

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE McHENRY BUSINESS PARK**

THIS DECLARATION of Covenants, Conditions, and Restrictions for the McHenry Business Park (the "Declaration") is made this 4th day of December, 2012, by THE BOARD OF COUNTY COMMISSIONERS OF GARRETT COUNTY, MARYLAND (the "Declarant"), whose address is 203 South Fourth Street, Room 208, Oakland, Maryland 21550.

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Dec 04, 2012 11:45 am

DEFINITIONS

"Architectural Committee" shall refer to the reviewing and enforcement entity for the Business Park.

"Building" shall refer to any building located in the Business Park.

"Building Site" shall refer to any building site within the Business Park.

"Business Park" shall refer to the McHenry Business Park as described in Paragraph 1.1 as set forth below.

"Common Area" shall refer to those portions of the Business Park, including, but not in any way limited to, retention ponds, drainage ways, medians, private streets, signs, landscaped areas, and other common facilities or structures that may be held presently and in the future by Declarant.

"Covenants" shall refer to the covenants, conditions and restrictions set forth herein.

"Declarant" shall refer to the Board of County Commissioners of Garrett County, Maryland.

"Improvements" shall refer to all improvements to property located within the Business Park.

"Owner" shall refer to any private entity owning property within the Business Park.

"Plans" shall refer to any plans for the construction of improvements within the Business Park.

"Tenant" shall refer to any tenant of property located within the Business Park.

**ARTICLE 1
(Recitals)**

1.1. Property Ownership: Declarant is the record title holder and Owner of that certain real property located near McHenry in Garrett County, Maryland, pursuant to a deed from the Garrett County Sanitary District, Inc. to The Board of County Commissioners of Garrett County, Maryland, dated January 12, 2010 and recorded February 18, 2010 in Liber No. 1495, Folio 0072 among the Land Records of Garrett County, Maryland, said real property being more particularly described on a Plat of Survey dated March 4, 2009 as prepared by Floyd E. Bargy, Jr., MD PLS #20015, a copy of which plat is attached hereto as Exhibit "A" and incorporated by reference herein as if more particularly set forth (the "Business Park").

1.2. General Purpose: The declared purpose of these Covenants is to ensure proper use and development of each parcel in the Business Park, to protect the environment, to guard against the development of improper, unsuitable structures and uses, to maintain property values, to ensure protection from incompatibility and unsightliness, to protect the health and safety of residents in the area of the Business Park, and to attract quality businesses and industries to the Business Park.

1.3. Covenants to Run with the Land: Each lot shall be conveyed subject to the Covenants set forth herein, all of which shall run with the land and shall be binding on all parties and all persons, unless an instrument terminating this Declaration is adopted by Declarant.

**ARTICLE 2
(Repurchase Rights)**

2.1. Failure to Build: In the event the Owner of a Building Site purchased from Declarant does not obtain a building permit within one (1) year after the date of purchase and complete construction within eighteen (18) months of the issuance of said building permit, Declarant has the option to repurchase said Building Site at the Owner's original purchase price.

2.2. Resale of Vacant Land: In the event the Owner of a Building Site purchased from Declarant elects to sell any vacant portion thereof, the Building Site shall first be offered, in writing, to Declarant. Declarant shall have sixty (60) days from the date of receipt of such offer to accept or reject repurchase of the vacant portion thereof, unless an extension of time is mutually agreed upon by the parties and set forth in writing. The purchase price shall be computed as set forth in Paragraph 2.1 above. Conveyance shall be by warranty deed. Owner shall furnish a title insurance policy at Owner's expense. In the event Declarant does not elect to repurchase the property, Owner may sell the land, but these Covenants shall run with the land and be binding upon any subsequent Owner.

2.3. Subdivision of Lots: After a Building Site has been purchased, such Building Site shall not be further subdivided nor shall any Building Site be combined with any

other Building Site without the written consent of Declarant. No Owner may sell, lease, or rent less than all of the Building Site without the prior written consent of Declarant. The foregoing prohibition shall not apply to occupancy leases of space in a Building made in the ordinary course of business.

**ARTICLE 3
(Restrictions)**

3.1. Permitted Land Uses: Only businesses engaged in either light manufacturing, information technology development, or administrative, financial, professional, and technical services are permitted to operate within the Business Park.

3.2. Aviation: All property within the Business Park is granted, conveyed, or leased subject to an aviation and hazard easement providing for the free and uninterrupted right-of-way for the passage of all aircraft, by whomever operated or owned, in the airspace above the Business Park and any Building, Building Site, or Common Area within the Business Park above a mean sea level (“MSL”) of 3,083 feet to an infinite height, together with the right to cause in the airspace above the Business Park such noise, vibration, fumes, odor, or visual disturbance, and all other effects that may be caused by the operation of aircraft landing at, taking off from, or operating at, in, above, around, near, or on the Garrett County Airport (the “Airport”), its successors and assigns. No Building, Building Site, or Common Area within the Business Park may be improved by the erection of any Building, structure, tree, or any other object of whatsoever kind or nature extending into the airspace above the Business Park above an MSL of 3,083 feet. No use shall be made of property within the Business Park so as to create electrical interference with radio communication between aircraft or between any radio on or associated with the Airport or aircraft, or make it difficult for flyers to distinguish between Airport lights, or in any other respect to impair visually, in the vicinity of the Airport, the free flow of traffic in and out of the Airport, or to otherwise endanger the landing, taking off, or maneuvering of aircraft at the Airport.

3.3. Plan Approval: No Improvements shall be constructed, erected, placed, altered, or permitted on any portion of the Business Park until the Plans thereof have been approved by the Architectural Committee, as more fully set forth in Article 5 of this Declaration.

3.4. Variances: Notwithstanding anything contained herein to the contrary, Declarant expressly reserves the right at any time to authorize, in writing, variances from the strict applications of these Covenants, or any one or more of them, where the circumstances, in its sole and exclusive judgment, justify the granting of the same.

3.5. Setbacks: Setbacks shall be in accordance with Garrett County permitting or the Architectural Committee requirements.

3.6. Off-Street Parking: No parking shall be permitted on any street or road or at any place other than on the parking areas provided for each Building Site. Each Owner

and Tenant shall be responsible for compliance with the foregoing by its guests, employees, etc. Each Owner and Tenant shall provide adequate off-street parking for its guests, employees, etc.

3.7. Loading Areas: No use of public roadways for loading or maneuvering to load shall be permitted. Adequate off-street loading and maneuvering areas shall be provided for each Building located on a Building Site, and all loading and servicing docks and bays shall be designed as an integral part of the Building architecture.

3.8. Outside Storage: No materials, pallets, racks, tanks, supplies, goods, articles, equipment, and/or finished or semi-finished products or articles of any nature shall be stored or permitted to remain outside of any Building without the prior written consent of the Architectural Committee. All such outside storage areas permitted, and all waste and rubbish storage facilities, shall be within an enclosed area, properly screened, and shall have an all-weather surface. No materials or wastes shall be deposited upon any Building Site in such a form or manner that they may be moved by natural causes or forces. Further, toxic, corrosive, and/or flammable or explosive liquids, gases, or solids may only be stored in bulk above ground, and any such items shall be kept and maintained upon a Building Site only upon the prior written consent of the Architectural Committee and in strict compliance with the most current adopted Fire Code and Building Code of Garrett County and any other applicable governmental law, ordinance, rule, or regulation.

3.9. No Offensive Uses: No noxious, illegal, hazardous, dangerous, or offensive trade, services, or activities shall be conducted on any Building Site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owners, Tenants, or guests of other Building Sites within the Business Park by reason of unsightliness or the excessive emission of fumes, odors, glare, heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke, or noise.

3.10. Performance Standards: The Architectural Committee, in its sole discretion, shall have the right to impose use and performance standards in order to ensure proper use and appropriate development and improvement of the Building Site.

3.11. Airport Zoning Code: The McHenry Business Park is also subject to the Airport Zoning Code adopted by the Declarant on January 31, 2006, as set forth in the Garrett County Code of Ordinances.

ARTICLE 4 **(Landscaping)**

4.1. Landscape Plan: A landscape plan shall be provided to the Architectural Committee. The landscaping upon any Building Site shall be carried out in such a manner as to be consistent with a detailed landscaping plan reviewed and approved in writing by the Architectural Committee. The landscaping plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size,

root condition, and quantity of all plant material. The Plan shall show all ground cover and mulch areas, landscape and construction materials, and construction details.

4.2. Landscaping Methods: Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover, and other landscape materials, including permanent sprinkler systems, fountains, storm run-off retention ponds, reflective ponds, and landscape lighting.

4.3. Time for Completion: All landscaping shall be completed within ninety (90) days following occupancy, or as soon thereafter as weather will allow if such period occurs within winter months.

4.4. Maintenance: Landscaped areas, materials, fixtures, and Improvements shall be maintained by the Owner of the Building Site or by such Owner's long-term Tenant in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, replacement of dead plantings, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the Building Site landscaping in a healthy state of growth and visually attractive in appearance.

4.5. Lighting: Lighting shall be of a type and installation such that no direct glare may be seen from any other Building Site, adjoining properties, or roadways inside or outside of the Business Park. Site lighting shall use only architectural grade metal poles and cutoff type fixtures of a style and lamp type consistent with the other approved lighting in the Business Park.

4.6. Exterior Materials: Construction will be of a unified and integrated character befitting of a business park. To maintain a high standard of construction and appearance, the exterior walls of each Building are to be predominantly constructed of durable, permanent materials such as glass, glass block, brick, colored decorative concrete masonry units, architectural finish tilt-up, or pre-cast concrete panels or architectural composite metal panels without exposed fasteners.

4.7. Signs: No billboards or other signs of any type or purpose shall be permitted anywhere within the Business Park without the prior written approval of the Architectural Committee. All signs shall conform to applicable laws, codes, ordinances, rules, and regulations of Garrett County, and all other such applicable laws and governmental regulations. Identification signs shall be restricted to advertising only the persons or companies located on the Building Site. No signs shall be devised or constructed so as to rotate, gyrate, blink, or move in any animated fashion. Temporary signs may be used for construction, design team information, or future tenant identification. No sales or leasing signs shall be permitted unless specifically approved in writing by the Architectural Committee.

4.8. Fences: Fencing material and location must be reviewed by the Architectural Committee. Screening fences and walls, if required and permitted, shall be of a height at least equal to that of the materials or equipment being screened.

4.9. Open Space: The Owner must provide a minimum of twenty-five percent (25%) green space within each Building Site.

4.10. Fire Protection: Each Owner shall be responsible for providing fire protection for the Buildings and Improvements located on its respective Building Site based on existing water service to the Business Park.

**ARTICLE 5
(Architectural Committee)**

5.1. Creation of the Committee: There is hereby established and created an Architectural Committee (the "Committee"), which shall consist of five (5) members, namely, the Directors of Garrett County's Department of Economic Development, Office of Planning and Land Development, and Department of Engineering, Garrett County's Chief of Permitting and Inspections, and a designated staff representative of Garrett County Government, or their individual designees, who will serve at the will of Declarant. Members of the Committee may be removed and replaced by Declarant at any time, with or without cause. The vote of a majority of the members of the Committee shall constitute the action of the Committee on any matter being considered.

5.2. Designated Contact of the Committee: The designated contact for the Committee is the Garrett County Department of Economic Development, 203 South Fourth Street, Room 208, Oakland, Maryland 21550; Telephone: (301) 334-1921.

5.3. Approval of Plans: No Improvement shall be commenced until approved in writing by the Committee. The Committee shall exercise its reasonable discretion so that all Improvements conform and harmonize with all other existing or proposed Improvements with respect to external design, color scheme, shape, height, type of materials, quality of workmanship, location of Building Sites, set backs, building envelopes, topography, finish grade elevation, preservation of views, natural resource conservation, circulation patterns, vehicular access, pedestrian circulation, parking, fencing and storage areas, landscaping, and easements, so as to assure that the Business Park will consist of an attractive, integrated development wherein all Improvements are designed to conform to and complement natural topography and existing and proposed Improvements. In the event of any conflict between the provisions hereof and the provisions of any law, ordinance, or regulation, the more restrictive criterion shall control.

5.4. Plans: Plans submitted to the Committee by Owner at Owner's expense shall be in writing signed by Owner or its authorized agent and shall include the following:

5.4.1. Architectural plans and specifications, including Building elevations, type of materials, exterior colors, exterior lot lighting, brief description of mechanical systems, structural systems, floor plans, typical wall sections, and roof construction and appurtenances;

5.4.2. Site plan showing the location and design of all Improvements (including all Buildings proposed to be constructed on the Building Site at a future time), fences, streets, roadways, parking areas, storage areas, lighting plan, number, size and layout of parking spaces, setbacks, loading areas, trash areas, pedestrian circulation patterns, sidewalks, fire hydrant locations, retaining walls, landscaped areas, grading and drainage, easements, utilities, driveways, sidewalks, and curb cuts;

5.4.3. Proposed development schedule, covering each phase of development of the Building Site;

5.4.4. Description of proposed operations or uses, including an estimated maximum number of employees;

5.4.5. Description of measures that will be taken to mitigate adverse characteristics such as water, noise, air, surface, and subsurface pollution;

5.4.6. Complete landscape plan showing location, size, and species of trees and shrubs, turf mixtures, irrigation plan, and planting specifications;

5.4.7. Signage plan showing size, height, design, location, color, materials, construction, and lighting plans relating to each intended sign;

5.4.8. Evidence of all required permits; and

5.4.9. Such other information as the Committee may deem pertinent in the evaluation of the proposed Improvements, or may be required by the Committee in order to perform its function hereunder.

ARTICLE 6 (Procedures)

6.1. Approval of Plans. The Committee shall approve or disapprove all Plans within thirty (30) days after receipt of five (5) complete sets of the Plans, including all items described in Paragraph 5.4 above. In the event the Committee fails to approve or disapprove such Plans within thirty (30) days of the submittal thereof, then the Owner submitting the Plans shall submit to the Committee a notice of non-action.

6.2. Notice of Non-Action. In the event the Committee fails to approve or disapprove such Plans within ten (10) days after receipt of a notice of non-action from the Owner, then such approval shall not be required, provided no Improvement which violates any of the Covenants contained herein shall be erected or be allowed to remain on any Building

Site. The issuance of a building permit or certificate of occupancy, which may be in contravention of this Declaration, shall not prevent the Committee from enforcing these Covenants. Further, notwithstanding any approval by the Committee, it is the sole responsibility of each Owner to obtain any and all required approvals and permits from Garrett County and any other governmental entity prior to the commencement of the construction of any Improvement, and the Architectural Committee shall not have any obligation or responsibility to secure any such approvals or permits.

6.3. Disclaimer of Liability: Neither Declarant, the Committee, nor their respective members, successors or assigns, shall be liable for damages to anyone submitting Plans for approval, to any Owner, or to any third party, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of any such Plans. Every person who submits Plans for approval agrees by the submission of such Plans, and every Owner of any Building Site covenants and agrees by acquiring title thereto or an interest therein, that Owner will not bring any action or suit against Declarant or the Committee, or their respective members, successors or assigns, to recover any such damages.

ARTICLE 7 (Maintenance and Enforcement)

7.1. Construction Period: Owner is required to promptly and diligently commence construction of all approved Improvements in accordance with the approved construction schedule and to secure additional approval for any delay. During construction, a Building Site shall be cleaned up on a reasonable periodic basis, and all trash, rubbish, and debris shall be promptly removed therefrom after such construction or work is completed. All construction storage and equipment yards shall be located on a Building Site in a manner that minimizes the impact on adjacent Building Sites and streets.

7.2. Site and Building Maintenance: Each Owner or Tenant shall keep its Building Site and Improvements in a safe, clean, and neat condition; shall remove, replace, or restore all such items not in such condition; and shall comply in all respects with all government, safety, health, and police requirements. Each Owner or Tenant shall remove, at its own expense, any rubbish or trash of any character which may accumulate on such Owner's or Tenant's Building Site and shall keep non-landscaped areas mowed. Rubbish, trash, garbage, or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed on any Building Site, except as necessary during the construction period. Rubbish and trash shall not be disposed of by burning in open fires or incinerators at the Business Park.

7.3. Owner's Failure to Maintain: In the event Owner fails to maintain its Building Site or the Improvements located thereon, including, but not limited to, the landscaping thereon as required herein, then Declarant shall have the right and powers set forth in Paragraph 9.7 below. Upon Declarant's determination of such failure by Owner to

adequately maintain Owner's Building Site or Improvements, Declarant shall so notify Owner in writing. If Owner has not (a) commenced such maintenance and either completed it or is diligently pursuing completion of it, or (b) notified Declarant of a firm date on which such maintenance shall be commenced and pursued with diligence, such date to be acceptable to Declarant in its sole discretion, within ten (10) days after Owner's receipt of the aforesaid notice of failure to maintain, then Declarant may undertake and complete such maintenance and assess the cost of such maintenance against Owner, and, if such assessment is not paid within thirty (30) days after Owner's receipt of written notice of such assessment, such assessment, together with interest, costs, and reasonable attorney's fees, shall constitute a lien on the Building Site and may be enforced as set forth in Paragraph 9.7 below.

7.4. Deemed to Constitute a Nuisance: Every violation of this Declaration, or any part hereof, is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed by law or equity against Owner and/or Tenant shall be applicable against every such violation and may be exercised by Declarant.

7.5. Attorneys' Fees: In any legal or equitable proceeding for the enforcement hereof or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the court in such proceedings. In the event Declarant's attorneys' fees and/or any other fees, costs, or expenses are assessed against Owner pursuant to any provisions of this Declaration and are not paid by Owner, such fees, costs, and/or expenses shall constitute a lien against the Building Site subject thereto pursuant to Paragraph 9.7 below.

7.6. Non-Waiver: The failure of Declarant to enforce any provision of this Declaration shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other provision of this Declaration.

7.7. Non-Compliance: Anything herein to the contrary notwithstanding, if any Improvement is erected or constructed on any Building Site or changed, modified or altered without prior compliance with the provisions of this Declaration, or other than in accordance with approvals thereto previously granted by the Architectural Committee, then, and in such event, Declarant may enforce the provisions of this Declaration, including those set forth in this Article 7. If any Improvement is changed, modified, or altered without prior approval of the Architectural Committee, then Declarant reserves the right to require Owner to cause the Improvements to be restored to comply with the Plans originally approved by the Architectural Committee, and Owner shall bear all costs and expenses of such restoration, including the costs and reasonable attorneys' fees of the Architectural Committee.

ARTICLE 8

(Duration, Amendment, and Assignment of Covenants and Provisions)

8.1. Duration: This Declaration shall continue and remain in full force and effect, in perpetuity from the date of recordation hereof, unless terminated in accordance with the provisions of this Article 8.

8.2. Amendment: Any provision contained in this Declaration may be amended or repealed by the recording of a written instrument or instruments specifying the amendment or the repeal signed by Declarant and by the Owners of all Building Sites in the Business Park at the time of said amendment or repeal.

8.3. Effect of Provisions of Declaration: Each provision of this Declaration and any agreement, promise, covenant, and undertaking to comply with each provision of this Declaration shall be deemed a Covenant running with the land as a burden with and upon the title to each Building Site within the Business Park for the benefit of any other Building Site within the Business Park.

8.4. Limited Liability: Neither Declarant nor the Architectural Committee, their respective members, successors, or assigns, nor any director, partner, officer, member, agent, or employee of any of them, shall be liable to any party for any action or failure to act with respect to any matter concerning this Declaration, if the action involved or failure to act was undertaken in good faith.

8.5. Assignment: All or any part of the rights, powers, and reservations of Declarant herein contained may be assigned by Declarant, in whole or in part, to any person, corporation, or association, including, without limitation, an Owners' Association, which will assume any or all of Declarant's duties hereunder. Upon executing a writing evidencing its acceptance of such assignment, such assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers as Declarant, and be subject to the same obligations and duties as are given to Declarant herein. Any such assignment shall be recorded among the Land Records in the Office of the Clerk of the Circuit Court for Garrett County, Maryland. Upon any such assignment and to the extent thereof, the Declarant shall be relieved from all liabilities, obligations, and duties so assigned and assumed.

ARTICLE 9

(Miscellaneous)

9.1. Notice and Acceptance: Every person or entity which now or hereafter owns or acquires any right, title, or interest in or to any portion of the Business Park is and shall be conclusively deemed to have consented to every Covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired said interest.

9.2. Severability. Invalidity or unenforceability of any provision of this Declaration, in whole or in part, shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

9.3. Singular and Plural: When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender and the singular the plural and vice versa.

9.4. Successors and Assigns: Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, Owners, and their respective heirs, personal representatives, successors, and assigns.

9.5. Reservations by Declarant: Declarant reserves all rights to the Business Park not herein granted, including, without limitation, the rights to change the zoning classification and to re-subdivide, subject to a condominium regime or additional covenants or restrictions, any portion of the Business Park prior to the conveyance of such portion to an Owner.

9.6. Invalidation: A failure to enforce any of said Covenants at the time of its violation shall in no way affect any of the other Covenants nor be deemed a waiver of the right to enforce the same thereafter.

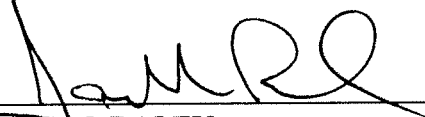
9.7. Enforcement: The Declarant has the responsibility to ensure compliance with the Covenants set forth herein through any and all lawful means. In the event an Owner fails to perform in accordance with these Covenants, Declarant, upon recommendation of the Architectural Committee, may take whatever corrective measures it deems appropriate and assess the cost thereof against the Building Site in the same manner as a special charge. Declarant shall give at least thirty (30) days' notice to the Owner of any violation and the steps required to correct said violation prior to taking any action to cure such violation.

9.8. Captions: The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

THE BOARD OF COUNTY COMMISSIONERS
OF GARRETT COUNTY, MARYLAND

(SEAL)

BY:  (SEAL)

JAMES M. RALEY
Chairman

ATTEST:



R. LYMONT PAGENHARDT
County Administrator

Return to:
Kim E. Durst
Economic Development Specialist
Garrett County Dept. of Economic Development
203 S. Fourth Street, Room 208
Oakland, MD 21550

EXHIBIT "A"

CAD FILE: R:\eng\30-1592 McHenry Business Park\Drawings\Plots\MBP - Plot of Survey\MBP - Plot of Survey.dwg PLOT DATE: 02/28/2010

