

## PLANNED DEVELOPMENT AGREEMENT

East 8.78 Acres of the South Half of the North East Quarter of the North East Quarter of Section 21, Township 01 South, Range 25 East in Yellowstone County Montana

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **CCN, LLC** whose address for the purpose of this agreement is P.O. Box 81316, Billings, MT 59108, hereinafter referred to as “Owner” and **Yellowstone County**, Montana, hereinafter referred to as “County.”

WITNESSETH:

**WHEREAS**, the subject property is an existing commercial business.

**WHEREAS**, the Owner is seeking a lessee for available commercial space within the property.

**WHEREAS**, the Owner desires a harmonious development with surrounding properties.

**WHEREAS**, the Owner and County desire to place use restrictions on the above-described property, as provided in this agreement.

**THEREFORE, THE PARTIES TO THIS AGREEMENT**, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

### **1. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT**

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

### **2. LAND USE RESTRICTIONS AND ALLOWANCES**

Unless expressly designated below, all other standards or requirements of the Yellowstone County’s Zoning Ordinance shall be followed for the type of zoning described herein.

A. “CANYON CREEK NURSERY”: (underlying zone: Neighborhood Commercial) as described above and per attached Exhibit A.

All allowed land uses within the Neighborhood Commercial Zone as outlined within the Yellowstone County Zoning Regulations shall apply with the following exceptions and inclusions.

**Exceptions (not allowed) within the “CANYON CREEK NURSERY” Planned Development Zone**

- Paint, glass and wallpaper; hardware stores (SIC 5231 & 5251)
- General Merchandise Stores (SIC 53)
- Convenience store with gas pump islands (SIC 5411)
- Automotive dealers and Gasoline Service Stations (SIC 55 – all)
- Convenience store (SIC 5411 & 554)
- Apparel and Accessory Stores (SIC 56)
- Home Furniture, Furnishing and Equipment Stores (SIC 57)
- Miscellaneous Retail (SIC 59) – inclusions in this category listed below
- Hotels, Rooming Houses, Camps and Other Lodging Places (SIC 70)
- Personal Services (SIC 72) – inclusions in this category listed below
- Business Services (SIC 73) – inclusions in this category listed below
- Automotive Repair, Services and Parking (SIC 75) except parking lots provided for on-site businesses are not excluded
- Social services (SIC 83)
- Public Administration (SIC 91, 92, 93, 94, 95, 96, 97)
- Multi-family dwellings

**Inclusions (allowed) within the “CANYON CREEK NURSERY” Planned Development Zone**

- Nurseries, Lawn and Garden Supply Stores (SIC 5261)
- Professional Offices
- One (1) Alcoholic Beverage manufacturer of 1,500 31-gallon barrels per year or less (SIC 2082, 2083, 2084 & 2085) – a tap room and outdoor seating will be allowed with restrictions (see below)
- Gift, Novelty and Souvenir Shops (SIC 5947)
- Florists (SIC 5992)
- Photographic Studios (SIC 7221)
- Beauty & Barber Shops (SIC 7231 & 7241)
- Event Space Rental (Indoor and Outdoor) (SIC 7299) – with restrictions (see below)
- Commercial Photography (SIC 7335)
- Commercial Art and Graphic Design (SIC 7336)
- Drafting Services (SIC 7389)
- Physical Fitness Facilities and Instruction including Yoga (SIC 7991 and 7999)

### **3. OPERATIONAL RESTRICTIONS – Alcoholic Beverage Manufacturing and Event Space Rental**

The Owner and County recognize the sensitive location of the Canyon Creek Nursery Planned Development Zone and the need to include specific operational restrictions and site development requirements not normally required for the uses listed above.

The Owner agrees to the following conditions of operations:

1. The Planned Development Zone is allowed only one (1) alcoholic beverage manufacturer.
2. Any seating area outside of any enclosed building for use by the patrons of the alcoholic beverage manufacturer shall have a fence installed at least 42 inches in height enclosing the outdoor area. There shall be no entry to the outdoor seating area for patrons except through the tap room.
3. Any music or entertainment, including any permanent or temporary speakers, outside of an enclosed building shall only be located along the eastern elevation of the greenhouse and office/brewery structures.
4. All outdoor activities associated with an event space rental shall cease by 9 pm. Indoor activities associated with an event space rental shall cease by 11 pm.
5. The owner shall install a 6-foot high earthen berm along the north property line adjacent to the boundary of Lot 2B, C/S 2224 (1604 S 48<sup>th</sup> St West). The berm shall extend from the 48<sup>th</sup> Street West road right of way (existing fence line) to the west 225 feet (obscuring all existing buildings on Lot 2B, C/S 2224). Evergreens and shrubs shall be planted along the top and sides of the berm to eliminate any unobstructed view from the residential property to the Canyon Creek Nursery property along the length of the berming. This installation shall be inspected and approved by the Planning Division before the alcoholic beverage manufacturer opens the tap room for patrons for the first time or before the first event space rental occurs.
6. All new parking lot lighting shall consist of pole standards no taller than 15 feet above grade with fully shield light fixtures so no part of the lens or fixture extends below the shielding. All outdoor parking lot lights shall be turned off at 10 pm unless an event space rental is scheduled. In this case, all parking lot lighting shall be turned off at midnight.

### **4. OTHER SPECIAL AGREEMENTS**

The Owner and County agree the existing four (4) drive approaches off 48<sup>th</sup> Street West may need to be modified in the future depending on specific traffic conditions on 48<sup>th</sup> Street West. Current studies indicate the intersection of 48<sup>th</sup> St West and Hesper Road will have good operations of a Level of Service (LOS) of C or better until 2035. These projections are based on current land use designations and development potential of property. If traffic flow conditions

do not follow these current projections, modifications to the four (4) access points may be required.

**5. PLANNED DEVELOPMENT AGREEMENT OR CHANGES**

Any modification of the approved development plan requested by the Owner shall be processed using the same procedures for a new application, as set forth in Yellowstone County Zoning Regulations. However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings:

- (1) No change in the overall character of the development;
- (2) No increase in the number of residential units greater than two (2) percent;
- (3) No additional allowed uses;
- (4) No reduction in open space greater than two (2) percent; and
- (5) No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

**6. EFFECT OF THIS AGREEMENT**

The provision of the Planned Development Agreement shall remain in full force and effect as to Owner and any and all persons becoming an owner of all or any portion of the property and all of such Owner’s heirs, personal representatives, successors and assigns.

**7. RIGHT TO ENFORCE**

The provisions of the Planned Development shall be enforced as provided for in the Yellowstone County Zoning Regulations in effect at the time of enforcement.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals on the date first above written.

“OWNER”

CCN, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ known to me to be the \_\_\_\_\_ of CCN, LLC who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public for the State of Montana

Printed Name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

This agreement is hereby approved and accepted by Yellowstone County, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

“COUNTY”

COUNTY OF YELLOWSTONE, MONTANA

County of Yellowstone  
Board of County Commissioners

BY: \_\_\_\_\_  
Chairman

BY: \_\_\_\_\_  
Member

BY: \_\_\_\_\_  
Member

Attest: \_\_\_\_\_  
County Clerk and Recorder

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ known to me

to be the Board of County Commissioners, and County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

Notary Public for the State of Montana

Printed Name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

# Exhibit A - Zone Change Plan CCN, LLC

