other structures on the Access Easement. Further, each Party agrees not to cause or permit any activity on the Access Easement which would unreasonably interfere with the use thereof for the purposes contemplated herein.

2.2 Utilities. Each Athol East Parcel Owner and Parcel 19 Owner, with respect its Parcel, hereby grants to each other Athol East Parcel Owner and Parcel 19 Owner, as grantee, for the benefit of each grantee Party and each grantee Party’s Parcel, and as a burden on

each grantor Party's Parcel, a perpetual non-exclusive easement appurtenant to each grantee Party's Parcel, upon, over, across, through and under each grantor Party's Parcel (except that, with respect to Parcel 19, such easement shall be limited to the boundary of the Access Easement located on Parcel 19), for the purpose of installation, operation, flow, passage, use, maintenance, connection, relocation, repair and replacement of water drainage systems and structures, water mains, storm drains, sanitary sewer (including without limitation the Septic System and/or the Sewage Treatment System), irrigation lines, telephone, communication and electrical lines, conduits and systems, gas mains, and other systems, structures and facilities for Utilities necessary for the orderly development and operation of each grantee Party's Parcel (collectively, "**Utility Infrastructure**"), subject to the following terms and conditions:

- (a) The rights granted pursuant to the foregoing easement shall be exercised in compliance with all Applicable laws, at the sole cost and expense of the grantee Party, and in such manner as not to unreasonably interfere with the use, occupancy or enjoyment of the grantor Party's Parcel. The grantee Party shall cause all work in connection therewith (including general clean up and proper surface and/or subsurface restoration) to be completed as quickly as possible.
- (b) Promptly following completion of the applicable installation or relocation, the grantee Party shall provide the grantor Party with a copy of an as-built survey showing the location of any Utility Infrastructure installed or relocated by such grantee Party.
- (c) All Utility Infrastructure shall be underground except:
 - (i) ground mounted electrical transformers and fire service valves, fire hydrants and related equipment;
 - (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
 - (iii) as may be required by applicable Governmental Authorities;
 - (iv) as may be required by the provider of such service;
 - (v) surface water collection; and
 - (vi) storage lagoons, drain fields, ground water application areas and equipment/processing areas associated with the Septic System and Sewage Treatment System.
- (d) Except in an emergency, the right of any grantee Party to enter upon a grantor Party's Parcel for the exercise of any right pursuant to the foregoing easement shall be conditioned upon obtaining the

prior written consent of such other Party. Furthermore, except in an emergency, no Utility Infrastructure may be installed, relocated, removed, disconnected or otherwise modified by or on behalf of any Party unless all of the following conditions are satisfied:

- (i) such work has been approved in writing by all Parties whose Parcels are served or affected by such Utility Infrastructure;
 - (ii) such work shall not interfere with or diminish any Utilities to the other Parties during their business hours, and shall not unreasonably restrict any access to any Athol East Parcel;
 - (iii) such work shall not reduce or impair the usefulness or function of any Utility Infrastructure;
 - (iv) such work shall be performed without cost or expense to the other Parties;
 - (v) such work shall be completed using materials and design standards that equal or exceed those originally used; and
 - (vi) if applicable, such work shall have been approved by the appropriate Utilities service providers and any applicable Governmental Authorities.
- (e) In the event it should be necessary to grant any of the foregoing easements and rights to local utility companies as a condition to their providing or continuing services (which easements may be exclusive to the extent reasonably required by the local utility companies), such rights shall be granted so long as the Parties required to execute the applicable grant instruments reasonably deem the terms and conditions of such grant instruments to be acceptable.

2.3 Surface Storm Drainage. Each Athol East Parcel Owner and Parcel 19 Owner, with respect to its Parcel, hereby grants to each other Athol East Parcel Owner and Parcel 19 Owner, as grantee, for the benefit of each grantee Party and each grantee Party's Parcel, and as a burden on each grantor Party's Parcel, a perpetual non-exclusive easement appurtenant to each grantee Party's Parcel, upon, over, across and through each grantor Party's Parcel (except that, with respect to Parcel 19, such easement shall be limited to the boundary of the Access Easement located on Parcel 19), for the purpose of discharging surface storm drainage and/or runoff from the grantee's Party's Parcel; provided, however, (a) each grantee Party's Parcel must be graded such that no surface water containing Hazardous Materials generated or stored on a grantee Party's Parcel (the "**Generating Parcel**") will drain or run from the Generating Parcel to any other Party's Parcel (the "**Other Parcel**") without first being treated as may be required under Applicable Laws, but only if and to the extent such treatment is required under Applicable Laws before draining from the Generating Parcel to the Other Parcel, and (b) no grantee Party shall alter or permit to be

altered the surface or the drainage/retention system on its Parcel if such alteration would (i) materially increase the flow of surface water onto any grantor Party's Parcel, either in the aggregate or by directing the flow of surface water to a limited area, (ii) materially decrease the purity or quality of surface water flowing onto a grantor Party's Parcel, or (iii) otherwise adversely affect a grantor's Party's Parcel in any material respect, in each case without the prior written consent of such grantor Party's Parcel.

2.4 Maintenance. Each Athol East Parcel Owner and Parcel 19 Owner, with respect to its Parcel, hereby grants to Approving Party as grantee, for the benefit of such grantee Party, its agents, employees and contractors and grantee Party's Parcel, and as a burden on each grantor Party's Parcel, a perpetual non-exclusive easement appurtenant to such grantee Party's Parcel, upon, over, under, across and through all portions of the grantor Party's Parcel (excluding any buildings or structures), for the purpose of exercising the rights granted to Approving Party pursuant to Section 5.2 below, it being agreed that Approving Party shall use commercially reasonable efforts to exercise such rights in a manner that does not unreasonably interfere with any business operations on each grantor Party's Parcel.

2.5 Easements Perpetual. All of the easements set forth in this Section 2 shall be perpetual and non-exclusive in nature, and shall continue in full force and effect unless and until: (a) the Parties agree in writing to terminate such easements, or (b) such easements are terminated by operation of law.

3. RESTRICTIONS.

3.1 Use Restriction on Parcel 13.

(a) No portion of Parcel 13 shall be used for any purpose other than as an automobile gas station or fueling center, such as Shell, Conoco, Chevron, Holiday or Texaco ("**Gas Station**") and the following incidental uses expressly permitted under this Section 3.1(a). Parcel 13 may also be used as a convenience store provided that (i) such convenience store is operated solely as an incidental service in conjunction with the operation of the Gas Station, (ii) any grocery sales area within such convenience store does not exceed 3,500 square feet, (iii) such convenience store does not include any "branded" restaurant (for example, Subway, McDonald's, Taco Bell, Panda Express) or any coffee shop, and (iv) such convenience store sells only automotive parts and supplies and other items that are typically sold in conjunction with the operation of a Gas Station. Parcel 13 may also include an automated car wash tunnel that is attached to the Gas Station and operated solely as an incidental service in conjunction with the operation of the Gas Station ("**Car Wash**"). For avoidance of doubt, and without limiting the foregoing, no portion of Parcel 13 shall be used for any vehicle repair services, for any free standing coffee kiosk, or for any other purpose not expressly permitted under the foregoing provisions of this Section 3.1(a).

(b) The Parties acknowledge and agree that, following recordation of this AE DEC and the Subdivision Plat, Approving Party intends to sell Parcel 13 to a new Owner in reliance and expressly conditioned on Parcel 13 being used solely as a Gas Station and the incidental uses expressly permitted under Section 3.1(a) above, in order to promote the orderly and integrated development of the other Parcels owned by Approving Party, and that a violation

of this use restriction shall cause irreparable harm to Approving Party. Accordingly, Approving Party shall be entitled to injunctive relief and an order for specific performance to compel compliance with the use restriction set forth in Section 3.1(a) above. Such remedies shall be the primary relief for breach or anticipatory breach of the use restriction set forth in Section 3.1(a), but Approving Party shall retain any and all other rights and remedies allowed by law or equity for breach of Section 3.1(a).

3.2 Sewage Restriction. Due to the limitations of the Sewage Treatment System to be constructed to serve the entire Project, any operations or other activities on any Athol East Parcel shall be conducted in a manner to discharge the minimum possible amount of waste water. Without limiting the foregoing, and by way of illustration, each Athol East Parcel Owner shall use fixtures and equipment in connection with its construction and operations on its Parcel that minimizes waste water discharge, and shall install and maintain on its Parcel its own landscape areas and associated irrigation infrastructure to accept and utilize available treated water from the Sewage Treatment System for irrigation purposes on such areas. With respect to Parcel 13, in no event shall any operations and activities on Parcel 13 generate more than five hundred (500) gallons of waste water per day in the aggregate, and the Car Wash (if any) on Parcel 13 must, to the maximum extent possible, utilize recycled water and available treated water from the Sewage Treatment System.

4. CONSTRUCTION.

4.1 Approval of Plans and Specifications; Sign Program. No grading, buildings, structures or other improvements (including but not limited to building structures and appurtenant canopies, gas island canopies, supports, loading docks, truck ramps, sidewalks, landscaping, utilities, drive-through lanes, swales, detention basins and other drainage infrastructure, and signs and monuments) shall be constructed or altered on any Athol East Parcel except in accordance with plans and specifications approved by the Approving Party, and, with respect to any signs or monuments, in accordance with the sign program for the Athol East Parcels as prepared by Approving Party and approved by any applicable Governmental Authorities and in effect at the time such sign or monument is constructed (or if no such sign program is then in effect, in accordance with plans and specifications approved by Approving Party). Notwithstanding the foregoing, Approving Party's approval shall not be required for, nor shall Approving Party's review entail any aspects of, any improvements to be constructed within the interior of any buildings to be construction on any Athol East Parcel.

4.2 Disclaimer. The review and approval of any plans and specifications by Approving Party shall be solely for the purpose of protecting Approving Party's interest in the Parcels owned by Approving Party, and shall not imply Approving Party's review of the same, or obligate Approving Party to review the same, for quality, design, code compliance or other like matters, for the benefit of any other Party, and Approving Party shall not be responsible for any omissions or errors contained in any such items. Each Party will be solely responsible for properly and adequately designing and installing all improvements located on its Parcel, including the proper design and installation of any improvements and equipment to connect to the Sewage Treatment System, including but not limited to any necessary holding tank, pump system and grease interceptor on its Parcel.

4.3 General Requirements. All construction activities performed within any Athol East Parcel shall be performed in compliance with all Applicable Laws and, once commenced, shall be diligently prosecuted to completion. All construction activities with respect to any Athol East Parcel shall not:

- (a) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel;
- (b) Unreasonably interfere with construction work being performed on any other part of the other Parcels;
- (c) Unreasonably interfere with the use, occupancy, or enjoyment of any other Parcels by any other Party or its Permittees; or
- (d) Cause any building located on another Parcel to be in violation of any Applicable Laws.

4.4 Mechanic's Liens. In the event that any mechanic's or materialmen's lien is filed against a Party's Parcel due to another Party's actions, or those of its consultants, contractors, employees, agents or representatives, then, in addition to any other remedies provided herein, the Party upon whose Parcel the lien is filed shall provide written notice of such lien to the other Party. Within 15 days from receipt of notice of the lien, the other Party shall, at its sole cost and expense, remove such lien from title or bond for or otherwise obtain a release of such lien. In any event, the other Party shall defend, protect, indemnify and hold the Party upon whose Parcel the lien is filed harmless from and against any and all costs, expenses, losses, damages, and liabilities of any kind (including reasonable attorneys' fees and cost of suit) arising out of or resulting from such lien.

5. MAINTENANCE, REPAIR AND OPERATIONS.

5.1 Obligations of Parcel Owners. Except as otherwise provided in this AE DEC, each Athol East Parcel Owner and Parcel 19 Owner, at its sole expense, shall cause (i) all improved portions of its Parcel (including without limitation any and all buildings, structures, monuments, signs, drives, sidewalks, aisles, parking lots, utilities exclusively serving its Parcel, swales, detention basins and other drainage infrastructure, landscaping, and any other improvements located on its Parcel) to be maintained in first class, clean and good condition and repair, and, solely with respect to any improved areas outside the perimeter of any existing buildings, reasonably free from ice and snow, with adequate hard surfacing and proper directional signs and striping, and fully illuminated from dusk until dawn, seven (7) days a week; and (ii) all unimproved portions of its Parcel to be maintained in a smooth, level condition, reasonably free and clear of refuse and weeds. The provisions of this Section 5 shall not restrict any Party from constructing or altering any improvements on its Parcel, provided that such Party otherwise complies with the other terms and conditions of this AE DEC.

5.2 Approving Party's Right to Perform Maintenance. Approving Party shall have the right (but not the obligation), at any time or from time to time in its sole and absolute

discretion, with or without notice, to perform (or hire a contractor to perform) any or all of the maintenance and repair obligations of one or more of the Athol East Parcel Owners and Parcel 19 Owner (excluding any buildings or structures). Each Athol East Parcel Owner and Parcel 19 Owner shall reimburse Approving Party for its out-of-pocket cost of performing such maintenance and repairs on the applicable Party's Parcel, plus an administrative fee of fifteen percent (15%) of such costs, within ten (10) days after receipt of billing therefor and proof of payment of such costs.

6. INDEMNIFICATION AND INSURANCE

6.1 Indemnification by Athol East Parcel Owners and Parcel 19 Owner. Each Athol East Parcel Owner and Parcel 19 Owner shall defend, protect, indemnify and hold the other Parties and their affiliates, and the partners, trustees, beneficiaries, shareholders, members, managers, directors, officers, employees, agents, representatives and consultants of each of them, and their respective heirs, successors, personal representatives and assigns, harmless from and against all third-party claims or demands, including mechanics' or materialmen's liens, any actions or proceedings, and any and all costs, expenses, losses, damages, and liabilities of any kind (including reasonable attorneys' fees and cost of suit), to the extent arising out of or resulting from: (i) any injury to persons, loss of life, or damage to property occurring in connection with the exercise of the easements rights granted under this AE DEC, caused by the negligence, willful misconduct or violation of Applicable Laws of the indemnifying Party or its tenants, or their respective officers, directors, agents, employees and contractors; (ii) such Athol East Parcel Owner's or Parcel 19 Owner's breach of any terms or provisions of this AE DEC; or (iii) the negligence, willful misconduct or violation of Applicable Laws by such Athol East Parcel Owner or Parcel 19 Owner, or its officers, directors, agents, employees or contractors in connection with performance or non-performance of such Athol East Parcel Owner's or Parcel 19 Owner's obligations under this AE DEC.

6.2 Insurance. Each Athol East Parcel Owner acknowledges and understands the insurance required to be maintained by it as an "HJ Excess Property Owner" as defined and provided in the Project DEC. Each Athol East Parcel Owner agrees, for the benefit of each other Party, to maintain all such insurance required to be carried by an "HJ Excess Property Owner" under the terms of the Project DEC, and, in addition, to name Approving Party as additional insured, and to grant to the Approving Party under this AE DEC all of the same rights granted to the "Approving Parties" and "HJ Approving Party" as defined and provided in the Project DEC.

7. TAXES AND ASSESSMENTS.

Each Athol East Parcel Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Parcel, the buildings and other improvements located thereon, and any personal property owned or leased by such Party in the Project; provided that if the taxes or assessments or any part thereof may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable. Nothing contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Parcel in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith and does not become a lien on or result in a tax sale. At the time as such contest is concluded (allowing for appeal to the highest appellate

court), the contesting Party shall promptly pay all such taxes and assessments determined to be owed, together with all interest, penalties and costs thereon.

8. DEFAULT.

8.1 Right to Cure. Should any Athol East Parcel Owner or Parcel 19 Owner breach any terms or provisions of this AE DEC, and thereafter fail to cure such breach within twenty (20) days following its receipt of any other Party's written notice thereof (or such longer period, not to exceed ninety (90) days, if such breach by its nature cannot be cured within such 20-day period and the defaulting Party commences performance within such 20-day period and therefore diligently and continuously prosecutes the same to completion), the Party giving such notice shall, in addition to any other remedy provided at law, in equity or in this AE DEC, have the right (but not the obligation) to cure such breach on behalf of the defaulting Party and the defaulting Party shall reimburse the curing Party for its out-of-pocket cost of performing such cure within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Party does not so reimburse the curing Party within such ten (10) days, the curing Party shall have the right to exercise any and all rights which such curing Party might have at law or in equity to collect the same. The amount paid by the curing Party but not reimbursed by the defaulting Party, and any amount not timely paid by a Party as required under Section 5.2 above, shall bear interest at a rate equal to the then published "Prime Rate" of Citibank, N.A., plus ten percent (10%) per annum (the Parties acknowledging that such rate may not be the lowest or "best" rate), or the highest legal rate of interest, whichever is less, from the date of billing until paid.

8.2 Right to Lien. Payments, costs and expenses accruing and/or assessed pursuant to Section 8.1 or Section 5.2 above shall constitute a lien against the defaulting Party's Athol East Parcel(s) or Parcel 19, as applicable. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of Kootenai County, Idaho, by the Party making the claim solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law including, without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of Idaho. The claim of lien shall include the following:

- (a) The name of the lien claimant;
- (b) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party;
- (c) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (d) A description of the Parcel against which the lien is claimed;
- (e) A description of the work performed that has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (f) A statement that the lien is claimed pursuant to the provisions of this AE DEC, reciting the date, book and page of recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 9 below.

8.3 Injunctive Relief. In the event of any violation or threatened violation of any provision of this AE DEC, any Party shall have the right, in addition to any other remedies herein or by law or equity provided, to enjoin such violation or threatened violation.

8.4 Breach Shall Not Permit Termination. No breach of this AE DEC shall entitle any Party to cancel, rescind or otherwise terminate this AE DEC, but such limitation shall not affect in any manner any other rights or remedies which such Party may have hereunder by reason of any breach of this AE DEC.

8.5 No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Parties, except as otherwise provided in this AE DEC, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy, or be construed as a waiver of any default or nonperformance or as acquiescence therein.

8.6 Mortgage Protection. The breach of any covenants, conditions or restrictions herein contained shall not defeat, invalidate nor impair the obligation or priority of any mortgage or deed of trust now or hereafter executed and constituting a lien upon the Parcels or any portion thereof, which is made in good faith and for value; provided, however, that any party, including the holder of the mortgage or deed of trust, who acquires title through private or judicial foreclosure, trustee's sale or deed in lieu of foreclosure (a "**Foreclosure-Purchaser**") and all successors and assigns of such Foreclosure-Purchaser shall take title subject to all of the covenants, conditions and restrictions contained in this AE DEC. Such Foreclosure-Purchaser shall not be liable for damages arising from the breach of any covenants, conditions or restrictions performed or which were to have been performed, or arising from other events, facts or circumstances that occurred, prior to the time such Foreclosure-Purchaser acquires title to all or any portion of the Parcels.

9. NOTICES.

Notices, requests, demands and other communications hereunder shall be in writing and shall be given (a) by Federal Express or another established express delivery service which maintains delivery records, (b) by hand delivery, or (c) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other addresses as the Parties may designate from time to time by written notice in the manner aforesaid:

To Owner:

HJ Bayview Gateway L.L.C.
c/o Hughes Investments
23 Corporate Plaza, Suite 245
Newport Beach, CA 92660
Attn: William W. Hughes, Jr.
Telephone: (949) 759-9531 Ext. 230
Email: whughes@hughesinv.com

And to:

HJ Bayview Gateway L.L.C.
P.O. Box 999
Coeur d Alene, ID, 83816
Attn: Alan Johnson
Telephone: (208) 818-0836
Email: ajohnson@hughesinv.com

Notices and demands shall be deemed effective upon receipt.

10. ATTORNEYS' FEES.

In the event legal proceedings are commenced to enforce any of the terms of this AE DEC, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, to be fixed by the court in the same action.

11. DAMAGE OR DESTRUCTION.

11.1 Mandatory Restoration. In the event all or any portion of any driveway improvements located within the Access Easement on any Parcel shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Party that owns such Parcel shall forthwith proceed with due diligence to restore the portion of such driveway located within the Access Easement on its Parcel to a condition equal to or better than that existing prior to such damage or destruction.

11.2 Optional Restoration. In the event any improvements on an Athol East Parcel other than those described in Section 11.1 above are damaged or destroyed by fire or other casualty or any other cause whatsoever, the Party that owns such Parcel shall promptly, in its discretion, either demolish or restore the damaged improvements. If a Party determines to demolish the damaged improvements on its Parcel, it shall promptly rebuild new improvements consistent with the terms of this AE DEC and/or leave and maintain any portion of its Parcel which it does not rebuild in a smooth, level condition, free and clear of all refuse and weeds.

12. EMINENT DOMAIN.

12.1. Party's Right to Award. Nothing herein shall be construed to give any Party any interest in any award or payment made to any other Party in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Party's Parcel or giving the public or any government any rights in the Parcels.

12.2. Collateral Claims. Notwithstanding the foregoing, all other Parties or persons having an interest in any easements rights burdening another Party's Parcel so condemned may file collateral claims with the condemning authority for their losses, including severance damages relating to the taking of easement rights provided the award of such severance damage

does not reduce or diminish the amount which would otherwise be paid to the Party that owns the Parcel(s) on which the taking occurred.

12.3. Tenant's Claim. Nothing in this Section shall prevent a tenant from making a claim against a Party pursuant to the provisions of any lease between tenant and such Party for all or a portion of any such award or payment.

12.4. Restoration of Driveway Improvements. The Party owning all or any portion of any driveway improvements located within the Access Easement on its Parcel so condemned shall promptly repair and restore the remaining portion of such driveway located within the Access Easement on its Parcel as near as practicable to the condition existing immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Party.

12.5. Restoration of Other Improvements. In the event any improvements on an Athol East Parcel other than those described in Section 12.4.1 above is condemned, the Party that owns such Parcel shall promptly, in its discretion, either demolish or restore the remaining portion of the improvements, and remove all debris resulting therefrom. If the Party demolishes the remaining portion of the improvements, it shall promptly rebuild new improvements consistent with the terms of this AE DEC and/or leave and maintain any portion of its Parcel which it does not rebuild in a smooth, level condition, free and clear of all refuse and weeds.

13. MODIFICATION.

This AE DEC may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing instrument executed by Approving Party in its sole and absolute discretion, reciting the date, book and page of recordation hereof and duly recorded in the office of the Recorder of Kootenai County, Idaho; provided, however, that no such modification shall impose any materially greater obligation on, or materially impair any right of, any Party or its Parcel without the written consent of such Party, which consent must be given or withheld by such Party within fifteen (15) days after delivery of the proposed modification to such Party, and if such Party does not respond within the required time period, such Party shall be deemed to have given its consent. By way of example, any modification of this AE DEC which changes the location of the northerly Access Easement may be executed solely by Approving Party and the Owners of the Parcels on which such Access Easement is currently located, and any Parcels onto which the Access Easement is to be relocated.

14. GENERAL PROVISIONS

14.1 Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for any public purposes whatsoever, it being the intention of the Parties that this AE DEC shall be strictly limited to and for the purposes herein expressed.

14.2 Severability. If any term or provision of this AE DEC or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder

of this AE DEC or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this AE DEC shall be valid and shall be enforced to the extent permitted by law.

14.3 Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

14.4 Captions. The captions in this AE DEC are for convenience only and do not constitute a part of the provisions hereof.

14.5 Not a Partnership. The provisions of this AE DEC are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship among the Parties.

14.6 Governing Law. This AE DEC shall be construed and enforced in accordance with, and governed by, the laws of the State Idaho.

14.7 No Presumption. This AE DEC shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Party.

14.8 Inurement. This AE DEC, and the covenants, restrictions, benefits and obligations created hereby, shall inure to the benefit of and be binding upon each Party and its successors and assigns who become owners of any Parcel. If a Party conveys all of its interest in any Parcel to any other party, the selling Party shall be released from any obligations under this AE DEC with respect to such Parcel arising from and after such conveyance, and the buying party shall be liable for all such obligations; provided, that no such conveyance shall release the selling Party from any liabilities, actual or contingent, existing as of the time of such conveyance.

14.9 Covenants Run with the Land. The Parties agree that the provisions of this AE DEC shall operate as covenants running with the land, such covenants constituting a mutual equitable servitude in favor of each and every part of the Parcels. The Parties shall reasonably cooperate to promptly record any such documents or instruments as may be reasonably necessary or desirable to effectuate the foregoing.

14.10 Counterparts. This AE DEC may be executed in counterparts.

14.11 Consent Standard. Except for matters for which there is a standard of consent or discretion specifically set forth in this AE DEC, if any time the consent or approval of a Party is required under this AE DEC, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

14.12 Force Majeure. No Party will be responsible for any delay or failure in performance of any part of this AE DEC to the extent that the delay or failure in performance (i) is caused by an event or circumstance beyond the reasonable control of the Party whose

performance is affected (the “**Affected Party**”), including, by way of example, fire or other casualty, acts of God, weather, refusal or failure of governmental authorities to grant necessary approvals and permits (the Party responsible therefor agreeing to use reasonable diligence to procure the same), war, riot, or insurrections, but specifically excluding any financial payment obligation, and (ii) could not have been avoided or corrected through the exercise of reasonable diligence (a “**Force Majeure Event**”). The Affected Party will promptly notify the other Parties in writing of the Force Majeure Event, giving details of the Force Majeure Event circumstances, its anticipated effect upon the Affected Party’s performance under this AE DEC, and the steps that the Affected Party is taking to remedy the delay.

14.13 Estoppel Certificate. Each Party agrees that upon request by any other Party, it will issue to a prospective lender of such other Party, to a prospective purchaser of such other Party’s Parcel, or to a prospective lessee of not less than an entire building within such Party’s Parcel, an estoppel certificate stating:

- (a) that the Party to whom the request has been directed is the sole owner of such Party’s Parcel;
- (b) whether the Party to whom the request has been directed knows of any default by the requesting Party under this AE DEC, and if there are known defaults, specifying the nature thereof;
- (c) whether this AE DEC has been assigned, modified or amended in any way by the Party to whom the request has been directed (and if it has, then stating the nature thereof); and
- (d) that, to knowledge the Party to whom the request has been directed, this AE DEC as of that date is in full force and effect.

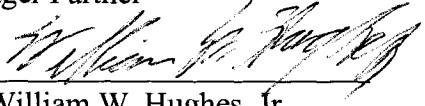
Such statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this AE DEC has been executed as of the date first above written.

HJ GRATHOL,
a California general partnership,

By: HJ Bayview Gateway, LLC,
a Delaware limited liability company,
its Manager Partner

By: 
Name: William W. Hughes, Jr.
Title: Managing Member

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

On November 25, 2019, before me, Cindy A. Stoltman, Notary Public,
(insert name and title of the officer)

Notary Public, personally appeared William W. Hughes, Jr.,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cindy A. Stoltman

(Seal)

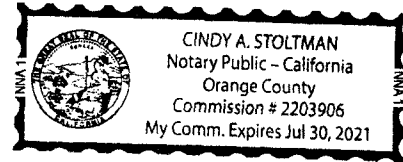


EXHIBIT "A"
Legal Description of Real Property

That portion of the Southwest Quarter of Section 10, Township 53 North, Range 3 West, Boise Meridian, City of Athol, Kootenai County, Idaho, described as follows;

COMMENCING at the Southwest corner of said section 10; Thence North $80^{\circ}06'27''$ East a distance of 1132.67 feet to the southeast corner of a parcel of land described as schedule 2 in a Deed of Release recorded as Instrument Number 2371740000, records of Kootenai County, Idaho, and the beginning of a non-tangent curve to the left, having a radius of 1173.00 feet, said point being the **TRUE POINT OF BEGINNING**.

Thence northwest along said curve and the East line of said parcel, through an arc length of 364.27 feet, a central angle of $17^{\circ}47'35''$, a chord bearing of North $12^{\circ}11'15''$ West and a chord distance of 362.81 feet;

Thence along said East line, North $21^{\circ}05'02''$ West a distance of 715.04 feet to the South line of a strip of land appropriated by the United States of America in a Decree of Condemnation recorded in Book 20 of Misc, Page 436, records of Kootenai County, Idaho;

Thence along said South line, South $89^{\circ}43'44''$ East a distance of 1911.31 feet;

Thence South $01^{\circ}19'18''$ West a distance of 244.84 feet to the northwest right of way of East Howard Road;

Thence along said northwest right of way, South $27^{\circ}32'32''$ West a distance of 572.54 feet;

Thence leaving said northwest right of way North $62^{\circ}27'28''$ West a distance of 115.00 feet;
Thence South $27^{\circ}32'32''$ West a distance of 100.00 feet;

Thence South $62^{\circ}27'28''$ East a distance of 115.00 feet to the northwest right of way of East Howard Road;

Thence along said northwest right of way South $27^{\circ}32'32''$ West a distance of 199.96 feet to the North right of way of Highway 54;

Thence along said North right of way, North $89^{\circ}43'26''$ West a distance of 521.32 feet to the beginning of a non-tangent curve to the left, having a radius of 305.00 feet;

Thence northwest along said curve, through an arc length of 28.92 feet, a central angle of $05^{\circ}26'08''$, a chord bearing of North $04^{\circ}53'54''$ West and a chord distance of 28.92 feet to the beginning of a non-tangent compound curve to the right, having a radius of 295.00 feet;

Thence northwest along said curve, through an arc length of 42.48 feet, a central angle of $08^{\circ} 15' 03''$, a chord bearing of North $03^{\circ} 29' 26''$ West and a chord distance of 42.44 feet to the beginning of a non-tangent compound curve to the left, having a radius of 276.50 feet;

Thence northwest along said curve, through an arc length of 178.93 feet, a central angle of $37^{\circ} 04' 38''$, a chord bearing of North $17^{\circ} 54' 14''$ West and a chord distance of 175.82 feet;

Thence North $36^{\circ} 26' 32''$ West a distance of 137.74 feet to the beginning of a curve to the right, having a radius of 173.50 feet;

Thence northwest along said curve, through an arc length of 111.76 feet, a central angle of $36^{\circ} 54' 29''$, a chord bearing of North $17^{\circ} 59' 18''$ West and a chord distance of 109.84 feet;

Thence North $00^{\circ} 27' 57''$ East a distance of 402.34 feet;

Thence North $89^{\circ} 43' 44''$ West a distance of 521.25 feet;

Thence South $00^{\circ} 16' 40''$ West a distance of 290.84 feet;

Thence South $21^{\circ} 04' 46''$ East a distance of 296.76 feet;

Thence South $89^{\circ} 43' 20''$ East a distance of 371.43 feet to the beginning of a curve to the right, having a radius of 120.00 feet;

Thence southeast along said curve, through an arc length of 111.59 feet, a central angle of $53^{\circ} 16' 48''$, a chord bearing of South $63^{\circ} 04' 56''$ East and a chord distance of 107.61 feet;

Thence South $28^{\circ} 53' 13''$ East a distance of 38.03 feet to the beginning of a non-tangent curve to the right, having a radius of 223.91 feet;

Thence southeast along said curve, through an arc length of 177.48 feet, a central angle of $45^{\circ} 24' 55''$, a chord bearing of South $13^{\circ} 41' 29''$ East and a chord distance of 172.87 feet to the beginning of a non-tangent compound curve to the left, having a radius of 236.74 feet;

Thence southwest along said curve, through an arc length of 38.90 feet, a central angle of $09^{\circ} 24' 51''$, a chord bearing of South $04^{\circ} 18' 33''$ West and a chord distance of 38.85 feet to the North right of way of Highway 54;

Thence along said north right of way, North $89^{\circ} 43' 26''$ West a distance of 583.33 feet to the **TRUE POINT OF BEGINNING.**

Containing: 1,281,227 square feet or 29.413 acres more or less.