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When recorded  
return to:

CD DG Merrill, LLC  
4336 Marsh Ridge Road  
Carrollton, TX 95010

2018-005434

Klamath County, Oregon

05/01/2018 01:14:01 PM

Fee: \$67.00

**DECLARATION OF USE RESTRICTIONS**

THIS DECLARATION OF USE RESTRICTIONS (the "**Declaration**") is made this 30<sup>th</sup> day of April, 2018, by and between **CD DG Merrill, LLC**, a Texas limited liability company ("**DG Merrill**"), and **SFP-E, LLC**, an Oregon limited liability company ("**SFP**").

**WITNESSETH:**

WHEREAS, DG Merrill is the fee simple owner of that certain tract or parcel of land lying and being in Klamath County, Oregon, being more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (hereinafter referred to as the "**DG Merrill Tract**"); and

WHEREAS, SFP is the fee simple owner of that certain tract or parcel of land contiguous to the DG Merrill Tract and lying and being in Klamath County, Oregon, and being more particularly described on Exhibit "B" attached hereto and made a part hereof by this reference (hereinafter referred to as the "**SFP Tract**"; the DG Merrill Tract and the SFP Tract each being herein sometimes referred to individually as a "**Tract**" and collectively as the "**Tracts**"); and

WHEREAS, DG Merrill and SFP have agreed to impose certain use restrictions on the Tracts.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Declaration, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, DG Merrill and SFP do hereby covenant and agree as follows:

1. Benefited Parties/Binding Effect. The rights and obligations established in this Declaration shall run with the land and be for the benefit of the Tracts and shall run with the land comprising each of the Tracts and be binding upon the respective owners of the Tracts and their respective successors and assigns. The rights and obligations of the owner of each Tract shall apply only during such owner's period of ownership of the applicable Tract, and such owner's rights and obligations shall be deemed to be automatically assigned to and assumed by its successor or assignee upon conveyance of the applicable Tract without need for any further documentation or for consent of or notice to any party.

2. Restrictions on DG Merrill Tract. DG Merrill covenants and agrees that its Tract shall not be leased, rented, or occupied, and the owner of the DG Merrill Tract shall not allow to be leased, rented or occupied, any part of its Tract for any of the following: Sale, installation or servicing of tires, wheels, shocks, brakes, batteries or other automotive accessories, or alignment for any vehicle or trailer. The restrictions granted and the agreements contained in this Section 2 shall run with the land comprising the DG Merrill

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Tract and bind the owner of DG Merrill Tract and its successors and assigns, for so long as the SFP Tract is leased or occupied by SFP or any of its affiliates. An "affiliate", as that term is used in this Agreement, shall mean any entity that controls, is controlled by, or is in common control with SFP.

3. Restrictions on SFP Tract and DG Merrill Tract. SFP and DG Merrill each covenants and agrees that its respective Tract shall not be leased, rented, occupied, and the respective owners of such Tract shall not allow to be leased, rented or occupied, any part of its respective Tract for any of the following uses and purposes:

(a) Any unlawful purpose or in any way which would constitute a legal nuisance to an adjoining owner or occupant; (b) a discotheque, dance hall or night club; (c) a massage parlor; (d) funeral parlor; (e) bingo parlor; (f) car wash; (g) any use which emits a strong, unusual, offensive or obnoxious odor, fumes, dust or vapors; (h) any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (i) any "second hand" store or liquidation outlet; (j) any mobile home park, trailer court, labor camp, junk yard, recycling facility or stock yard; (k) any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located near the rear of any building); (l) any dry cleaners performing on-site cleaning services; (m) any automobile, truck, trailer or recreational vehicles sales, leasing, storage, display or body shop repair operation; (n) any living quarters, sleeping apartments or lodging rooms; (o) any veterinary hospital or animal raising facilities (except this provision shall not prohibit pet shops and shall not prohibit the provision of veterinary services in connection with pet shops or pet supplies business); (p) any establishment selling or exhibiting paraphernalia for use with illicit drugs, and establishment selling or exhibiting materials or devices which are adjudicated to be pornographic by a court of competent jurisdiction, and any adult bookstore, adult video store or adult movie theater; (q) any bar or tavern; provided, however, a bar within a restaurant shall be permitted; (r) any pool or billiard hall, gun range or shooting gallery, or amusement or video arcade; and (s) any use which creates fire, explosives or other hazards. Notwithstanding the foregoing, the operation of a full service tire center on the SFP Tract is permitted and such operation shall not be deemed in conflict with the above restricted uses.

The restrictions granted and the agreements contained in this Section 3 shall run with the land comprising each of the Tracts and bind the respective owners of the SFP Tract and the DG Merrill Tract, and their respective successors and assigns, until neither SFP nor any of its affiliates leases or occupies the SFP Tract.

4. Injunctive Relief. In the event of any violation or threatened violation of any of the terms, covenants and conditions of this Declaration, any or all of the owners of the Tracts shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. This right of injunctive relief shall be in addition to all the remedies available under statute, law or equity.

5. Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Oregon.

6. Miscellaneous. The paragraph headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration, and shall not be considered in any construction or interpretation of this Declaration or any part hereof. Nothing in this Declaration shall be construed to make the parties hereto partners or joint venturers. No party hereto shall be obligated to take any action to enforce the terms of this Declaration or to exercise any easement, right, power, privilege or remedy granted, created, conferred or established hereunder. This Declaration may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Declaration or their respective successors or assigns.

IN WITNESS WHEREOF, DG Merrill and SFP have set their hands and seals as of the day, month and year first above written.

Signed, sealed and delivered

in the presence of:

**CD DG MERRILL, LLC**, a Texas limited liability company

By: [Signature]  
Steve Rumsey, President

Wendee Zang  
Name: Wendee Zang  
Kara Bravo  
Name: Kara Bravo

STATE OF Texas  
COUNTY OF Benton

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of April, 2018, by Steve Rumsey, as President of CD DG Merrill, LLC, a Texas limited liability company, on behalf of the company, who did not take an oath and who:

X is/are personally known to me.  
\_\_\_ produced current \_\_\_ driver's license as identification.  
\_\_\_ produced \_\_\_ as identification.

Brenda Ellis  
Notary Public

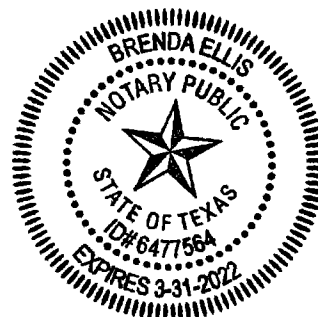
(Notary Seal Must Be Affixed)

TX

Name of Notary Printed

My Commission Expires: 3/31/2022

Commission Number: \_\_\_\_\_

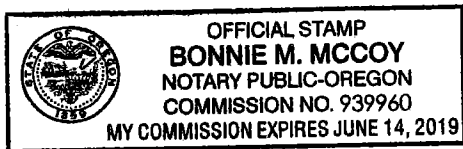


SFP-E, LLC,  
an Oregon limited liability company

By:   
Name: Corey J. Parks  
Its: Secretary

STATE OF Oregon )  
County of Deschutes ) ss.

This instrument was acknowledged before me this 27 day of April, 2018, by Corey J. Parks, the Secretary of SFP-E, LLC, an Oregon limited liability company, on behalf of the company.



Bonnie M. McCoy  
NOTARY PUBLIC FOR Oregon  
My Commission Expires: 6/14/2019

EXHIBIT "A"

Legal Description of DG Merrill Tract

Parcel 2 of Land Partition 5-18, a Replat of Parcel 2 of Land Partition 19-15, situated in the South Half of Section 2, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, recorded March 15, 2018 as 2018-002859, records of Klamath County, Oregon.

EXHIBIT "B"

Legal Description of SFP Tract

Parcel 1 of Land Partition 5-18, a Replat of Parcel 2 of Land Partition 19-15, situated in the South Half of Section 2, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, recorded March 15, 2018 as 2018-002859, records of Klamath County, Oregon.