

TOPSHAM BUSINESS PARK
TOPSHAM, MAINE

DECLARATION OF COVENANTS AND RESTRICTIONS

Definitions: As used in this Declaration:

(a) The word "Developer" shall mean and refer to The Topsham Development Incorporated, its nominees, successors and assigns.

(b) When referring to parties against whom this Declaration may be enforced, the words "owner" or "lot owner" shall mean and refer to any person having record title to a lot or parcel of land shown on the Plan within the Business Park and/or any person who has a legal or equitable interest (possessory or otherwise), or claim therein (including but not limited to interests created by lease, will, contract, adverse possession or prescription). In all other instances the word "owner" or "lot owner" shall refer to title holders and owners of record.

(c) The word "parcel" shall mean and refer to any premises, lot or parcel of land shown on the Plan, within the Business Park, or part or combination thereof.

(d) The word "Park" shall mean and refer to the 25 acre Business Park development as shown on the Plan in its developed, partially developed or undeveloped state.

(e) Whenever and wherever the context of the Declaration so requires, the singular shall include the plural and gender shall be modified to correspond with the appropriate gender.

(f) The word "person" shall, where the context hereof may require, mean and refer to any natural born person and any legal entity, including but not limited to, corporations, partnerships, trusts, and associations.

1. Covenants and Enforceability

A. The following covenants, restrictions and easements shall run with the land designated in the Business Park. Any subsequent conveyances, leases, mortgages or other dispositions of such land or any part thereof shall be subject to these covenants and restrictions and easements.

B. The covenants, restrictions and easements set forth in this Declaration shall not terminate or otherwise expire until July 31, 2031.

C. The covenants, restrictions and easements shall be jointly and severally enforceable by the Developer and its assigns and by its grantees, their successors and assigns. The violation or attempted violation of any covenant, restriction or easement is hereby declared a nuisance which may be remedied by any appropriate legal proceeding. If any landowner shall attempt to violate, or permit any violation of any of the covenants, restrictions or easements described herein, the Developer or any owner of a parcel may commence proceedings at law or equity, either to recover damages or other awards for violations, or to enjoin the furtherance or continuation of such violations, or both.

By accepting delivery of a deed to a parcel of land shown in the Business Park each owner of record covenants that if a judgment is rendered against such owner as a result of an action or actions brought on this Declaration, to pay all reasonable costs, including reasonable attorney's fees, incurred in the prosecution of said claim. By acceptance of a deed to a parcel subject to the provisions of this Declaration, each owner covenant and agrees to abide by all such provisions.

D. In the event of a violation or breach of any of the covenants, restrictions, easements or agreements set forth in this Declaration, and if such breach or violation has not been remedied or corrected within thirty (30) days after delivery of notice of such violation or breach by the Developer to the occupant of the parcel on which the violation or breach has occurred, [or in the alternative, within thirty (30) days after mailing such notice to the record owner of such parcel at his last known address] the Developer shall have, in addition to other remedies and rights it enjoys, the following remedy and right: The Developer may enter upon the parcel as to which such violation or breach has occurred or exists and summarily abate and remove any erection or thing or correct any condition which constitutes such violation or breach. Actions taken by the Developer pursuant to this paragraph including reasonable attorney's fees shall be at the expense of the owner of such parcel, which expense shall be an encumbrance and lien on such parcel, notice of which shall be recorded in the Cumberland County Registry of Deeds.

2. Land Use.

A. Prior to any development of a lot the owner or prospective owner, with the consent of the Developer and on behalf of the Developer, shall submit to the Department of Environmental Protection, for review and approval, a plan for such lot's development. The plan shall include, and not be limited to, the type and size of industry, location of all structures, types and volumes of wastes to be generated and disposed of, the location and nature of disposal, the types and volume of traffic anticipated, and individual lot landscaping and/or visual screening plans.

B. Each parcel shall be used for those uses permitted as listed below:

light manufacturing
offices
lab: research facility
warehousing
storage
distribution
wholesale trade

Since no list of uses can be all inclusive the Developer will determine if the proposed use meets and maintains the commercial quality of the Park.

C. The Developer may, at its sole discretion, on a time by time and lot by lot basis permit such use on any one of the lots on such specific conditions and subject to such additional restrictions as it shall deem proper based on compatibility of uses already in the Park.

D. The Developer reserves the right to further limit or restrict the use of any particular parcel; and, such further limitations or restrictions shall be contained in the deed of the owner conveying said parcel and shall apply to only the parcel(s) to which such restrictions are specifically directed in said deed. Additional restrictions may be made on a lot by lot basis.

E. No use will be made of any parcel and no materials or products may be manufactured, processed or stored thereon which cause or constitute, or in the opinion of the Developer may cause or constitute, an undue fire hazard, a nuisance, the emission of noxious odors, gases or smoke or cause noises or vibrations or other conditions which may have a detrimental effect on the surrounding environment or other lot owners in the Park.

3. Setbacks, Plans and Specifications.

A. (1) No building or parking area, any part thereof, or projection therefrom, shall be erected on, within or extend over a strip of land fifty (50) feet in width from a abutting residential zone; within twenty-five (25) feet of Park Road; within fifteen (15) feet of any boundary line of a parcel, unless two or more contiguous parcels are owned by the same person.

B. No building, fence, wall, sign, loading facility, outside storage facility, parking area, landscaping, facility for industrial waste or sewage disposal, nor any other improvement shall be commenced, erected or constructed, nor shall any addition thereto or change or alteration therein be made (except to the interior of the building), nor shall any change in the use of any premises be made,

until the plans and specifications therefor, showing the nature, kind, shape, heights, materials, color scheme, and lighting, of the exterior of the structure and location on lot of the proposed improvements, grading, landscaping or alterations and the proposed use or change in the use of the premises, shall have been submitted to and approved in writing by the Developer and a copy of such plans and specifications as finally approved lodged permanently with the Developer. The Developer shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which the Developer, in its sole discretion, may deem in the best interest of the Park and the owners or lessees or prospective owners or lessees of other properties therein.

C. Parking is prohibited on all roads and "future roads" as shown in the Business Park. Each lot owner shall provide, subject to the setback and buffer restrictions, necessary and adequate parking facilities and private driveways, subject to the Developer approval.

D. The construction, alteration and use of any and all improvements within the Park shall be in accordance with the requirements of all applicable state and local building, zoning, health and other statutes, codes, ordinances and regulations.

E. No lot or parcel may be subdivided or resubdivided without the written consent of the Developer.

4. Construction and Maintenance.

A. All exterior construction on any building or structure shall be completed within two (2) years from the date construction (including excavation) begins unless the Developer extends such period in writing.

B. During construction it shall be the responsibility of each lot owner to insure that construction sites are kept free of unsightly accumulations or rubbish and scrap materials, and that construction materials, trailers, sheds, and the like are kept in a neat and orderly manner.

C. Each lot owner shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each lot owner shall provide for the removal of trash and rubbish from his premise.

D. The Owner will maintain all undeveloped land owned by it within the Park in a manner compatible with the provisions of this paragraph 4.

5. Repurchase Options.

A. If a purchaser, or his successors and assigns, of a parcel

has not begun, in good faith, and substantially completed, the construction of an acceptable building within two (2) years from the date of execution of a purchase and sale agreement for the parcel with the Owner [and if none, two (2) years from the date of execution of the deed from the Owner to purchaser] or construction of a building or structure has not been completed pursuant to paragraph 4.A. of this Declaration, the Developer shall have the option, at its discretion, to enter onto the premises, take possession of the parcel, enforce the issuance of a deed to the Developer and pay the original purchase price (that price which was originally paid to Owner) without interest to the then owner.

B. Developer shall have a right of first refusal in the event of any proposed transfer or sale of a parcel as follows:

In the event any owner of record of a parcel of land within the Park desires to sell all or part of that portion of a parcel which does not have substantial improvements thereon, separate and apart from the improved portion of the parcel, then the Developer shall have the prior right and option to purchase the unimproved portion of the parcel at the same price and terms paid by the original owner of record to Owner for said parcel when originally acquired; said repurchase price to be based on prorated square footage. Prior to such sale, Owner shall receive all approvals necessary for the sale including, but not limited to, Department of Environmental Protection approval and municipal Planning Board approval.

C. Prior to any proposed sale of all or part of a parcel of land within the Park which parcel has come under the terms of paragraph B above, the owner of record of the parcel shall notify the Developer of its intention to sell, assign or transfer the parcel by a signed written notice to the Developer. The notice shall accurately describe the premises to be sold and Developer shall have forty-five (45) days from the date of receipt of said notice to exercise its option to purchase. Developer shall exercise its option to purchase by serving a written notice on the record owner within said forty-five (45) day period; and, in the absence of written notice of Developer's intent to exercise its option the record owner shall be free to sell to any person at any price. If the Developer seasonably exercises its option to purchase, Developer shall have forty-five (45) days from the date of its notice of exercise within which to tender the purchase price established pursuant to paragraphs A and B. above. If the Developer does not exercise its option to purchase and the subject parcel is acquired by any purchaser other than Developer such new owners shall comply with the rules and regulations established pursuant to paragraph 9.A. regardless of prior compliance by the prior owner of the parcel.

6. Waiver.

Any delay or failure to enforce, any provision of these covenants, restrictions and easements in a particular situation shall not be deemed a waiver or abandonment of such provision as it

may apply to the same or another situation or the same or similar situation at any other location in the Park or of any other provision of these covenants, restrictions and easements. The failure to enforce any provision of this Declaration on any occasion shall in no event be deemed a waiver of the right to do so thereafter as to the original breach or violation or any subsequent breach or violation. The invalidation of any provision of the Declaration by a court of competent jurisdiction shall not affect the validity of any other provision of this Declaration and all such other provisions hereof shall remain in full force and effect.

7. Nominees, Agents and Successors of Developer.

The Developer may from time to time assign and/or delegate any or all of its rights, powers, discretion and duties hereunder to such agent or nominee as it may appoint or nominate. It may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title easements and estates reserved to it by deed or this Declaration to any one or more corporations, associations or persons that will accept the same. Any such assignment shall be in a recorded writing and the assignee shall join thereafter for the purpose of evidencing its acceptance of the same, and such assignee shall thereupon have the same rights, title powers, obligations, discretion and duties as are herein reserved to the Developer and the Developer shall thereupon be released therefrom.

8. General Standards.

A. No more than fifty (50%) of any parcel may be covered by buildings.

B. All parking areas are to be paved.

C. No material, supplies, or products shall be stored or permitted to remain on the premises outside a permanent structure without the prior written consent of the Developer.

D. All setback areas facing roads between the building and the curb, with the exception of driveways, sidewalks and other walkways and signs, shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground covering or material as approved by the Developer.

E. The Developer may, from time to time, enter onto a parcel or lot to inspect the same for compliance with this Declaration and Operating Rules and Regulations.

F. Occupants of the Park shall not cause or make any excessive noise, odors, harmful sewage, vibration or nuisance that would conflict with the purposes or restrictions of the Park.

G. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

H. All buildings and grounds shall be maintained in good condition and repair.

I. No temporary signs shall be installed or erected on any lot at any time.

J. No freestanding post sign shall be greater than fifty (50) square feet per face in size and no higher than eight (8) feet to the top of the sign from the surrounding grade.

K. All setback areas are to remain in natural vegetation to the greatest extent practicable. If the natural vegetation must be altered due to the topography of the parcel and based on an approved development plan then new plantings shall be installed to match the original in number and density. Such landscape plan shall be approved by the Developer.

9. Administrative and Operating Regulations.

A. The Developer may, from time to time, adopt and amend such administrative rules and regulations for the sale and development of parcels within the Park, the review of proposals, plans and uses, and the carrying out of its responsibilities and duties set forth in this Declaration, as it shall deem fit and necessary. The Developer may require that an owner of a lot provide evidence of financial responsibility and/or post a performance bond prior to lot development to guarantee the owner's compliance with these covenants and any additional standards or restrictions placed on the owner of lot.

B. The Developer may, from time to time, adopt and amend such operating rules, regulations and additional General Standards governing the use and operation of the Park.

10. Notice.

All notices required hereby shall be in writing and served on the intended recipient by Certified Mail.

11. Separability.

If any provisions of these covenants are declared to be invalid, that declaration does not affect the remainder of the covenants.

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ATTEST: *Barbara J. Shaw*
REGISTER OF DEEDS