

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

MAINE BUSINESS ENTERPRISE PARK

This Declaration, made this 24th day of September, 2001, by the CITY OF BANGOR is made with reference to the following facts:

RECITALS:

A. The City of Bangor is the owner of that certain real property in the City of Bangor, County of Penobscot, State of Maine, described in Exhibit A attached hereto and by this reference incorporated herein, and known as Maine Business Enterprise Park (MBEP).

B. MBEP is being developed as a planned business/industrial park. It is the City of Bangor's desire and intention to subject the real property in said business park to certain covenants, conditions, and restrictions for the benefit of the property, the City of Bangor, and the lessees of lots in MBEP. It is intended that said covenants, conditions, and restrictions bind and benefit not only said lessees and MBEP, but also their respective successors, heirs, and assigns and that all lots in MBEP should be held, used, leased, and conveyed subject to the covenants, conditions, and restrictions set forth in their Declaration.

C. It is the intention of the City of Bangor to further a plan of subdivision by means of the covenants, conditions, and restrictions set forth in this Declaration. Said covenants, conditions, and restrictions are intended to be common to all of the lots in MBEP and to enhance and protect the value, desirability, and attractiveness of all such lots to their mutual benefit.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, as used in this Declaration, have the meanings herein set forth:

1.1 Beneficiary. The term "beneficiary" shall mean a mortgagee under a mortgage as well as a beneficiary under a deed of trust.

1.2 Declarant. The term "Declarant" shall mean the City of Bangor and, to the extent provided in Article VIII of this Declaration, its successors and assigns.

1.3 Declaration. The term "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for MBEP as it may from time to time be amended or supplemented.

1.4 Deed of Trust. The term "deed of trust" shall mean a mortgage as well as a deed of trust, the term "mortgage" to include a recorded contract for sale or bond for a deed, to the extent that such a contract or bond operates as a mortgage in favor of the seller under 14 M.R.S.A. Sec. 6203-F or other or successor statute.

1.5 Design Professional. The term “design professional” shall mean an architect or professional engineer holding a certificate of registration to practice in the State of Maine under the authority of Title 32 M.R.S.A.

1.6 Design Review Committee. The term “design review committee” shall mean a committee comprised of the Director of the City of Bangor’s Dept. of Community and Economic Development (or his/her designee), the Planning Officer of the City of Bangor (or his/her designee), and the City Engineer of the City of Bangor (or his/her designee). The committee, at its discretion, can add additional members.

1.7 Maine Business Enterprise Park (MBEP). The term “MBEP” shall be synonymous with the term “subject property” and shall mean all of the real property now or hereafter made subject to this Declaration.

1.8 Improvement-Improvements. The term “improvement” or “improvements” shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.

1.9 Lot. The term “lot” shall mean a fractional part of the subject property as subdivided on subdivision or parcel maps recorded from time to time in the Registry of Deeds for the County of Penobscot, State of Maine.

1.10 Mortgage. The term “mortgage” shall mean a deed of trust as well as a mortgage, and shall include a recorded contract for sale or bond for a deed to the extent such contract or bond operates as a mortgage in favor of the seller under 14 M.R.S.A. Sec. 6203-F or other or successor statute.

1.11 Mortgagee. The term “mortgagee” shall mean a beneficiary under, or holder of a deed of trust as well as a mortgagee under a mortgage, to include a seller holding rights of a mortgagee under a recorded contract for sale or bond for a deed.

1.12 Occupant. The term “Occupant” shall mean a lessee or optionee of the Declarant, or any other person or entity other than the Declarant in lawful possession of a lot with the permission of the Declarant.

1.13 Record-Recorded-Recordation. The terms “record”, “recorded”, or “recordation” shall mean, with respect to any document, the recordation of said document in the Registry of Deeds of the County of Penobscot, State of Maine.

1.14 Shrubs. The term “shrubs” shall mean evergreen shrubs having a minimum height of 18” or deciduous shrubs with a minimum height of 24”.

1.15 Sign. The term “sign” shall mean any structure, devise, or contrivance, electric or nonelectric, upon or within which any poster, bill, bulletin, printing, lettering, painting, devise, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, posted, otherwise fastened or affixed.

1.16 Site Designer. The term “site designer” shall mean a land surveyor, landscape architect, architect, or professional engineer, holding a certificate of registration to practice in the State of Maine under the authority of Title 32, M.R.S.A.

1.17 Street-Streets. The term “street” or “streets” shall mean any street, highway, road, or thoroughfare within or adjacent to the subject property and shown on any recorded subdivision or parcel map, or record of survey, whether designated thereon as street, boulevard, place, drive, road, court, terrace, way, lane, circle, or otherwise.

1.18 Subject Property. The term “subject property” shall be synonymous with the term Maine Business Enterprise Park (MBEP), or any lot therein, and shall mean all of the real property now or hereafter made subject to this Declaration.

1.19 Trees. The term “trees” shall mean evergreen trees having a minimum height of 4’ or deciduous trees having a minimum caliper of 1.5” measured 6” from the root ball.

1.20 Visible from Neighboring Property. The term “visible from neighboring property” shall mean, with respect to any given object on a lot, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent lot or other property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II SUBJECT PROPERTY

2.1 General Declaration. Declarant hereby declares that all of that real property located in the City of Bangor, County of Penobscot, State of Maine, and more particularly described in Exhibit A is, and shall be conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved, or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions, and restrictions set forth herein are declared and agreed to be in furtherance of a general property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subject property and every part thereof. All of said covenants, conditions, and restrictions shall run with all of the subject property for all purposes and shall be binding upon and inure to the benefit of Declarant and all Occupants and their successors in interest as set forth in this Declaration.

2.2 Addition of Other Realty. Declarant may at any time during the pendency of this Declaration add all or a portion of any real property now or hereinafter owned by Declarant to the subject property, and upon recording of a notice of addition of real property containing at least the provisions set forth in Section 2.3 the provisions of this Declaration specified in said notice

shall apply to such added real property in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent that this Declaration is made applicable thereto, the rights, powers, and responsibilities of Declarant and the Occupants of lots within such added real property shall be the same as in the case of the real property described in Exhibit A.

2.3 Notice of Addition to Land. The notice of addition of real property referred to in Section 2.2 shall contain at least the following provisions:

- (a) A reference to this Declaration stating the date of recording and the book or books of the records of Penobscot County, Maine, and the page numbers where this Declaration is recorded;
- (b) A statement that the provisions of this Declaration, or some specified part thereof, shall apply to such added real property;
- (c) A legal description of such added real property; and
- (d) Such other or different covenants, conditions, and restrictions as Declarant shall, in its discretion, specify to regulate and control the use, occupancy, and improvements of such added real property.

ARTICLE III CONSTRUCTION OF IMPROVEMENTS

3.1 Approval of Plans Required. No exterior improvements shall be erected, placed, altered, maintained, or permitted to remain on any lot by an Occupant until final plans and specifications shall have been submitted to and approved in writing by the Design Review Committee as established by the Declarant and which shall act on behalf of the Declarant for the review and approval of plans. Such final plans and specifications shall be submitted in duplicate over the authorization signature of the Occupant of the lot or the authorized agent thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the Design Review Committee but shall in any event include the following:

- (a) A site development plan of the lot showing the nature, grading scheme, kind, shape, composition, and location of all structures with respect to the particular lot (including proposed front, rear, and side setback lines), and with respect to structures on adjoining lots, and the number and location of all parking spaces and driveways on the lot;
- (b) A landscaping plan for the particular lot;
- (c) A plan for the location of signs and lighting;

(d) A building elevation plan showing dimensions, materials, and exterior color scheme in no less detail than required by the appropriate governmental authority for the issuance of a building permit. Material changes in approved plans must be similarly submitted to and approved by Declarant;

(e) Accessory buildings, fences, storage areas, trash collection, antennas, and any external mechanical systems; and

(f) All building plans submitted must be stamped by a Design Professional;

(g) All site plans submitted must be stamped by a Site Designer.

3.2 Basis for Approval. Approval shall be based, among other things, upon compliance with the Design Standards prepared for the subject property, including adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, property facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air-conditioning, or other roof-top installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. No plans will be approved that do not provide for the underground installation of power, electrical, telephone, and other utility lines from the property line to buildings.

Plans that provide for metal-clad buildings will be approved only on the conditions that such buildings are constructed so as not to have the appearance of a pre-engineered metal building, are designed by a Design Professional, and are specifically approved in writing by Declarant. Declarant shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, Declarant shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

(a) Failure to comply with any of the restrictions set forth in this Declaration;

(b) Failure to include information in such plans and specifications as may have been reasonably requested by Declarant;

(c) Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;

(d) Objection on the ground of incompatibility of any proposed structure or use with existing structures or uses upon other lots, other property in the vicinity of the subject property;

(e) Objection to the locations of any proposed structure with reference to other lots, or other property in the vicinity;

- (f) Objection to the grading or landscaping plan for any lot;
- (g) Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure.
- (h) Objection to the number or size of parking spaces or to the design of the parking area;
- (i) Any other matter that, in the judgment of the Declarant, would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property or with improvements located upon other lots or other property in the vicinity.

3.3 Review Fee. No review fee shall be paid to Declarant for the review and approval of such plans.

3.4 Result of Inaction. If Declarant fails either to approve or disapprove plans and specifications submitted to it for approval within forty-five (45) days after the same have been submitted, it shall be conclusively presumed that Declarant has approved said plans and specifications; provided, however, that within the forty-five (45) day period Declarant gives written notice of the fact that more time is required for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice.

3.5 Approval. Declarant may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions. Upon approval or conditional approval by Declarant of any plans and specifications submitted, a copy of such plans and specifications, there shall be deposited for permanent record with Declarant, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same.

3.6 Appeal. A decision of the Design Review Committee may be appealed to the City Manager. A decision of the Design Review Committee can be modified or reversed by the City Manager.

3.7 Proceeding with Work. Upon receipt of approval from Declarant pursuant to Section 3.5, the Occupant to whom the same is given, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing, and alterations. In all cases, work shall commence within one (1) year from the date of approval, and if work is not so commenced, approval shall be deemed revoked unless Declarant, pursuant to written request made and received prior to the expiration of said one (1) year period, extends the period of time within which work must be commenced.

3.8 Completion of Work. Any improvement commenced pursuant hereto shall be completed within two (2) years from the date of Declarant's approval of the plans and specifications therefor, except for so long as such completion is rendered impossible, or unless work upon the proposed improvements would impose a great hardship upon the Occupant to whom Declarant's approval is given, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of Occupant. Declarant may, upon written request made and received prior to the expiration of the two (2) year period, extend the period of time within which work must be completed. Failure to comply with this Section 3.8 shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VII. Provided, however, that nothing in this paragraph shall be deemed to extend any construction start or completion date constituting a condition of any site plan or subdivision approval granted by the City of Bangor Planning Board in accordance with the City's land development code.

3.9 Declarant Not Liable. Nothing in this Declaration shall be deemed to constitute an undertaking by the Declarant to perform any particular act with respect to the subject property or any Occupant, nor to assume liability or indemnify any person for any damage, loss, or prejudice suffered or claimed by any person on account of:

- (a) The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
- (b) The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.
- (c) The development or use of any lot within MBEP; or
- (d) Enforcement or failure by the Declarant to enforce any of the covenants, conditions or restrictions contained herein.

3.10 Construction without Approval. If any improvement shall be erected, placed, or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with the approval by the Declarant pursuant to the provisions of this Article III, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this Declaration, and upon written notice from Declarant, any such improvement so altered, erected, placed, maintained, or used upon any lot in violation of this Declaration shall be removed or altered so as to conform to this Declaration, and any such use shall cease or be amended so as to conform to this Declaration. Should such removal or alteration or cessation or amendment or use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this Declaration shall be subject to the enforcement procedures set forth in Article VII.

**ARTICLE IV
DEVELOPMENT STANDARDS**

4.1 General Requirements. All improvements shall comply in every respect with all applicable laws and ordinances of the United States, the State of Maine, and the City of Bangor, including zoning restrictions, landscaping, and site development standards under applicable City of Bangor ordinances.

4.2 Minimum Setback. Notwithstanding any lesser setback requirements under City of Bangor zoning ordinances, no improvements of any kind, and no part thereof, shall be placed closer than permitted by Declarant to an interior property line or right-of-way, except as otherwise provided in Section 4.3. "interior property line" shall mean the boundary between any lot within the subject property and all other lots bordering upon said lot.

No improvements of any kind or part of an improvement shall be placed within the following setback areas:

(a) Front setback – 50’;

(b) Side setback – 30’ on any one side and the total set back of both sides must be greater than 90’;

(c) Rear setback – 30’.

4.3 Exceptions to Setback Requirements. The following improvements, or parts of improvements, are specifically excluded from the setback requirements set forth in Section 4.2:

(a) Roof overhand, subject to approval in writing from Declarant, provided said overhand does not extend more than 36 inches into the setback area;

(b) Steps and walkways;

(c) Fences, subject to the requirements set forth in Section 4.6;

(d) Landscaping and irrigation systems;

(e) Planters, not to exceed three (3) feet in height, except that planters of greater height may be built within the setback area with the prior written approval of Declarant;

(f) Business park identification signs, directional and parking signs, and signs identifying the Occupant of a lot, subject to the prior written approval of Declarant, compliance with the City’s land development code, and the requirements of Section 4.5 of this document;

(g) Lighting facilities, subject to the prior written approval of Declarant;

(h) Underground utility facilities and sewers;

(i) Parking areas – The side and rear set back will be at least 20'. The side and rear set back can be reduced to less than 20', but in no case less than 10', with the use of more intensive buffer yards as described in 4.4. The front yard setback will be at least 10'; and

(j) Driveways – A driveway may cross a front yard setback.

4.4 Structures.

(a) The principal building on each lot shall conform to the following design standards. These standards apply to all sides and elevations of the structure. Any and all secondary buildings which may be erected on a lot shall also conform to these standards and be compatible with the principal building. Deviations from these standards may be granted by the Declarant upon submission of a written request and appropriate drawings to enable the Declarant to fully evaluate the nature of the request.

- (i) Minimum building height
Principal building on lot – 15'
Secondary buildings – 10'
- (ii) Maximum building height – 50'
- (iii) Primary Façade materials – masonry, bricks, stone, glass, and tiles. Wood siding, to include solid wood materials such as clapboards but not including premanufactured panels. Concrete block and sheet metal are not to comprise more than 30% of the total building façade.
- (iv) The street or park facing facades shall have a maximum of 50% glazed material.
- (v) The street or park façade should create a series of implied ground floor bays or the façade should be broken up by design elements.
- (vi) Orientation – Buildings must front on a City street and the orientation of building must be approved by the Design Review Committee under the provisions of Article III, Section 3.1.
- (vii) Maximum building lot coverage .35.
- (viii) Maximum impervious surface coverage .70.

(b) Landscaping. Within ninety (90) days following completion of construction, or by the date each improvement is occupied, whichever shall occur first, each lot shall

be landscaped in accordance with the plans and specifications except for as long as the completion of the landscaping would impose a great hardship upon the Occupant due to weather or climatic conditions. Declarant may, upon written request made and received prior to the expiration of the ninety (90) day period, extend the period of time within which work must be completed. The area of each lot between any street and any minimum setback line as set forth in Section 4.2 shall be landscaped with an attractive combination of trees, shrubs, and other ground cover. All portion of a lot not fronting on a street and not used for parking, storage, or buildings shall be landscaped in a complementary and similar manner. Buffers will be constructed as outlined in the City's land development code and be reviewed and approved by the Declarant.

(i) The perimeter of parking areas shall be landscaped with plant material to screen said areas from view and lessen the impact on neighboring sites. A buffer yard of 20' or more must be planted and landscaped with the following plant units per 100': one (1) shrub, two (2) evergreen trees, and two (2) deciduous trees.

(ii) A buffer yard of less than 20' on the perimeter of a parking area must be planted and landscaped with the following plant units per 100': two (2) shrubs, two (2) evergreen trees, two (2) deciduous trees, and a landscaped berm with a minimum height of three (3) feet.

(iii) If an outdoor parking lot contains fifteen (15) or more parking stalls, not less than 6% of the interior of such parking lot shall be landscaped. The use of landscaped earth berms to accomplish such landscaping is encouraged. Strips between parking bays shall also be landscaped with appropriate ground cover and deciduous trees.

(iv) After completion, such landscaping as is herein required shall be maintained in a sightly and well-kept condition. If, in Declarant's reasonable opinion, the required landscaping is not maintained in a sightly and well-kept condition, Declarant shall be entitled to the remedies set forth in Article VII.

(v) Use of existing vegetation to meet the landscaping requirement shall be encouraged.

(c) Trees. All existing trees of six (6) inches in caliper or greater shall be preserved, and a fifteen (15) foot radius surrounding such a tree shall be left undisturbed, unless, (1) removal of a tree is approved by the Design Review Committee under the provisions of Article III, Section 3.1, or (2) in the opinion of the City Forester, a tree poses a safety hazard, is dead, is of low quality, or should be removed in order to preserve adjacent trees. In the event that a tree of six (6) inches in caliper or greater dies or is destroyed, it shall be replaced with two (2) trees, each of which is at least two (2) inches in caliper.

4.5 Signs. No sign shall be permitted on any lot unless approved by Declarant in writing. No sign shall be approved other than business park identification signs, informational, and vehicular control signs, signs identifying the building or the business of the Occupant of a lot, signs offering the lot for lease, and temporary development signs. All signs must comply with the City of Bangor's land development code and the following requirements:

(a) Free Standing Occupant Identification Signs:

(i) Shall be set back no less than twenty-five (25) feet from any property line;

(ii) Shall contain no more than fifty (50) square feet of surface area on any face nor one hundred (100) square feet of area on all faces;

(iii) Shall be no more than ten (10) feet in height above the average grade elevation of the site around the sign; nor shall such signs be supported above the base or ground immediately beneath them by a single support;

(iv) Shall be indirectly lighted by either back lighting through opaque sign facing or exterior lights shining upon the sign face;

(b) Occupant Identification Signage on a Building:

(i) Shall not extend above a parapet or eaves line (or obscure such building line);

(ii) Shall not exceed twenty-five percent (25%) of the building façade length on any wall (for any individual line of letters); nor thirty percent (30%) of the façade height (from ground level to parapet or eaves line) for the combined total of vertical sign elements; nor shall such signs exceed ten percent (10%) of the total building façade (wall) area;

(iii) Shall not be erected on more than two walls of any building;

(iv) Shall be indirectly lighted.

(c) Deviations from these standards may be granted by the Declarant upon submission of a written request.

4.6 Fences. No fences or walls shall be permitted on any lot unless such fence or wall is necessary for security, grade change, or screening purposes. The Declarant reserves the right to approve the location and design of all fences, and no fence shall be constructed without a letter of approval from the Declarant. All fences must comply with the City of Bangor's land development code.

4.7 Parking Areas. Off-street parking adequate to accommodate the parking needs of the Occupant and the employees and visitors thereof shall be provided by the Occupant of each lot. The intent of this provision is to eliminate the need for any on-street parking; provided, however, that nothing herein shall be deemed to prohibit on-street parking of public transportation vehicles. If parking requirements increase as a result of a change in the use of a lot or in the number of persons employed by the Occupant, additional off-street parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

(a) Required off-street parking shall be provided on the lot, on a contiguous lot, or within such distance from the lot as Declarant deems Reasonable. Where parking is provided other than upon the lot concerned, Declarant shall be given a certified copy of a recorded instrument, duly Executed and acknowledged by the person or persons holding title to the Lot or other property upon which the parking area is located, stipulating To the permanent reservation of the use of the lot or other property for such parking area.

(b) Parking areas shall be paved so as to provide dust free, all weather Surfaces. Each parking space provided shall be designated by lines painted upon the paved surface and shall be adequate in area. All parking areas shall provide, in addition to parking spaces, adequate driveways and Space for the movement of vehicles.

(c) Collective and joint use of parking areas and adjacent lots is encouraged.

4.8 Storage and Loading Areas. Storage, maintenance, and loading areas must be constructed, maintained, and used in accordance with the following conditions:

(a) Outside storage of materials, supplies, or equipment, including trucks or other motor vehicles, shall be permitted only if:

(i) The material, equipment, or objects stored outside are incidental to the activities regularly conducted on the premises;

(ii) The area devoted to outside storage does not exceed five percent (5%) of the gross floor area of the principal structure on the site up to 2,000 sq. ft.;

(iii) The area is screened on the sides and harmonizes with the architecture, design, and appearance of neighboring structures and other surroundings; and

(iv) The area is located upon the rear portions of a lot, unless otherwise approved in writing by Declarant.

(b) Provision shall be made on each site for any necessary vehicle loading, and no on-street vehicle loading shall be permitted.

(c) Loading dock areas shall be set back, recessed, or screened to minimize visibility from neighboring properties or streets, and in no event shall a loading dock be closer than fifty (50) feet from a property line fronting upon a street unless otherwise approved in writing by Declarant.

ARTICLE V REGULATION OF OPERATIONS AND USES

5.1 Permitted Uses. Except as otherwise specifically prohibited herein, any business or industrial operation and use will be permitted upon a lot, provided that Declarant specifically consents to such use in writing.

Such approved use shall be performed or carried out entirely within a Building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to other lots or property, such as, but not limited to, vibration, sound, electromechanical disturbances, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or non-toxic matter (including steam). Certain activities that cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in writing and further provided such activity is screened so as not to be visible from neighboring property and streets. All lighting is to be shielded so as not to be visible from neighboring property.

5.2 Prohibited Uses. The following operations and uses shall not be permitted on any property subject to this Declaration:

- (a) Residential use of any type, except living quarters for security personnel;
- (b) Trailer courts or recreation vehicle campgrounds;
- (c) Junk yards, wrecking yards, or recycling facilities;
- (d) Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
- (e) Refining of petroleum or of its products;
- (f) Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III;
- (g) Distillation of bones;

(h) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse;

(i) Fat rendering;

(j) Stockyard or slaughter of animals;

(k) Smelting of iron, tin, zinc, or any other ore or ores;

(l) Cemeteries;

(m) Jail or honor farms;

(n) Labor or migrant worker camps;

(o) Truck terminals (incidental truck usage is specifically permitted);

(p) Automobile, go-cart, motorcycle, or quartermidget race tracks and other vehicle endurance or race tracks;

(q) New or used car sales lots;

(r) Commercial parking lots and structures;

(s) Autobody, retail auto, or auto repair facilities.

(t) warehouse or distribution centers, except as a use customarily incidental and subordinate to the principal use of a building, structure or lot and located on the same lot with the principal use;

(u) gas stations or service stations; or

(v) uses prohibited by federal, state, or local law, including applicable City of Bangor Zoning ordinance provisions.

5.3 Nuisances. No nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any adjacent lot or property or to its occupants. A “nuisance” shall include, but not be limited to, any of the following conditions:

(a) Any use, excluding reasonable construction activity, of the lot that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other waterway that, in the opinion of Declarant, may adversely affect the health, safety, comfort of, or intended use of their property by persons within the area. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the subject property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer;

(b) The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substance into the atmosphere, which discharge, in the opinion of Declarant, may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area or may be harmful to property or vegetation;

(c) The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the site or lot upon which the operation is conducted;

(d) Excessive noise. At no point outside of any lot plane shall the sound pressure level of any machine, device, or any combination of same, from any individual plant or operation, exceed the decibel levels in the designated preferred octave bands as follows:

Octave Band Center Frequency (Hz)	Maximum Sound Pressure Levels (dB) at Boundary Plane of Lot
31.5	78
63	72
125	65
250	59
500	55
1000	52
2000	50
4000	48
8000	47

A-scale levels for monitoring purposes are equivalent to 60 dB (a). The maximum permissible noise levels for the octave bands shown above are equal to a Noise Criterion curve when plotted on the preferred frequency scale.

Reasonable noise from motor vehicles and other transportation facilities are exempted, so long as the vehicles or other transportation facilities are not continuously on the subject property.

The operation of signaling devices and other equipment having impulsive or non-continuous sound characteristics shall have the following corrections applied:

Corrections	
Pure Tone Content	- 5 dB
Impulsive Character	- 5 dB
Duration for Non-continuous Sounds in Daytime Only:	

1 min/hr	+ 5 dB
10 sec/10 min	+ 10 dB
2 sec/10 min	+ 15 dB

The reference for the dB values listed above is the pressure of 0.0002 microbar or 0.0002 dyne/cm².

(e) Excessive emissions of smoke, steam, or particulate matter. Visible emissions of smoke or steam will not be permitted (outside any building) that exceed Ringlemann No. 1 on the Ringlemann Chart of the United States Bureau of Mines. This requirement shall also be applied to the disposal of trash and waste materials. Windborne dust, sprays, and mists originating in plants are not permitted.

(f) Ground Vibration. Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point exterior to any lot.

5.4 Condition of Property. The Occupant of any lot shall at all times keep it and the buildings, improvements and appurtenances thereon in a safe, clean, and wholesome condition and comply, at its own expense, in all respects with all applicable governmental, health, fire, and safety ordinances, regulations, requirements and directives, and the Occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such lot.

5.5 Maintenance of Grounds.

(a) Each Occupant may be assessed a charge (the "Maintenance Assessment") for the maintenance of the open space areas, landscape easements, and other areas located on the subject property. Such charge shall be paid to the Declarant and shall equal an amount that represents that proportion of the total cost of such maintenance as the area of the lot owned by the Occupant is proportionate to the total area of all lots on the subject property. The Maintenance Assessment shall be assessed on a periodic basis as determined by Declarant.

(b) Each Occupant shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on his/her lot. Such maintenance and repair shall include, without limitation, up to the public travel way including any easements, esplanades, tree protection zone, and joint or shared parking areas:

(i) Maintenance of all parking areas, driveways, and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefore as shall, in all respects, be equal thereto in quality,

appearance, and durability, the removal of debris and waste material and the washing and sweeping of paved areas, the painting and repainting of striping markers and directional signals as required;

(ii) Cleaning, maintenance, and relamping of any external lighting fixtures, except such fixtures as may be the property of any public utility or government body; and

(iii) Performance of all necessary maintenance of all landscaping, including the trimming, watering, and fertilization of all grass, groundcover, shrubs, or trees, the removal of dead or waste materials, the replacement of any dead or diseased grass, groundcover, shrubs, or trees.

(c) Nothing contained herein shall preclude an Occupant from recovering from any person liability therefor, damages to which such Occupant might be entitled for any act or omission to act requiring an expenditure by the Occupant for the maintenance and repair of the parking area, driveway, walkway, and/or landscaping on his/her lot.

5.6 Remedies for Failure to Maintain and Repair.

(a) Remedies. If any Occupant shall fail to pay the Maintenance Assessment or to perform the maintenance and repair required by Section 5.5, the Declarant, after fifteen (15) days prior written notice to such delinquent Occupant shall have the right, not the obligation, to pay the Maintenance Assessment or to perform such maintenance and repair and to charge the delinquent Occupant with costs of such assessment or such work, together with interest thereon at the rate of twelve percent (12%) per annum from the date of Declarant's advancement of funds for such payment or such work to the date of reimbursement of Declarant by Occupant. If the delinquent Occupant shall fail to reimburse Declarant for such costs within ten (10) days after demand therefor, Declarant may, at any time within two (2) years after such advance, file for record in the Office of the Registry of Deeds, Penobscot County, Maine, a claim of lien signed by Declarant for the amount of such charge together with interest thereon. The lien created by this section shall be effective to establish a lien against the interest of the delinquent Occupant in his/her lot together with interest at twelve percent (12%) per annum on the amount of such advance from the date thereof, in addition to recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof, and court costs and reasonable attorney's fees that may be incurred in the enforcement of such a lien.

(b) Foreclosure of Lien. Subject to the provisions of Article XII, such a lien, when so established against the lot described in said claim, shall be prior or superior to any right, title, interest, lien, or claim that may be or may have been acquired in or attached to real property interests subject to the lien subsequent to the time of filing such claim for record except that any real estate tax lien against the subject lot, at any time recorded, shall be deemed to have priority over a lien created under this paragraph. Such lien shall be for the benefit of Declarant and may be enforced and foreclosed in a like

manner as a real estate mortgage is foreclosed in the state of Maine, but without redemption.

(c) Cure. If a default for which a notice of claim of lien was filed is cured, Declarant shall file or record a rescission of such notice, upon payment by the Defaulting Occupant of the costs of preparing and filing or recording such rescission, and other reasonable costs, interest, or fees that have been incurred.

5.7 Taxes and Assessments. If any Occupant fails to pay taxes or assessments on its lot that become a lien on any portion of the subject property utilized in common for parking, service, or loading areas, then any other Occupant may pay such taxes or assessments, together with any interest, penalties, and costs arising out of or related thereto, except while the validity thereof is being contested by judicial or administrative proceedings, and in such event the defaulting Occupant obligated to pay such taxes or assessments shall promptly reimburse the other Occupant for all such taxes or assessments, interest, penalties, and costs paid or incurred by such other Occupant, and until such reimbursement has been made, the amount of the payment by such other Occupant shall constitute a lien on and charge against the lot of the defaulting Occupant, subject and subordinate, however, to any mortgage or deed of trust then outstanding and affecting said lot.

5.8 Refuse Collection Areas. All outdoor refuse collection areas shall be screened to minimize visibility from neighboring property or streets. No refuse collection area shall be permitted between a street and the front of a building.

5.9 Repair of Buildings. No building or structure upon any lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

5.10 Public Utilities. Declarant reserves the sole right to grant consents for the construction and operation of public utilities, including, but not limited to, street railways, interurban or rapid transit, freight railways, poles or lines for electricity, telephone, or telegraph, above- or below-ground conduits, and gas pipes in and upon any and all streets now existing or hereafter established upon which any portion of the subject property may now or hereafter front or abut. Declarant reserves the exclusive right to grant consents and to petition the proper authorities for any and all street improvements, such as grading, seeding, tree planting, sidewalks, paving, and sewer and water installation, whether it be on the surface or subsurface, which in the opinion of Declarant are necessary on or to the subject property. Notwithstanding the provisions of Section 3.2, Declarant reserves the exclusive right to approve above-ground utility lines across the subject property or any portion thereof on a temporary basis for the purpose of construction, and such lines shall be permitted when required by a government agency. Notwithstanding the provisions of this Section, the construction and operation of public utilities in rights-of-way dedicated to the public must be approved by the appropriate governmental authority.

5.11 Utility Lines and Antennas. No sewer, drainage, or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals, including telephone, television, microwave, or radio signals, shall be constructed, placed, or maintained anywhere in or upon any portion of the subject property other than within the designated utility easements, buildings or structures, unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under buildings or other structures. No antenna for the transmission or reception of telephone, television, microwave, or radio signals shall be placed on any lot within the subject property without the consent of the Design Committee which shall not be unreasonably withheld. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of buildings on the subject property.

5.12 Mechanical Equipment. All mechanical equipment, utility meters, storage tanks, air-conditioning equipment, and similar items shall be screened with landscaping or attractive architectural features integrated into the structure itself.

5.13 Mineral Exploration. No portion of the subject property shall be used in any manner to explore for or to remove any steam, heat, oil, or other hydrocarbons, gravel, earth, or any earth substances or other minerals of any kind, provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of improvements within the subject property.

5.14 Other Operations and Uses. Operations and uses that are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by Declarant in accordance with the procedures set forth in Article III of this Declaration. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the occupants thereof, but shall be in the sole discretion of Declarant.

ARTICLE VI MODIFICATION AND REPEAL

6.1 Modification by Declarant. For so long as Declarant owns any interest (excepting a leasehold interest) in the subject property, or any part thereof, Declarant acting alone may modify or amend the provisions of this Declaration; provided, however, that (i) any such modification or amendment must be within the spirit and overall intention of the development as set forth herein; (ii) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary. No such modification or amendment shall be effective until the Occupants have been given thirty (30) days prior written notice of the proposed change and a proper instrument in writing has been executed, acknowledged, and recorded.

6.2 Governmental Regulation. All valid governmental enactments, ordinances, and regulations are deemed to be a part of this Declaration, and to the extent that they conflict with

any provision, covenant, condition, or restriction hereof, said conflicting governmental enactment, ordinance, and regulation shall control and the provision, covenant, condition, or restriction hereof in conflict therewith shall be deemed (i) amended to the extent necessary to bring it into conformity with said enactment, ordinance, or regulation while still preserving the intent and spirit of the provision, covenant, condition, or restriction; or (ii) stricken herefrom should no amendment conforming to the governmental enactment, ordinance, or regulation be capable of preserving the intent and spirit of said provision, covenant, condition, or restriction.

ARTICLE VII ENFORCEMENT

7.1 Abatement and Suit. The Occupant of each lot shall be primarily liable for the violation or breach of any covenant, condition, or restriction herein contained. Violation or breach of any covenant, condition, or restriction herein contained shall give to Declarant, following thirty (30) days written notice to the Occupant in question except in exigent circumstances, the right, privilege, and license to enter upon the lot where said violation or breach exists and to summarily abate and remove, or abate or remove, at the expense of the Occupant thereof, any improvement, structure, thing, or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these covenants, conditions, or restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation. No such entry by Declarant or its agents shall be deemed a trespass, and neither Declarant nor its agents shall be subject to liability to the Occupant of said lot for such entry and any action taken to remedy or remove a violation. The cost of any abatement, remedy, or removal hereunder shall be a binding personal obligation of any Occupant in violation of any provision of this Declaration, as well as a lien (enforceable in the same manner as a mortgage) upon the lot in question. The lien provided for in this section shall not be valid as against a mortgagee for value of the lot in question unless a suite to enforce said lien shall have been filed in a court of record in Penobscot County, Maine, prior to the recordation of the mortgage encumbering the lot in question to such mortgagee.

7.2 Right of Entry. During reasonable hours and upon reasonable notice and subject to reasonable security requirements, Declarant, or its agents, shall have the right to enter upon and inspect any lot and the improvements thereon covered by this Declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

7.3 Deemed to Constitute a Nuisance. The result of every act or omission whereby any covenant, condition, or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an Occupant either public or private shall be applicable against every such result and may be exercised by Declarant.

7.4 Attorney's Fees. In any legal or equitable proceeding for the enforcement of this Declaration or any provision hereof, whether it be an action for damages, declaratory relief, or injunctive relief, or any other action, the losing party or parties shall pay the attorney's fees the prevailing party or parties, in such reasonable amount as shall be fixed by the court in such proceedings or in a separate action brought for that purpose. The prevailing party shall be entitled to said attorney's fees even though said proceeding is settled prior to judgment. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

7.5 Failure to Enforce is No Waiver. The failure of Declarant to enforce any requirement, restriction, or standard herein contained shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor of the right to enforce any other restriction.

ARTICLE VIII ASSIGNMENT

Any and all of the rights, powers, and reservations of Declarant herein contained may be assigned to any person, partnership, corporation, or association that will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned, and upon any such person, partnership, corporation, or association evidencing its consent in writing to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Any assignment or appointment made under this article shall be in reasonable form and shall be recorded.

ARTICLE IX CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every person or entity who now or hereafter occupies any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the subject property.

ARTICLE X WAIVER

Neither Declarant nor its successors or assigns shall be liable to any Occupant of the subject property by reason of any mistake in judgment, negligence, non-feasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Occupant of any of said property by acquiring its interest therein agrees that it will not bring any action or suite against Declarant to recover any such damages or to seek equitable relief because of same.

**ARTICLE XI
RUNS WITH LAND**

All covenants, conditions, restrictions, and agreements herein contained are made for the direct, mutual, and reciprocal benefit of each and every lot of the subject property; shall create mutual equitable servitudes upon each lot in favor of every other lot; shall create reciprocal rights and obligations between respective Occupants of all lots and privity of contract and estate between all grantees of said lots, their heirs, successors, and assigns; and shall, as to the Occupant of each lot, his heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other lots, except as provided otherwise herein.

**ARTICLE XII
RIGHTS OF MORTGAGEES**

No breach of any covenant, condition, or restriction herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any mortgage or deed of trust now or hereafter executed upon the subject property or a portion thereof, provided, however, that if any portion of said property is transferred under a foreclosure of any mortgage or under the provisions of any deed of trust, any successors and assigns shall hold any and all property so transferred subject to all of the covenants, conditions, and restrictions contained in this Declaration.

**ARTICLE XIII
CAPTIONS**

The captions of articles and sections herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

**ARTICLE XIV
EFFECT OF INVALIDATION**

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

CITY OF BANGOR, DECLARANT

By: Edward A. Barrett
Its: City Manager

Declaration of Covenants, Conditions, and Restrictions
Maine Business Enterprise Park
Adopted by Council Order 92-459 October 14, 1992
Amended by Council Order 01-372 September 24, 2001

STATE OF MAINE

Penobscot, ss. _____, 2001

Then personally appeared the above-named Edward A. Barrett, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said body corporate.

Before me,

Notary Public/Attorney-at-Law
Printed Name: