

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**  
**AND RESERVATION OF EASEMENTS FOR**  
**MOORESVILLE BUSINESS PARK EAST**

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NORTH CAROLINA

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS**

IREDELL COUNTY

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the SOUTH IREDELL COMMUNITY DEVELOPMENT CORPORATION (hereinafter referred to as “Developer” or “SICDC”); and MOORESVILLE BUSINESS PARK EAST PROPERTY OWNERS ASSOCIATION, INC. (hereinafter referred to as the “Corporation”)** pursuant to the North Carolina General Statutes and amends and restates the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements dated March 23<sup>rd</sup>, 2016 and recorded in Book 2410, Page 748 in the Register of Deeds for Iredell County.

**W I T N E S S E T H:**

**WHEREAS**, Developer was the owner of all of that approximate 478 acre tract of real property located in Barringer Township, Mooresville, Iredell County, North Carolina, and being more particularly described on Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the “Business Park”) and which includes, but is not limited to, the property depicted on that certain map or plat entitled **Mooresville Business Park East**, Phase 1, as is shown on Plat Book 64, Page 11 (a revision of Plat Book 63, Page 140) in the Office of the Register of Deeds for Iredell County, North Carolina; and

**WHEREAS**, Developer sold Lot 2 of the Business Park to Maclean Curtis, L.L.C. on March 28, 2016 by deed recorded in Deed Book 2410, Page 2239, Iredell County Registry; and

**WHEREAS**, Developer proposes to further sell and convey, from time to time, certain portions and acreage of the subject property to be used for industrial, business and commercial purposes and to develop said Business Park, into a well-planned industrial, business and commercial community; and

**WHEREAS**, Developer, prior to selling and conveying any portion of the Business Park, imposed upon such property certain mutual and beneficial restrictions, covenants, conditions and charges and by this Amendment and Restatement furthers and continues the same (hereinafter collectively referred to as “Restrictions”) for the benefit and complement of all of the Business Park property in order to promote the best interests and protect the investments of Developer and Owners (as hereinafter defined).

**NOW, THEREFORE**, Developer hereby declares that all of the Business Park, specifically including all of the property described on Exhibit A attached hereto, is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to the following Restrictions. This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

## **ARTICLE 1**

### **DEFINITIONS**

As used herein,

1.1 “Articles” means the Articles of Incorporation of **Mooreville Business Park East Property Owners Association, Inc.**

1.2 “BMP” means retention and/or detention ponds installed pursuant to the stormwater “Best Management Practices” as such may be required by the Town of Mooreville, Iredell County, the State of North Carolina, the United States government or any other governmental agency having jurisdiction over the Business Park.

1.3 “Business Park” means **Mooreville Business Park East** as described on Exhibit A attached hereto and incorporated herein by reference, including but not limited to Lot 2 as shown on Plat Book 64 at Page 11 (a revision of Plat Book 63, Page 140) of the Iredell County Public Registry.

1.4 “Bylaws” means the bylaws of **Mooreville Business Park East Property Owners Association, Inc.** The Bylaws are attached hereto and incorporated by reference herein as Exhibit D.

1.5 “Corporation” means **Mooreville Business Park East Property Owners Association, Inc.**, a North Carolina non-profit corporation. The “Board of Directors” or “Board” shall be the elected body governing the Corporation and managing the affairs of the Corporation.

1.6 “Common Areas” or “Community Use Areas” means all real and personal property, together with those areas within dedicated portions of the Business Park, which may be deeded to or acquired by the Corporation for the common use and benefit of the members of the Corporation. This shall include property which the Corporation owns in fee simple. It also includes any property in which the Corporation may hold some other property right, such as an easement or right of way. It is intended that the Corporation shall have an easement to maintain signage for the Business Park (this easement will be more particularly described when the Developer conveys property upon which signage is located to third parties). It is further intended that the Corporation shall have access over easements reserved by the Developer herein and/or on any plat. The Corporation shall expressly not be responsible for maintenance of detention ponds and other erosion control and watershed facilities which may be located on individual Lots or property specifically for the service of those particular individual Lots.

1.7 “Common Expenses” means and includes actual and estimated expenses of maintaining and operating the Common Area and/or Community Use Area and operating the Corporation for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Corporation.

1.8 “Dedication” means the act of committing a portion of the Business Park to the purposes of this Declaration.

1.9 “Developer” means the **South Iredell Community Development Corporation**, (“SICDC”) its successors or assigns. No entity shall take the place of the Developer unless the Developer specifically assigns to that entity the right to stand in the Developer’s place and have for itself all rights reserved by the Developer hereunder.

1.10 “Lot” means a separately numbered tract of land lying within the Business Park and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located. No tract of land shall become a “Lot” as the word is used herein until the area on which the same is located is depicted upon a plat recorded in the Office of the Register of Deeds for Iredell County, North Carolina. The Owner of all of a numbered Lot may combine such numbered Lot with a part or parts of another such numbered Lot and the aggregate shall be considered as one Lot for the purpose of these Restrictions.

1.11 “Owner” or “Owners” shall mean the person or entity that holds record title ownership of a Lot at any given point in time.

1.12 “Plat” shall mean the recorded plat of the Business Park as referred to hereinabove as well as any subsequently recorded plats of the Business Park that are expressly made subject to this Declaration.

## **ARTICLE 2**

### APPLICABILITY

These Restrictions shall apply to all subdivided numbered Lots shown on the Plat, and additional plats or maps of subdivisions of the Business Park, (hereinafter referred to as “Lot” or “Lots”), which Lots are for industrial, business and/or commercial purposes only. These Restrictions shall not be applicable to any unnumbered lands, until the same are platted and numbered, or to other lands of Developer, and Developer is withholding these parcels from these Restrictions pursuant to its general scheme of development, the absence of Restrictions thereupon being intended to allow Developer maximum flexibility in the determination of the development of such parcels.

## **ARTICLE 3**

### PROPERTY OWNERS ASSOCIATION

3.1 A corporation named **Mooreville Business Park East Property Owners Association, Inc.** has been formed pursuant to the rules and requirements of the General Statutes of North Carolina as an association of the Owners of Lots. Its purpose

is to own, manage, maintain and operate the Common Areas and Community Use Areas and facilities located upon the Common Areas and Community Use Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

3.2 Each Owner of each Lot within the Business Park shall be a member of the Corporation. The Developer, by this Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Corporation as follows:

a. That for so long as each is an Owner of a Lot within the Business Park, each will perform all acts necessary to remain in good and current standing as a member of the Corporation (as such acts are set forth herein and in the Bylaws of the Corporation);

b. That each shall be subject to the rules and regulations of the Corporation with regard to ownership of a Lot; and

c. That any assessment, whether general or special, levied by the Corporation in accordance with these Restrictions, the Articles or the Bylaws shall be a lien upon the Lot upon which such assessment was levied, and shall be the personal obligation of the Owner of the Lot at the time the assessment fell due.

3.3 Each membership in the Corporation shall relate to and have a unity of interest with an individual Lot which unity of interest may not be separated from ownership of said Lot.

3.4 The Corporation shall have one class of members who shall be Owners. Each member shall be entitled to one vote for each acre of land owned with each partial acre being rounded to the nearest quarter acre and said vote being a partial vote in the same percentage ( By way of example, an Owner who owns a Lot which is 3.42 acres in size would be entitled to 3.5 votes as the .42 acres would be rounded up to .5); provided however, when more than one person or entity holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, collectively determine.

3.5 Assessments shall be determined on the basis of total acreage owned by each particular Lot Owner. Thus, for example, the Owner of a two-acre Lot would pay an assessment which would be twice as much as the assessment for a one-acre Lot.

#### **ARTICLE 4**

#### **MANAGEMENT AND ADMINISTRATION**

The management and administration of the affairs of the Community Use Areas of the Business Park shall be the sole right and responsibility of the Corporation. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Corporation, but may be delegated or contracted to managers or management services.

## **ARTICLE 5**

### **COMMUNITY EXPENSES**

5.1 The Community Expenses of the Business Park include:

a. All amounts expended by the Corporation in operating, administering, managing, repairing, replacing and improving the Common Areas, Community Use Areas, and, until the same are accepted by the appropriate governmental entity, the streets of the Business Park; all amounts expended by the Corporation in insuring or bonding the Common Areas, Community Use Areas and streets in the Business Park; all amounts expended by the Corporation in legal, engineering, or architectural fees; and all similar fees which may be incurred by the Corporation from time to time in performing the functions delegated to the Corporation by these Restrictions; and all amounts expended in any form by the Corporation in enforcing these Restrictions, the Articles or the Bylaws. The expenses referred to herein shall specifically include, but not be limited to, the upkeep of the entrance signs to the Business Park (to be located upon a signage easement on certain Lots of the Business Park which said Lots will be identified by the deeds to said Lots) and those expenses in insuring that the Business Park complies with any governmental, environmental guidelines. The Developer will initially, at the time of the recording of any Plat, have the Business Park in compliance with said guidelines. It will be the obligation of the Corporation to continue to maintain the Business Park in compliance with said guidelines, including the payment of all costs necessitated thereby. Individual Lot owners shall be responsible for ensuring that their particular Lots comply with said regulations. This would include the use of such individual detention facilities as may be necessary to reduce the flow of water runoff from each particular Lot in the Business Park.

b. All amounts expended by the Corporation in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the Bylaws.

c. All amounts declared to be Community Expenses in the Bylaws or in these Restrictions.

d. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Community Use Areas in the

Business Park. However, the Corporation will not be responsible for taxes upon any property of which it is not a fee simple owner.

## ARTICLE 6

### ANNUAL GENERAL ASSESSMENT

6.1 The Developer for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so-expressed in such deed) is deemed to covenant and agree to pay to the Corporation "Annual General Assessments" or charges as herein provided. The "Annual General Assessments", together with interest, costs and reasonable attorneys' fees shall be a charge and lien on the land, and subject to the provisions of Paragraph 6.5 of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by that successor. Nevertheless, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

6.2 Until January of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual General Assessment shall be Fifty Dollars (\$50.00) per acre owned by each Owner. Excluded from this assessment would be the Developer.

a. From and after January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased each year not more than five percent (5%) above the assessment for the previous year without any vote of the membership.

b. From and after January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased by an amount greater than five percent (5%) of the assessment for the previous year or greater than One Hundred Dollars (\$100) per acre provided the proposed increase is approved by a vote of two-thirds (2/3) of the members who are voting in person or by a proxy at a meeting duly called for this purpose.

c. The Board of Directors of the Corporation may fix the annual general assessment at any amount not in excess of the maximum.

d. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members and mortgagees who hold a mortgage/deed of trust on a Lot and who have provided the Board with a mailing address and other contact information. After the initial notice of the

assessment, the assessment shall become due and payable as provided by the Board of Directors.

e. **ASSESSMENT AMOUNTS BASED UPON TOTAL ACREAGE OWNED.** The amount of the assessment, as referenced in Section 3.5, shall vary depending on the amount of total acreage owned by each particular Lot Owner within the Business Park. The Owner will pay a fraction of the total budget for Assessments, the numerator of which shall be the total acreage owned by the Owner and the denominator of which shall be the total acreage of the Business Park.

6.3 Written notice of any meeting called for the purpose of taking any action authorized under this or any other Article shall be sent to all members not less than thirty (30) days, and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty-five percent (25%) of all the votes shall constitute a quorum. If the required quorum is not present, a vote shall not be cast and another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the members who are present in person or by proxy at the subsequent meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.4 The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by the officer of the Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Lot is binding upon the Corporation as of the date of its issuance.

6.5 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu therefor, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien associated with said subsequent assessments.

## **ARTICLE 7**

### **SPECIAL ASSESSMENTS**

“Special Assessments” may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaws and on such terms as provided by the Board of Directors or the members. The maximum Special Assessment at any one time may not exceed Two Hundred Dollars (\$200) per acre owned by each Owner. Either the Board of Directors or the members may levy and impose Special Assessments upon a majority vote. The purposes for which such Special Assessments

may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay the same and providing a contingency fund for capital improvements and extraordinary expenses. Furthermore, Special Assessments may be assessed against specific Lots. In the event the Owner of a Lot fails to comply with the provisions of any article hereof, the Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and against such Lot as a Special Assessment.

## **ARTICLE 8**

### **LIEN FOR ASSESSMENTS**

Any general or special assessment, if not paid within thirty (30) days after the date of such assessment is due, together with interest at a rate of eighteen percent (18%) per annum (accruing from the date thirty (30) days after notice of such assessment is delivered to the Owner), costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the clerk of Superior Court of Iredell County or file a suit to collect such delinquent assessments and charges. The Corporation may file Notice of *Lis Pendens*, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

## **ARTICLE 9**

### **COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BYLAWS OF THE CORPORATION**

9.1 In the case of failure of a Lot Owner to comply with the terms and provisions contained in this Declaration, the Articles or the Bylaws of the Corporation, the following relief shall be available:

a. The Corporation, the Developer, an aggrieved Lot Owner or Owners within the Business Park on behalf of the Corporation, or any Lot Owner on behalf of all the Lot Owners within the Business Park shall have the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate and shall be able to recover its costs and attorney fees in exercising these enumerated rights.

b. The Corporation shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a Special Assessment.

c. If the violation is the nonpayment of any General or Special Assessment, the Corporation shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees and invitees of the Community Use Areas in the Business Park for any period during which an assessment against the Lot remains unpaid.

d. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

e. The failure of the Corporation or any person to enforce any restriction contained in these Restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

Prior to availing itself of the relief specified in this paragraph, the Corporation shall follow the hearing procedures as set forth in the Bylaws.

## **ARTICLE 10**

### **PROPERTY RIGHTS OF LOT OWNERS, CROSS-EASEMENTS, AND EXCEPTIONS AND RESERVATIONS BY DEVELOPER**

10.1 The Developer, the Corporation and every Owner of a Lot within the Business Park, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Business Park for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Business Park, whether or not specifically included in a deed thereto, subject to the following provisions:

a. The Corporation shall have the right to make reasonable rules and regulations respecting the use of same.

b. The Corporation shall have the right to suspend the voting rights of a Lot Owner and his right to use the Community Use Areas within the Business Park for any period during which any due assessment against such Owner's Lot remains unpaid as is provided in Article 9 hereof, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. However, should the infraction be continuing in nature, the suspension shall remain in effect until such time as the infraction is cured.

10.2 The Corporation hereinafter may grant easements for utility purposes for the benefit of the Business Park and the Lots now or hereafter located thereon, over, under, along and through the Community Use Areas.

10.3 Developer shall have the right, at its election, without the consent of any Owner or Owners, to bring within the coverage and operation of these Restrictions additional properties as may be developed in the future. The addition of property authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Iredell County, North Carolina, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or appropriate in the sole judgment of the Developer to reflect the different character, if any, of the added properties and as are not inconsistent with the plan, intent and spirit of this Declaration.

10.4 The Developer reserves for itself, its heirs, successors and assigns as well as the Corporation a permanent and perpetual right of way and easement for the purposes of ingress, egress and regress and for the installation of necessary utilities as such may be necessary to maintain the Business Park in compliance with any government or environmental requirements.

10.5 Easements and rights of way over and upon each Lot for drainage and the installation and maintenance of utilities and services are reserved exclusively to Developer for such purposes as Developer may deem incidental and appropriate to its overall development plan, such easements and rights of way being specifically reserved herein, which will be platted as necessary and made a part hereof for the purpose of providing a more particular description of such easements and rights of way, but which will be subject to the reasonable approval of the Lot Owner. Any land disturbed by the Developer as part of construction within the easement and right of way areas shall be restored to its original condition following construction. The easements and right of way areas reserved by Developer on each Lot pursuant hereto shall be maintained continuously by the Owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except that the upkeep, maintenance and appearance of the Business Park entrance signs to be located in the Business Park shall be maintained by the Corporation.

10.6 In the event that commencement of construction has not occurred upon a Lot within two hundred forty (240) days following the conveyance from Developer or other Owner to any other Owner (the "Building Period"), the Developer shall, so long as commencement of construction has not occurred, have the right to purchase that Lot at any time within twenty four (24) months after the expiration of the Building Period (the "Notice Period"). In order to exercise this Option, the Developer must give written notice to Owner within the Notice Period and tender the purchase price within 60 days following the delivery of notice. The repurchase price shall be that price paid by the

non-building Owner at the time of original acquisition, reduced by ten (10) percent and any unpaid balance of any mortgage or mortgages or any other liens against the Lot. Upon tender of the purchase price, Owner shall convey the Lot to the Developer by Special Warranty Deed. Owners expressly agree that the Developer is entitled to specific performance of all duties imposed upon Owners by this Section. Further, the non-building Owner shall not sell and convey a Lot in unimproved condition without having first offered in writing to re-sell and convey the same back to the Developer under the repurchase conditions stated in this section.

## **ARTICLE 11**

### **ARCHITECTURAL REVIEW COMMITTEE**

11.1 Membership. There is hereby established an Architectural Review Committee (the "Committee") whose members will be appointed by the Developer. The Committee will consist of three (3) members. One of the members must be selected from the following groups: licensed architects, engineers, landscape architects and persons with building construction experience. The second and third members need not have any specific professional certification and may be representatives of the Developer. Developer will select the initial membership of the Committee. In the event of future vacancies upon the committee, Developer shall appoint successor members. Developer may also appoint members to terms of limited duration or replace any or all members at intervals. By written notice to the Corporation, Developer may delegate its power to appoint members of the Committee to the Corporation. The power to appoint members of the Committee shall automatically be transferred to the Corporation immediately following the period of Developer control of the Corporation as is defined herein and in the Bylaws of the Corporation.

11.2 Duties and Powers. The Committee shall: (1) review and act upon proposals and plans submitted to it by Owners pursuant to the terms of this Declaration, (2) adopt Architectural and Site Guidelines (as hereinafter defined), and (3) perform all other duties delegated to and imposed upon it by this Declaration.

11.3 Architectural and Site Guidelines. The Committee may promulgate certain rules, guidelines and statements of policy which will be known as the "Architectural and Site Guidelines". At all times, the Committee shall maintain copies of the most recently adopted Architectural and Site Guidelines in writing so that copies are available, upon request, to all Owners. Said Guidelines may interpret and implement the provisions of this Declaration by detailing the standards and procedures for review, guidelines for building and site design, landscaping, lighting, parking, exterior materials which may be used, or are required, within the Business Park. Such guidelines may be interpretations and expansions of, but not in contradiction to, the terms of this Declaration.

Any Architectural and Site Guidelines as well as all such rules, guidelines and statements of policy as may be approved and adopted, from time to time, by the Committee as Architectural and Site Guidelines shall be deemed incorporated as a part

of this Declaration. Notwithstanding the foregoing, Architectural and Site Guidelines shall not be retroactive to already existing structures except in the event of further construction or renovation on a particular Lot.

11.4 Right of Inspection. Members and agents of the Architectural Review Committee, and the Developer and its agents may, at any reasonable and safe time (during initial construction or during construction of subsequent additions or improvements) enter upon the Lot of an Owner for the purpose of inspecting the improvements and site development and their compliance with the Architectural and Site Guidelines.

11.5 Variances. The Committee is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration or the Architectural and Site Guidelines in order to overcome specific development problems or hardship caused by strict application of the provisions of either this Declaration or the Architectural and Site Guidelines. Such variances, however, must not materially injure any of the Business Park, amenities or improvements in the Business Park and must be made in furtherance of the spirit and purpose of this Declaration. The committee is specifically empowered to, at its sole discretion, grant variances of setback requirements (see paragraph 13.9) up to ten percent (10%) of the total Setback Distance required. The Committee will not, however, grant any variance for setbacks different from those required by applicable zoning ordinances unless the Owner also obtains a variance from the appropriate governmental authority empowered to grant such variances.

11.6 Limitation of Scope of Approval. Approval by the Committee of any Improvement or use for a designated Lot shall not be a waiver of the Committee's right to reject a similar or identical improvement or use upon another Lot (or the same Lot at another time). Similarly, in light of the purpose of this Declaration, approval by the Committee of any specific set of plans does not bind the Committee to approve an identical set of plans submitted at another time.

11.7 Exoneration of Architectural Review Committee. The Committee shall not be subject to liability to any Owner or any other party by reason of its failure to enforce any covenant, condition or restriction stated herein. Neither the Committee, nor any member thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, drawings or specifications, construction or performance of any work or the development of any Lot within the Business Park.

## **ARTICLE 12**

### **REVIEW PROCEDURES OF ARCHITECTURAL REVIEW COMMITTEE**

12.1 Meeting. The Committee may meet informally, by meeting, telephone, written communication, facsimile transmissions or such other means as the members

may agree upon and as may be sufficient to conscientiously, and fully, perform its duties.

12.2 Materials to be Submitted for Site Plan Approval. In general, the Committee shall require the same information and specifications as those required by the Town of Mooresville and Iredell County as part of its permitting process. Accordingly, before initiating any construction, alteration of existing improvements, grading of any site, landscaping or structural work upon any Lot, the Owner must first submit construction, site and landscape plans as described in the Architectural and Site Guidelines plus such other materials as the Committee may request. At a minimum, the plans shall show in detail:

- a. The grading work to be performed on the Lot;
- b. The nature, materials and location of all improvements including buildings, paving, significant plantings and screening;
- c. Setback distances; and
- d. The location of improvements on adjoining Lots.

The plans shall also provide specific detailed information concerning (e) landscaping for the Lot, (f) exterior lighting and (g) a building elevation plan showing dimensions, materials and exterior color scheme. The Committee shall also have the right to request additional information prior to rendering its decision. The period for approving or disapproving plans as set forth in Section 12.5 below shall be tolled at the time of request for additional information and shall remained tolled until ten (10) business after the receipt of the additional information by the Committee.

12.3 Review Fee. In order to defray the expense of the Committee, the Committee will require a reasonable fee for review of plans. The review filing fee shall be Two Hundred Fifty Dollars (\$250.00). The review fee may only be increased to defray actual out-of-pocket costs to the Developer, such as attendance fees or travel reimbursements to the committee members. Should plans require resubmittal then in such event, the review of any resubmitted plans shall be billed to the person or entity submitting said plans at a rate of \$100.00 per hour. A review fee shall not be charged for the review of changes suggested or required by the Committee.

12.4 Approved Criteria. The Committee shall specifically have the right to disapprove plans, specifications or details submitted to it for reasons, including but not limited to the following:

- a. The submission fails to comply with the terms of this Declaration or the Architectural and Site Guidelines (including payment of the review fee);
- b. Insufficient information or failure to provide detail reasonably requested by the Committee;
- c. The submission fails to comply with the appropriate zoning, tree or signage ordinances or other Applicable Laws that may be in effect from time to time;

- d. Perceived incompatibility with other proposed or existing Improvements or use;
  - e. Reasonable objection to the grading plan for any portion of the Lot;
  - f. Reasonable objection to design or location of loading or storage areas;
  - g. Reasonable objection to the color scheme, finish, proportions, style, height, bulk or appropriateness of any Structures;
  - h. An insufficient number of parking spaces;
  - i. The plans are not prepared by licensed architects, engineers or landscape architects;
  - j. The plans do not adequately provide for surface water control, required screening or other planning matters which affect other Lots in the Business Park; and
- k. Such other matters which, in the sole discretion of the Committee, would be inappropriate or inharmonious with the general plan of development within the Business Park.

12.5 Time for Review. Upon submission of all detail reasonably requested by the Committee (received in the office of Developer or other office as designated by Developer), the submitting Owner shall receive, in writing, the decision of the Committee within thirty (30) business days, subject to Section 12. 2 above, from the date said submission was received. Failure of the Committee to render a decision within thirty (30) business days shall be deemed approval of the submission.

12.6 Certification of Approval. Upon the request of the Owner, the Committee shall confirm its approval of the Owner's plans by issuing a written certificate describing the specific Lot and plans which have been approved.

12.7 Approval is not a Warranty. Approval of the plans submitted by any Owner or other party to the Committee shall not be construed as a certification or warranty, by either Developer or the Committee, that (1) the plans meet with any minimum standards of suitability for use, (2) are acceptable under any applicable laws, (3) conform to any other standards of quality or safety or (4) describe structures or development which would be safe, prudent or feasible. Neither Developer, the Committee, nor any member thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, drawings or specifications, construction or performance of any work or the development of any Lot within the Business Park.

12.8 Commencement of Construction. Beginning with the approval of the Committee as described in this Article 12, the Owner or other parties submitting plans shall, as soon as practical, satisfy all conditions of the Committee and proceed with all approved work described in the plans and such other work as may be necessary for improvement of the Lot in accordance with this Declaration. Commencement of Construction must begin within one hundred eighty (180) days from the date of such approval or, the approval of the Committee shall lapse. The Committee may, at its discretion and upon the request of Owner, extend the one hundred eighty (180) day period for Commencement of Construction in the event that good cause is shown for

such extension. For purposes of this Section 12.8, the term "Commencement of Construction" shall mean that a licensed contractor has been employed, necessary construction permits have been obtained, and construction of grade beams, footers, slabs or like initial construction steps has begun.

12.9 Completion of Work. All improvements upon the Lot, including alteration, construction and landscaping shall be completed within eighteen (18) months after the Commencement of Construction upon the Lot. This time period may be extended in the event that work or completion is rendered impossible due to strikes, fires, national emergencies, *force majeure* or other intervening forces beyond the control of Owner, lessee, licensee, occupant or their agents. Installation of large items of shrubbery or trees may be delayed beyond the 18-month completion period in order to plant during the best seasons for such plantings but in all events any and all landscaping shall be completed within twenty-two (22) months after the Commencement of Construction upon the Lot. Installation of sod and seeding of grounds shall, however, be completed within the 18-month period.

## **ARTICLE 13**

### **RESTRICTIONS ON USE AND OCCUPANCY**

13.1 Prohibited Uses. Unless the use of a Lot is restricted as expressly set forth herein, the Lot may be used for any purposes that are consistent with the zoning of the Lot as approved by the Town of Mooresville. Any use which is not compatible with a high quality, controlled Business Park development, including but not limited to, the following uses are prohibited:

- a. Refining of petroleum or any of its products,
- b. Entertainment Venues,
- c. Cemeteries and Crematoriums,
- d. Commercial or private raising or slaughtering of poultry, livestock or swine,
- e. Feeder lots for any poultry, livestock or swine, rearing of any other birds, fish, insects, mammals, reptiles,
- f. Animal kennels,
- g. Junkyards or Salvage,
- h. Quarries,
- i. Raceways,
- j. Dry-cleaning,
- k. Landfills,
- l. Fuel oil dealers,
- m. Sale of motor vehicle fuel,
- n. Vehicle repair, maintenance or storage,
- o. Storage or transportation of hazardous waste materials other than de minimus amounts incidental to some other business use,
- p. Building material sales and lumberyards,
- q. Self-Storage facility or "Mini-warehouses", or

- r. Businesses which may produce or emit substantial gases, smoke, odors or noises that would be unsuitable for a high quality, controlled Business Park development in the sole discretion of the Developer or Corporation.

13.2 Screening Requirements. The Business Park may be subject to screening requirements by the Town of Mooresville zoning ordinance as it may apply. This screening shall be done, if any, as required by the Town of Mooresville.

13.3 Setback Lines. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except behind the minimum building setback lines as shall be required by the Town of Mooresville and as may be depicted on any Plat. An Owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may construct the structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots. All such structures must comply with the minimum building setback lines from the actual boundary lines of the subject Owner's recombined property, and thereafter such combinations of Lots or portions thereof shall be treated for all purposes under these Restrictions as a single Lot.

13.4 Driveways and Parking. A paved or concrete dust-free parking area shall be provided by the Lot Owner with adequate capacity for off-street parking for all employees or visitors. Said parking shall also provide for the free movement of traffic from Lots to and from the public roads. Parking areas to be used at nighttime shall be lighted but in such a manner as to not produce glare or nuisance on the adjoining properties or public rights of way.

No paved or concrete areas, including driveways, shall be located closer than five (5) feet to any adjoining property line (without a written and recorded agreement with the adjoining property Owner). However, the paved or concrete portion of the driveway which accesses the adjoining public right of way can and must be paved or concrete. All striping and pavement markings shall be white or yellow in color. All parking Lots, sidewalks and driveways of any kind shall be constructed of either concrete or asphalt. Curbs shall be of slip form, cast in place with reinforced concrete or granite material. No parking will be allowed upon any of the streets shown on any Plat.

13.5 Water and Sewer. Each developed Lot must be connected to the water and sewer service provided by the Town of Mooresville. The Lot Owner shall be responsible for any tap on fees, pump and equipment installation costs (if necessary) and other costs associated with extending said water or sewer lines from their location in the street to the Lot. The Developer has already absorbed the cost of extending the water and sewer service to the Business Park itself. No wells or septic tanks shall be allowed on any Lot unless it is determined that municipal water and/or sewer cannot be provided to said Lot, except that wells may be installed for irrigation purposes.

13.6 Subdivision of Lots. No Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise without the prior written approval of the Developer or

its heirs, successors and assigns or the Corporation should the Developer no longer own property in the Business Park.

13.7 Landscaping and Maintenance. All landscaping must conform to those requirements set forth in the Architectural and Site Guidelines. If any Owner fails to undertake and complete the landscaping required within such time limits as are adopted from time to time as part of the Architectural and Site Guidelines, the Corporation may, at its option, after giving the Owner ten (10) days written notice, begin and thereafter pursue with diligence the completion of landscaping in accordance with the Owner's plans. If the Corporation shall undertake such landscaping, the costs shall be assessed against the Owner and if not paid within thirty (30) days after written notice of assessment from the Corporation, said assessment shall constitute a lien upon the Lot and may be enforced as set forth herein. The Architectural and Site Guidelines shall contain specific maintenance standards for the landscaping and Open Space of Lots. All Owners are required to maintain the terrain and landscaping of their Lot to a standard of quality equal, at a minimum, to the standard maintained by the Corporation in the landscaping and upkeep of the Common Areas. If, in the reasonable discretion of the Corporation, any Owner fails to observe the required maintenance standards for the terrain and landscaping of that Owner's Lot, the Corporation will provide written notice to the Owner of such failure. Thereafter, the Owner will have a period of thirty (30) days within which to reasonably and expeditiously commence corrective procedures for the landscaping of its Lot. If the Owner has not commenced reasonable and expeditious procedures within thirty (30) days, or if after a reasonable period of time Owner has failed to complete such corrections, the Corporation may enter upon the Lot and improve the landscaping to a grade equal to that of the Common Areas. All costs of such corrective action will then be assessed against the Owner. The Owner will pay all such costs assessed within fifteen (15) days. If the assessment is not paid when due, then such assessment shall be delinquent and shall accrue interest at the rate set forth previously in Article 8. The assessment shall be a lien against the Lot and the Corporation shall retain all remedies as described in Article 8.

13.8 Loading and Unloading. All loading and unloading areas shall be paved. All such areas shall be provided with appropriate ingress, egress and regress. Such areas shall be adequately screened from public view by buildings, plant material, earth forms or other devices. The design of such areas shall be subject to approval by the Committee.

13.9 Signs. No billboard or advertising signs will be permitted other than those which identify the name and location of the Lot occupant. Signs offering the premises for sale or lease and signs advertising contractors working on jobs on the Lot will be permitted only with prior written approval of the Developer. No signs shall have moving parts or contain or be subject to any flashing. No part of the sign shall extend above the roof line. Signs indicating a company's name must be appropriately scaled and designed for the structure. A front yard sign near the street is also permitted so long as it does not block vision for vehicle operators. The design, lighting characteristics, colors

and locations of all signs shall be subject to approval by the Town of Mooresville in accordance with its sign ordinance.

#### 13.10 Fences and Storage Areas.

(a) Fences shall be subject to approval by the Committee. No fence shall be located closer to the street than the street-side front of any building on a particular Lot.

(b) No materials, inventory, goods in process, semi-manufactured items, finished products, plant equipment, parts, rubbish, waste materials or other personal property shall be kept, stored, maintained or accumulated on any part of said Lot outside of buildings erected thereon in any manner that would be visible from any road within the Business Park, except where prior written approval of the Committee is secured.

#### 13.11 Construction Regulations.

(a) Trailers or field offices shall be parked in locations approved by the Developer and shall be removed immediately upon completion of construction.

(b) No tracked vehicles shall be allowed to operate on any paved road in the Business Park.

(c) Lot Owners shall be responsible for insuring that their contractors or employees promptly clean up all debris on their construction sites and to place such debris in a proper disposal unit. All disposals shall be emptied on a regular basis such that they are never overflowing. No debris shall be dumped, burned or buried except in strict compliance with applicable governmental regulations.

(d) Every Lot Owner shall be responsible for ensuring that any dirt, mud or debris resulting from construction on his Lot is removed promptly and that such debris shall not result in harm to Business Park Lot Owners or visitors. It shall not be the responsibility of the Corporation or other Lot Owners to clean up road hazards left by others. Each Lot Owner shall be wholly and individually liable for any and all damages which may occur as a result of that Lot Owner's negligence in failing to promptly remove debris resulting from construction on his or her Lot.

(e) Following completion of construction, each Lot Owner shall, within fifteen (15) days, remove from the Lot all unused materials, equipment and debris. In addition, said Lot Owner shall clean all his sites and streets and repair property which was damaged by said Owner, including, but not limited to, restoration of grades, planting grass and trees and further to repair the streets, pathways, curbs, drains, signs, lighting and fencing.

13.12 Compliance with Governmental Regulations. All Owners and/or parties in possession of any of the lands in the Business Park shall be responsible for compliance

with all state, federal and local governmental laws and regulations with respect to the business and the operations of the business on the Lot. Such Owners and/or occupants agree to indemnify and hold harmless the SICDC, Mooresville Business Park East Property Owners Association, Inc. and any other Owners and/or occupants of land within Mooresville Business Park East, or their successors or assigns, against and in respect of, any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed upon or incurred by it or them or their successors or assigns, or asserted against it or them or their successors or assigns, by any other party or parties (including, without limitation, a governmental entity) arising out of or created by anyone using the lands within the Mooresville Business Park East.

13.13 Uses. No part of the Lot or any building, structure or improvement thereon shall be used for any purpose other than general office, industrial, warehouse or other commercial purposes approved by the Town of Mooresville.

13.14 Excavation. No excavations or excavating work shall be permitted on any part of the Lot except excavations for the purpose of constructing buildings and tangible improvements on the Lot immediately prior to and during the construction of such buildings and tangible improvements. No soil, sand, gravel, minerals, aggregate or earth materials shall be removed from the Lot except as a part of such excavations made for the purpose of constructing buildings and tangible improvements on the Lot. Owners shall comply with erosion and silt control measures prior to beginning site/building excavation. Any soils to be removed from any Lot and is determined to be in excess for the Owner's use to establish finish grades must first be offered to the Developer as fill for other spots within the park before hauling it away.

13.15 Maintenance. All of the Business Park and all buildings, structures, improvements, appurtenances, signs, lawns, landscaping, sidewalks, driveways, parking areas and entrances thereon must at all times be maintained in a safe, clean and good condition. The Corporation is granted the privilege but not the obligation (which privilege it may or may not exercise at any time and for such periods of time as it deems advisable in its exclusive discretion) of maintaining any part or all of the Business Park or any other buildings, structures, appurtenances, signs, lawns, landscaping, sidewalks, driveways, parking areas and entrances thereon, which are not properly maintained in the opinion of the Architectural Review Committee or the Corporation, and all Owners, occupants and lessees of such realty shall pay to Mooresville Business Park East Property Owners Association, Inc. upon request the aggregate cost of such maintenance work and expense applicable to that portion of the realty owned, occupied or leased by such Owners, occupants or lessees. However, the Corporation must approve such action by a majority vote and must give any Lot Owner ten (10) days' written notice of that Owner's opportunity to cure the maintenance problem. If the Lot Owner does not cure the problem within ten (10) days after the date of issuance of such written notice, the Corporation can then proceed to cure the problem as outlined in this paragraph with the Lot Owner paying for said work as is set forth herein.

### 13.16 Reservation of Easements.

(a) Each Owner, lien holder and tenant of any part of the Lot hereby agrees to reasonably cooperate in the planning, granting, executing, acknowledging and recording of all easements and instruments establishing such easements deemed necessary and reasonable by the Developer for the further development of said Business Park which easements may include those deemed necessary for electric, telephone, gas, water and sewage purposes and storm drainage.

(b) Developer, herein reserves for itself, its successors or assigns, perpetual, alienable and releasable non-exclusive easements and rights-of-way over, through, upon, in, across, under, along and within those ten foot (10') strips of land located contiguous to and within the front, side and rear boundary lines of each and every Lot or future Lot subdivided with the Business Park for the installation, use, operation, repair, replacement, relocation, removal and maintenance of such utility lines, conduits, pipes and other equipment necessary for furnishing electric, natural gas, telephone service, internet service, water, sanitary sewage service and other like services to any other Lot. Also reserved is a temporary general right of access as is necessary from time to time to do installation or maintenance work within such ten foot (10') easements. This reservation of easements does not prohibit construction of driveways or parking areas at locations approved by the Committee.

13.17 Violation. If the grantee or its successors or assigns or any lessee or occupant of any part of the Lot or any other person should violate any of the covenants, conditions and restrictions contained herein, it shall be lawful and permissible for the Developer, or the Owner or occupant of any other site, regardless of whether adjacent thereto, or any one or more of such persons, to prosecute any proceedings at law or in equity against the person or persons violating any of these restrictions for any remedies that are available including, but not limited to, actions for injunctive relief and damages. The prosecuting party shall be entitled to recover from any person or persons violating or attempting to violate any of these covenants, conditions and restrictions all attorneys fees, costs and expenses, without relief from valuation and appraisal laws, incurred by said prosecuting, with respect to securing the enforcement of or the compliance with these covenants, conditions and restrictions or with respect to any actions, either of law or in equity, commenced by it for such purpose or purposes.

13.18 Reservation of Maintenance Option. There is reserved, for the benefit of the Corporation, an option of exclusive maintenance upon and over the frontage of any Lot, of up to twenty (20) feet in width. This option shall run along and with the margin of the right of way of all public or private streets within, or adjoining, the Business Park. The Corporation may exercise its option of exclusive maintenance either on a continuing basis or from time to time in its sole discretion. This option may be exercised with respect to all Lots or only to selected areas, all in the sole discretion of the Corporation. All expenses of this maintenance option shall be assessed by the Corporation as annual or special assessments.

13.19 Temporary Structures. Temporary Structures are prohibited within the Business Park, with the exception of such trailers or storage facilities as may be employed by a contractor, subcontractor or agent of an Owner engaged in construction upon a Lot pursuant to plans approved by the Committee.

13.20 Discharges. All uses of any Lot which will emit dust, dirt, cinders, sweepings, noxious or odoriferous gases or hazardous materials into the atmosphere or which discharge wastes of any nature or other harmful matter into the soil, ground water, any stream, river, pond, lake or other body of water, which in the sole discretion of the Committee may adversely affect the safety, health, comfort or intended property use by persons within the Business Park, are strictly prohibited.

13.21 Utility Lines. No above ground utility service lines shall be constructed within the Business Park. Only distribution lines supplying service to the entire site of the Business Park may be located above ground.

## **ARTICLE 14**

### **WASTE MANAGEMENT AND ENVIRONMENTAL HYGIENE**

14.1 General Waste Management. Because releases of hazardous or toxic materials upon any Lot within the Business Park could have enormous adverse impact upon any or all of the other Lots and other Property within the Business Park, each and every Owner hereby covenants and warrants that it will observe all requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), Clean Air Act, Clean Water Act, the Refuse Act, Toxic Substances Control Act, Safe Drinking Water Act, the North Carolina Oil Pollution and Hazardous Substances Control Act ("OPHSCHA") and all other federal, state and local statutes, laws, regulations and ordinances concerning the creation, storage, transportation or release of substances injurious to life forms or the environment, including but not limited to, "hazardous substances" as defined under CERCLA and "oil or other hazardous substances" as described in OPHSCHA.

14.2 Underground Storage Tanks. Before installation of any underground storage tank ("UST"), the Owner shall deliver to the Corporation a site plan or survey showing the exact proposed location of the UST. Copies of all permits issued in connection with all UST's shall be delivered to the Corporation upon their receipt by Owner. Unless other means of inspection are more appropriate, the Owner shall make periodic soil borings (or test with a geoprobe or any other effective technology then available), at each end of the UST, according to the following schedule, shall submit the boring sample to professional and qualified technicians for analysis and shall report the findings generated after sampling analysis to the Association. The borings will be required at the following intervals: five years following installation, ten years following installation, twelve years following installation and every two years thereafter. In the event that leakage or soil contamination is indicated at any time, the Owner shall

immediately, at its sole expense, take all remediation measures required by applicable laws.

## **ARTICLE 15**

### INDEMNIFICATION BY CORPORATION TO DEVELOPER

The Corporation shall be responsible for compliance with all state, federal and local governmental laws and regulations with respect to the maintenance of the Business Park in compliance with such laws as they relate to drainage within the Business Park. The Corporation agrees to indemnify and hold harmless the SICDC and its successors or assigns, against and in respect of, any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed upon or incurred by it or them or their successors or assigns, or asserted against it or them or their successors or assigns, by any other party or parties (including, without limitation, a governmental entity) arising out of or created by failure of the Corporation to comply with any other of its obligations hereunder or under applicable local, state or federal law.

## **ARTICLE 16**

### WAIVER

No provision contained in these Restrictions, the Articles or the Bylaws shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violations, no matter how often the failure to enforce is repeated. It is agreed by all Owners and by any other party having an interest in any Lot that neither Developer nor the Corporation has any duty to enforce any of the covenants and restrictions contained herein.

## **ARTICLE 17**

### VARIANCES

The Board of Directors in its discretion may allow reasonable variances and adjustments of these Restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Business Park of Lots owned in fee by various entities with each such Owner having an easement upon areas owned by the Corporation. To be effective, a variance hereunder shall be recorded in the Iredell County Register of Deeds office; shall be executed on behalf of the Corporation; and shall refer specifically to this Declaration.

## **ARTICLE 18**

### PARTIAL TAKING

In the event that any portion of the Business Park is taken or purchased in any manner in the nature of a condemnation or other governmental taking, such taking will not render invalid any provision contained in these Restrictions.

## **ARTICLE 19**

### **DURATION, AMENDMENT AND TERMINATION**

17.1 The covenants and Restrictions contained in this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of one (1) year. This Declaration may not be amended in full or part without the recording of an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. However, no amendment shall alter any obligation to pay Community Expenses to benefit the Common Areas and Community Use areas, as herein provided, or affect any lien for the payment of same. To be effective, any amendment must be recorded in the Office of the Register of Deeds of Iredell County, North Carolina, and a marginal entry of same must be signified on the face of this document.

17.2 Invalidation of any one of these covenants or Restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

## **ARTICLE 20**

### **CAPTIONS**

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include masculine and feminine.

## **ARTICLE 21**

### **ASSIGNABILITY OR RIGHTS AND LIABILITIES**

Developer shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of the same in any manner.

## **ARTICLE 22**

### LIBERAL CONSTRUCTION

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Business Park of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owner's association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

## **ARTICLE 23**

### BYLAWS

The Bylaws attached hereto as Exhibit D are incorporated by reference herein.

## **ARTICLE 24**

### GENERAL

24.1 Mortgagees' Protection. Violation of these Restrictions shall not defeat the lien of any mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder shall be subordinate to any such mortgage unless a lis pendens or notice of the lien shall have been filed prior to the recordation of such mortgage; provided, however, that any mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to these Restrictions as fully as any other Owner.

24.2 Chain of Title. Each grantee, lessee or other person in interest or occupancy accepting a conveyance of a fee or lessor interest, the demise of a leasehold interest, or a license, in any Lot, whether or not the instrument of conveyance refers to these Restrictions, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by these Restrictions and to incorporate these Restrictions by reference in any conveyance, demise of a leasehold estate, or the grant of a license, of all or any portion of his interest in any real property subject hereto.

24.3 Ambiguities. If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in these Restrictions, such ambiguity, conflict or discrepancy shall be resolved and determined by Developer in its sole discretion. Developer shall have the right to interpret the provisions of these Restrictions and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, their construction or interpretation shall be final and binding as to all parties or property benefited or bound by the provisions hereof. Any conflict between any construction or

interpretation of Developer and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Developer.

24.4 No Reversionary Interest. These Restrictions shall not be construed as creating conditions subsequent, or as creating a possibility of reverter. Nothing herein contained, however, shall be deemed a waiver of the rights to repurchase set forth in Article 10, Section 10.6 above. Except as provided above, all reversionary rights are hereby expressly waived by Developer.

24.5 Zoning Requirements. These Restrictions shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any other Applicable Laws, or by specific restrictions imposed by any deed or other conveyance. In the event of any conflicts, the most restrictive provision among the conflicting terms shall be taken to govern and control.

24.6 Effect of Invalidation. If any provision of these Restrictions is held to be invalid by any court or other body of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Restrictions and all remaining restrictions, covenants, reservations, easements and agreements contained herein shall continue in full force and effect.

24.7 Gender. All pronouns used herein shall be deemed to be singular, plural, masculine, feminine or neuter as application to specific circumstances may require.

## **ARTICLE 25**

### **JOINDER BY MORTGAGEE**

Property within the Subdivision is encumbered by a Real Estate Deed of Trust dated January 22, 2013 and recorded in Book 2220 at Page 2333 in the Iredell County Public Registry, executed and delivered by Developer to BB&T Collateral Service Corporation, as trustee for Branch Banking and Trust Company. A Consent and Subordination executed by BB&T Collateral Service Corporation and Branch Banking and Trust Company, consenting to the execution and recordation of this Declaration, is being recorded in the Iredell County Public Registry in connection with the recording of this Declaration and is attached to this Declaration as Exhibit B.

Further, property within the Subdivision is encumbered by a Real Estate Deed of Trust dated January 22, 2013 and recorded in Book 2220 at Page 2349 in the Iredell County Public Registry, executed and delivered by Developer to Steve Gambill, as trustee for the Town of Mooresville. A Consent and Subordination executed by Steve Gambill and the Town of Mooresville, consenting to the execution and recordation of this Declaration, is being recorded in the Iredell County Public Registry in connection with the recording of this Declaration and is attached to this Declaration as Exhibit C.

IN TESTIMONY WHEREOF, the **South Iredell Community Development Corporation** and  **Mooresville Business Park East Property Owners Association, Inc.** have caused this instrument to be executed this the \_\_\_\_ day of \_\_\_\_, 2017.

**SOUTH IREDELL COMMUNITY DEVELOPMENT CORPORATION**

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**MOORESVILLE BUSINESS PARK EAST PROPERTY OWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF IREDELL

I certify that the following person(s), who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_, Treasurer of SOUTH IREDELL COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation.

Date: \_\_\_\_\_

(Official Seal)

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF IREDELL

I certify that the following person(s), who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

\_\_\_\_\_ (name of person signing) as  
\_\_\_\_\_ (title) of MOORESVILLE BUSINESS PARK EAST  
PROPERTY OWNERS ASSOCIATION, INC., a North Carolina Corporation

Date: \_\_\_\_\_

(Official Seal)

\_\_\_\_\_  
Notary Public

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

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

## EXHIBIT A

### PROPERTY DESCRIPTION

COMMENCING at NCGS monument "EDMISTON" having NAD 83 NC grid coordinates N: 695457.40' E: 1476616.78'; thence, a grid bearing and grid distance, S 48° 41' 32" W 2752.69' to NCGS monument "EDMISTON AZ MK" having NAD 83 NC grid coordinates N: 693640.33' E: 1474549.03'; thence, S 47° 04' 26" W 2170.35' to an existing masonry nail in the centerline of NC Highway 801, the POINT OF BEGINNING; thence with the line of Haire as recorded in DB 696 PG 181 in the Iredell County Registry the following two courses and distances: (1) S 01° 46' 01" W crossing an existing 1.5" iron pipe at 30.38', for a total distance of 114.33' to an existing 1/2" iron pipe; (2) N 89° 50' 20" E 297.55' to an existing 5/8" iron rebar; thence with the line of Kerri Plantation subdivision as recorded in PB 51 PG 95 in the Iredell County Registry, S 03° 31' 49" W 519.87' to an existing 3/4" iron pipe; thence continuing with the line of Kerri Plantation subdivision, S 03° 34' 07" W 400.21' to an existing 1.5" iron pipe; thence with the line of Fenninger as recorded in DB 1241 PG 51 in the Iredell County Registry the following three courses and distances: (1) S 03° 49' 29" W 167.68' to an existing 3/4" iron pipe; (2) S 16° 35' 22" E 650.81' to an existing stone; (3) S 64° 54' 21" E 760.89' to an existing 1.5" iron pipe; thence with the line of Kerr as recorded in DB 677 PG 120 in the Iredell County Registry, N 89° 26' 24" E 611.99' to an existing 1.5" iron pipe; thence with the lines of Kerr, Graham and Foster as recorded in DB 1957 PG 2472 and DB 1509 PG 239 in the Iredell County Registry, S 12° 11' 07" E crossing an existing 1/2" iron pipe at 836.13' for a total distance of 899.37' to an existing 1.5" iron pipe; thence with the line of Foster and Neill as recorded in DB 2011 PG 2497 in the Iredell County Registry, S 35° 10' 31" E 285.56' to an existing 1.25" iron pipe; thence with the line of Donald Meadows as recorded in DB 2178 PG 403 in the Iredell County Registry, the following five courses and distances: (1) S 53° 26' 51" W 169.09' to an existing 1/2" iron rebar; (2) S 20° 44' 46" E 166.91' to an existing 1/2" iron rebar; (3) S 51° 38' 13" E 232.47' to an existing 1/2" iron rebar; (4) S 30° 55' 19" E 302.47' to an existing 1/2" iron rebar; (5) S 36° 41' 28" E 671.99' to an existing 1/2" iron rebar, a common corner with John Meadows as recorded in DB 2178 PG 418; thence with John Meadows the following ten courses and distances: (1) S 31° 28' 46" W 673.50' to an existing 1/2" iron rebar; (2) S 79° 40' 38" W 1260.73' to an existing 1/2" iron rebar; (3) S 44° 13' 44" W 564.89' to an existing 1/2" iron rebar; (4) S 44° 48' 46" E 588.22' to an existing 1/2" iron rebar; (5) S 61° 05' 19" W 314.63' to an existing 1/2" iron rebar; (6) S 83° 22' 04" W 215.60' to an existing 1/2" iron rebar; (7) S 66° 14' 26" W 128.81' to an existing 1/2" iron rebar; (8) S 55° 28' 30" W 174.74' to an existing 1/2" iron rebar; (9) S 43° 54' 43" W 350.24' to an existing 1/2" iron rebar; (10) S 57° 21' 46" E crossing an existing 1/2" iron rebar at 346.15' for a total distance of 374.15' to a point in the centerline of Back Creek; thence following the centerline of Back Creek the following seventeen courses and distances: (1) S 54° 12' 30" W 42.34'; (2) S 40° 47' 36" W 80.63; (3) S 27° 10' 51" W 90.15'; (4) S 48° 48' 48" W 95.23'; (5) S 66° 33' 33" W 149.06'; (6) S 50° 55' 09" W 88.88'; (7) S 65° 22' 59" W 140.61'; (8) S 68° 27' 17" W

237.19'; (9) S 78° 13' 49" W 167.96'; (10) S 79° 26' 21" W 85.78'; (11) S 44° 37' 44" W 126.42'; (12) S 87° 21' 33" W 300.19'; (13) S 63° 12' 18" W 118.08'; (14) S 55° 39' 19" W 368.95'; (15) S 45° 08' 21" W 211.49'; (16) S 37° 20' 57" W 110.18'; (17) S 34° 09' 42" W 56.40'; thence leaving the centerline of Back Creek and following along the line of Cherry Grove HOA as recorded in DB 1694 PG 985, and shown on Plat Book 47 Page 47 in the Iredell County Registry the following two courses and distances (1) S 77° 09' 15" W 239.52' to a point; (2) N 87° 30' 20" W 202.95' to an existing 1" square iron pipe; thence with the line of Carl A. Brown as recorded in DB 2078 PG 1993 in the Iredell County Registry, N 51° 40' 39" W 1042.00' to an existing 1" square iron pipe; thence with the line of Carl A. Brown and Ricky Brown as recorded in DB 2049 PG 858 in the Iredell County Registry the following two courses and distances: (1) N 41° 23' 02" E 199.37' to an existing 1" square iron pipe; (2) N 58° 15' 48" W 595.52' to an existing masonry nail in the centerline of NC Highway 801; thence following along the centerline of NC Highway 801 the following three courses and distances: (1) N 30° 22' 38" E 190.42'; (2) N 27° 20' 12" E 189.12'; (3) N 24° 48' 36" E 98.17' to an existing masonry nail; thence with the lines of Lyon and Mitchell as recorded in DB 2051 PG 463 and DB 992 PG 379 in the Iredell County Registry, N 88° 49' 54" E crossing an existing 3/4" iron rebar at 35.16' for a total distance of 607.54' to an existing 1" iron pipe; thence along the lines of Mitchell, Johnson, Oliphant and Cooke as recorded in DB 992 PG 379, DB 832 PG 568, DB 935 PG 1666, DB 2196 PG 1607 and DB 992 PG 1222 in the Iredell County Registry, N 01° 52' 22" E 1561.32' to an existing masonry nail in the centerline of NC Highway 801; thence following along the centerline of NC Highway 801, N 22° 37' 49" E 686.21' to an existing masonry nail; thence along the line of McClain as recorded in DB 507 PG 506 the following three courses and distances: (1) S 88° 55' 47" E crossing an existing 5/8" iron rebar at 31.73' for a total distance of 216.43' to an existing 1/2" iron rebar; (2) N 22°04'13" E 214.50' to an existing 5/8" iron rebar, the northeast corner of McClain; (3) N 88°55'47" W 214.50' to an existing masonry nail in the centerline of NC Highway 801; thence with the centerline of NC Highway 801, N 22° 40'43" E 245.62' to an existing masonry nail in the centerline of NC Highway 801, the southwest corner of Clodfelter as recorded in DB 1988 PG 1933 in the Iredell County Registry; thence with Clodfelter, S 84°00'03" E 214.00' to an existing 5/8" iron rebar, the southeast corner of Clodfelter; thence continuing with Clodfelter, N 23°04'57" E 100.00' to an existing 5/8" iron rebar in the line of Esselman as recorded in DB 776 PG 693 in the Iredell County Registry, the northeast corner of Clodfelter; thence with Esselman, S 84°00'03" E 199.43' to an existing 3/4" iron rebar, the southeast corner of Esselman; thence continuing with Esselman, N 05°53'24" E 104.91' to an existing 3/4" iron rebar, the northeast corner of Esselman; thence continuing with Esselman, N 75°20'37" W passing an existing 1/2" iron rebar at 339.09' for a total distance of 370.37' to an existing masonry nail in the centerline of NC Highway 801, the northwest corner of Esselman; thence with the centerline of NC Highway 801, N 22°43'44" E 161.34' to an existing masonry nail in the centerline of NC Highway 801; thence with the line of Ridenhour as recorded in DB 2053 PG 545 in the Iredell County Registry, N 88°27'56" E 438.81' to an existing 1/2" iron rebar; thence along the easterly boundary of Howard Estate as recorded in PB 3 PG 97 in the Iredell County Registry, N 22° 36' 52" E 941.06' to an existing 1/2" iron rebar; thence along the northerly boundary of Howard Estate, N 67° 05' 01" W 372.38' to an existing 1/2" iron rebar in the eastern boundary of

NC Highway 801; thence along the eastern boundary of NC Highway, N 23° 07' 27" E 450.92' to an existing 1.25" iron pipe; thence along the line of Phillips as recorded in DB 929 PG 1850 in the Iredell County Registry the following two courses and distances: (1) S 67° 17' 52" E 220.39' to an existing 3/4" iron rebar; (2) N 22° 51' 29" E 615.80' to an existing 1/2" iron rebar; thence along the line of Keener as recorded in DB 2202 PG 349 in the Iredell County Registry the following two courses and distances: (1) N 16° 45' 05" E 173.99' to an existing 1" pinched top pipe'; (2) N 68° 52' 46" W 204.13' to an existing 1/2" iron rebar in the eastern boundary of NC Highway 801; thence along the eastern boundary of NC Highway 801, N 23° 01' 09" E 206.59' to an existing 5/8" iron rebar; thence leaving the eastern boundary of NC Highway 801 N 68° 58' 57" W 30.45' to an existing masonry nail in the centerline of NC Highway 801; thence along the centerline NC Highway 801 N 23° 08' 24" E 158.39' to an existing masonry nail; thence along the line of Rader as recorded in DB 1742 PG 351 in the Iredell County Registry, S 54° 23' 57" E crossing an existing 1" pinched top pipe at 29.09' for a total distance of 424.32' to an existing 1" pinched top pipe; thence following the lines of Rader and Elledge as recorded in DB 1934 PG 2074 in the Iredell County Registry the following two courses and distances: (1) N 32° 33' 57" E 413.95' to an existing 1" pinched top; (2) N 55° 39' 01" W 89.98' to an existing 1" pinched top; thence following the lines of Karriker and Fegter recorded in DB 1735 PG 2132 and DB 2184 PG 2093 in the Iredell County Registry, N 36° 08' 50" E 350.83' to an existing 1" pinched top pipe; thence along the line of Overcash as recorded in DB 1839 PG 2481 in the Iredell County Registry the following two courses and distances: (1) N 36° 21' 00" E 245.39' to an existing 1" pinched top pipe; (2) N 41° 22' 18" W crossing an existing 1" pinched top pipe at 369.72' for a total distance of 399.60' to an existing masonry nail in the centerline of NC Highway 801; thence following the centerline of NC Highway 801 N 41° 10' 50" E 117.01 to the POINT OF BEGINNING, containing 476.741 acres.

**EXHIBIT B**

**CONSENT OF MORTGAGEE**

**BRANCH BANKING AND TRUST COMPANY**, being the Beneficiary under that certain Deed of Trust dated January 22, 2013 and recorded in Book 220 at Page 2333 in the Iredell County Public Registry, executed and delivered by Developer to BB&T Collateral Service Corporation as trustee for Branch Banking and Trust Company, does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof to said real property described on the Plat and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits and amendments hereto, shall be superior to the lien of said Deed of Trust on said property described on the Plat and subsequent plats filed by Developer. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Developer the relationship of partnership or of joint venturers, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the Developer under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BB&T Collateral Service Corporation, Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Branch Banking and Trust Company, a North  
Carolina Banking Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I certify that the following person(s), who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

\_\_\_\_\_(name of person signing) as  
\_\_\_\_\_(title) of BB&T Collateral Service Corporation, as Trustee.

Date:\_\_\_\_\_

(Official Seal)

\_\_\_\_\_  
Notary Public  
Printed Name:\_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I certify that the following person(s), who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

\_\_\_\_\_(name of person signing) as  
\_\_\_\_\_(title) of Branch Banking and Trust Company, a North  
Carolina Banking Corporation

Date:\_\_\_\_\_

(Official Seal)

\_\_\_\_\_  
Notary Public  
Printed Name:\_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT C**

**CONSENT OF MORTGAGEE**

**The Town of Mooresville**, being the Beneficiary under that certain Deed of Trust dated January 22, 2013 and recorded in Book 2220 at Page 2349 in the Iredell County Public Registry, executed and delivered by Developer to Steve Gambill as trustee for the Town of Mooresville, does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof to said real property described on the Plat and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits and amendments hereto, shall be superior to the lien of said Deed of Trust on said property described on the Plat and subsequent plats filed by Developer. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Developer the relationship of partnership or of joint venturers, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the Developer under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Steve Gambill, Trustee

By: \_\_\_\_\_  
Name: Steve Gambill  
Title: Trustee

TOWN OF MOORESVILLE, a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Town Clerk

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I certify that the following person(s), who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Steve Gambill, as Trustee.

Date: \_\_\_\_\_

(Official Seal)

\_\_\_\_\_  
Notary Public

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

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

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

I, \_\_\_\_\_, Notary Public, for \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally came before me this day and acknowledged that (s)he is Town Clerk for the Town of Mooresville, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by \_\_\_\_\_ as its Town Clerk.

Date: \_\_\_\_\_

(Official Seal)

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

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

**EXHIBIT D**

**BYLAWS OF  
MOORESVILLE BUSINESS PARK EAST PROPERTY OWNERS ASSOCIATION, INC.**