

**LINCOLN COUNTY INDUSTRIAL PARK**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**

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**STATE OF NORTH CAROLINA**

**COUNTY OF LINCOLN**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

Drawn by and mail to:  
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**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** made this the \_\_\_\_ day of \_\_\_\_\_, 2000 by:

the North Carolina County of Lincoln (hereinafter "Lincoln County");

Neil Finger et ux Mary Ann Finger, Carrie H. Finger (unmarried) and Rowe Lamar Laney et ux Doris Laney; and

The Heafner Tire Group, Inc., a North Carolina corporation,

who collectively are seised of the fee simple estate in that real property located in Lincoln County, North Carolina described in Exhibit "A", attached hereto and incorporated herein,

**WITNESSETH THAT**

In order to: (1) create a restricted, structured and high quality industrial park environment providing for a variety of employment uses; (2) provide for appropriate design of buildings, site arrangements, and amenities; (3) assure a satisfactory integration of the Industrial Park into the surrounding area; (4) enhance general development within the Industrial Park; (5) enhance the value, marketability, and quality of all property within the Industrial Park; (6) prevent construction of inappropriate Improvements; (7) provide for compliance with Applicable Laws concerning zoning, construction, safety, the public welfare and environment; (8) provide for an association of property owners within the Industrial Park; (9) create and maintain common areas with a high level of appearance and utility; (10) create reasonable and efficient review procedures to assist owners in the development of their Lots and (11) provide the owners of Lots with the best possible value for their investment and to protect that investment; the undersigned Declarants do hereby, for the use and benefit of themselves and their successors and assigns, **DECLARE, RESERVE AND IMPOSE** upon the property described in attached Exhibit "A" the following conditions, covenants, reservations, easements and restrictions.

**ARTICLE I**  
**Definitions**

Words or phrases defined in this Article I shall be interpreted in accordance with that defined meaning whenever those words or phrases are used in this Declaration.

(a) **Applicable Laws** - All enforceable laws, regulations and ordinances validly promulgated and placed into effect by the County of Lincoln, the State of North Carolina, or the United States of America, including all zoning regulations of those governmental entities having jurisdiction as well as sign, street, tree and floodway ordinances, state and federal regulation of land use, environmental resources, hazardous materials and such general laws of all appropriate jurisdictions as may effect the Industrial Park.

(b) **Architectural and Site Guidelines** - Those rules, regulations and guidelines promulgated by Declarants and attached hereto as Exhibit "B" and those additional rules, regulations and guidelines promulgated by the Architectural Review Committee pursuant to the power set forth in Article VIII, Section 3. All Architectural and Site Guidelines, whenever promulgated shall have the same force and effect as if they were originally set forth in this Declaration as Restrictions.

(c) **Accessory Use** - The use of a Structure which is not one of the principal businesses carried on in that Structure.

(d) **Association** - The Lincoln County Industrial Park Property Owners Association, Inc., a North Carolina not-for-profit corporation which will be formed by Declarants.

(e) **Buffers** - Berming or vegetative screening erected to obscure the line of vision, or the flow of sound or wind.

(f) **Commencement of Construction** - Occurs when the Owner has obtained approval from the Committee for its final plans; obtained building, grading, driveway and other required permits from the appropriate governmental authorities authorizing construction according to those plans approved by the Committee; entered into a construction contract with a contractor holding the appropriate North Carolina license; and expended at least the sum of Fifty Thousand Dollars (\$50,000.00) pursuant to such construction contract for on-site construction work.

(g) **Committee** - The Architectural Review Committee established pursuant to Article VIII.

(h) **Common Property** - All property specifically and expressly declared to be such by Declarants, including such property as may, from time to time, be owned in fee simple by the Association for the common use and benefit of all Owners, including all related fixtures, improvements, apparatus and amenities. The appearance of amenities, streets, plantings, improvements or facilities upon maps, drawings or other illustrations and descriptions of the Industrial Park which hypothetically project its appearance at a future stage of development does not constitute the declaration or dedication of such amenities, streets, plantings, improvements or facilities as Common Property.

(i) **Declarants** -

the North Carolina County of Lincoln;

Neil Finger et ux Mary Ann Finger; Carrie H. Finger (unmarried) and Rowe Lamar Laney et ux Doris Laney

(collectively the "Finger-Laney Family");

the Heafner Tire Group, Inc., a North Carolina corporation;

or any assignee(s) of the powers granted to said Declarants hereunder.

The above named land owners are the current owners of the fee simple interest of the Property. At such time as any one or more of the above named shall cease to own any Land within the Industrial Park, such individual or entity shall then cease to be one of the Declarants.

Except where expressly stated otherwise, authority granted to the Declarants by the terms of this Declaration may only be exercised upon the agreement of a majority in voting interest of the Declarants (one vote for each acre owned within the Property plus a fractional [hundredths] vote for each fractional [hundredths] acre thereof; the vote for any portion of the Property co-owned by more than one Declarant shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned property be split or cast separately) as such group may exist from time to time.

(j) Declaration - This Declaration of Covenants, Conditions and Restrictions as executed by the Declarants and Filed.

(k) File - The recording and proper indexing of record in the Office of the Register of Deeds for Lincoln County, North Carolina.

(l) Improvements - All buildings, out buildings, underground installations, roads, driveways, parking areas, fences, screens, retaining walls, stairs, decks, windbreaks, plantings, poles, signs, loading areas, cuts and fills, and all other structures or landscaping improvements of every variety and nature.

(m) Industrial Park - All property described in attached Exhibit "A", any additional property added and made subject to this Declaration as provided below in Article II, Section 3, and such businesses and improvements as shall come to be conducted or erected thereon and the amenities and infrastructure to be erected thereon.

(n) LEDA - the Lincoln Economic Development Association, a not-for-profit organization established for the purpose of promoting development to create employment opportunities, economic growth and an increased tax base to benefit the citizens of Lincoln County, North Carolina.

(o) Lessee - Any person or entity granted a leasehold interest to any portion of a Lot.

(p) Lot - That parcel of land within the Industrial Park which is conveyed from Declarants to an Owner. In the event that any Owner shall subdivide or otherwise reconvey any portion of that Owner's Lot, the portion conveyed shall be deemed a separate Lot and the Grantee shall be deemed an Owner. In the event any Owner shall not erect structures upon a portion of that Owner's Lot, which portion is of 2 or more acres having a shape and sufficient road frontage that it would be reasonably suitable for separate development with structures independent from those of the Owner, that portion shall for purposes of Article XIV, Section 1, be deemed a separate Lot.

(q) Mortgage - Any deed of trust or security interest granted to an institutional lender to secure a loan of money to an Owner or other party in interest, which attaches to any Lot and is perfected or Filed.

(r) Occupant - Any party, whether or not an Owner, who is regularly present upon a Lot pursuant to either express

or implied license or right.

(s) Open Space - Those areas of a Lot which are not improved other than by fills, cuts or the presence of underground utility lines. Open space shall include landscaping, natural areas, lawns, screening or buffer areas but it does not include any parking, loading, outdoor storage, trash handling, utility or service areas.

(t) Outdoor Storage - Any areas outside of a Structure, used for the temporary accumulation of inventory, materials, or other personalty. Outdoor storage does not include the stockpiling of materials which are to be incorporated into a Structure or Improvement by an Owners' contractor or subcontractor, so long as such materials are incorporated or removed within one hundred twenty (120) days.

(u) Owner - The person or entity holding the fee simple title to any Lot, excluding Lincoln County and the Finger-Laney Family.

(v) Principal Improvements - The primary Structures which, according to the final plans approved by the Committee, are to be built upon a Lot. Principal Improvements do not include such minor Structures as out-buildings or storage areas.

(w) Property - All that real estate described in attached Exhibit "A" plus such other real estate which may be additionally made subject to this Declaration as provided below in Article II, Section 3.

(x) Rear Setback - The Setback Distance from a rear boundary line of a Lot.

(y) Setback Distance - The distance between either a Lot boundary line or the edge of a street right of way, to a line within the Lot and parallel to the boundary line or the right of way, and within which distance no improvements, as more specifically described in Article X, Section 3, are permitted.

(z) Side Setback - The Setback Distance from a side boundary line of a Lot.

(aa) Sign - Any structure, component, fabric, device or display which bears lettered, pictorial or sculptured material designed to convey information or images and which is exposed to public view.

(bb) Street Setback - The Setback Distance from the edge of a Street Right of Way.

(cc) Structure - A building, primarily designed and used for a business use as is permitted by this Declaration and/or the approval of the Committee.

(dd) Substantial Completion - The date upon which the exterior walls and roof of the Principal Improvements have been installed.

(ee) Temporary Structures - Any structure not shown on the final site plan approved by the Committee, excepting such storage and operating trailers or structures as may be necessary for those contractors and subcontractors in the employ of Owner for the purpose of constructing those Improvements and Structures indicated on final plans approved by the Committee.

(ff) Utilities - Those lines and services in the nature of electric, telephone, catv, water, sewer and natural gas which may be laid or distributed throughout the Industrial Park.



## **ARTICLE II Property**

**Section 1. Description** The real property initially subjected to this Declaration is described in the Exhibit "A" attached hereto and incorporated herein.

**Section 2. Business Name** The Property, the business conducted thereon and the amenities and infrastructure of the Property shall henceforth, collectively, be known as "The Lincoln County Industrial Park".

**Section 3. Additions** At any time hereafter, Declarants may add additional real estate to the Property, which additional real estate shall be subject to this Declaration upon the filing of amended or supplementary declarations. Upon the filing of such amended or supplementary declaration, the real estate added to the Property shall be subject to and entitled to the benefit of this Declaration and all terms of the subsequent supplementary or amended declarations.

**Section 4. Form of Amendment** Each amendment or supplementary declaration as referred to immediately above, shall be signed by all Declarants (as that group is defined at the time of the amendment or supplementary declaration) and shall contain the following provisions:

1. Reference to this Declaration and the date, book and page of its Filing in Lincoln County, North Carolina;
2. A precise legal description of the additional real estate (if any);
3. Language subjecting the additional real estate (if any) to this Declaration and its subsequent amendments or supplementary declarations; and
4. Such other covenants, restrictions or easements as Declarants shall, in their discretion, additionally impose upon the subject real estate.

**Section 5. Adjacent Property Not Specifically Described** From time to time, one or more of Declarants, their predecessors or successors, may hold title or other interests in real estate adjacent to the Property. Unless such adjacent property is specifically described or included in the attached Exhibit "A" or the legal description of future supplementary or amended Declarations, such adjacent real estate shall not be deemed a part of the Property or the Industrial Park.

## **ARTICLE III Declaration**

The Property shall hereafter be held, sold, leased, transferred, conveyed and encumbered subject to the herein contained covenants, conditions, restrictions, reservations, and easements which: (1) are made for the direct, mutual and reciprocal benefit of each and every portion of the Property and shall create mutual, equitable servitudes upon each part of the Property in favor of every other part of the Property; (2) create reciprocal rights and obligations between the respective Owners and privity of estate between all grantees of portions of the Property, their successors and assigns; (3) shall operate as covenants running with the land; and (4) shall inure to the benefit of the Declarants and each Owner. By acceptance of any deed conveying title to a portion of the Property, execution of a

Property, execution of a contract of purchase or acceptance of a lease or license concerning any portion of the Property or by taking possession of any portion of the Property; whether from Declarants or a subsequent owner or lessee, any future owner, lessee, licensee or occupant shall accept such deed, contract, lease, license or possession upon and subject to each and all of the covenants, conditions, restrictions, reservations and easements set forth herein. Each person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to the covenants, conditions, restrictions, reservations and easements set forth herein, and in all future supplementary or amended Declarations, whether or not any reference thereto is contained in the instrument by which such person or entity acquires an interest in the Property.

#### **ARTICLE IV Common Property**

**Section 1. Description** The Common Property may include any area expressly and specifically designated as such in unambiguous terms by the Declarants or any area or facility owned by the Association. The Common Property may include streets, drainage and sewage facilities, recreational areas, pathways, streets, medians, entrances, planting areas, and such other lands, other than the Lots, which are not owned, operated or maintained by a governmental body or municipal authority.

The extent of any Common Property shall be determined by the ultimate number of Lots and Owners in the Industrial Park. If the Park consists of a relatively small number of large Lots, all having frontage on existing public rights of way, the Declarants may construct few or no facilities to be dedicated as Common Property.

**Section 2. Common Rights** Every Owner shall have a non-exclusive, perpetual right and easement of benefit and enjoyment in and to the Common Property which easement shall be appurtenant to the Lot of said Owner, subject to this Declaration and the By-laws, rules and regulations adopted from time to time by the Association.

#### **ARTICLE V Property Owner's Association**

**Section 1. Membership** Every Owner must be a Member of the Association. Membership is only available to Declarants and Owners and such membership shall be extinguished upon the complete transfer of all Property held by any Member.

#### **Section 2. Classes of Membership**

**(a) Owners Class Membership** Owners Class Members shall consist of all Owners and Declarants except for Lincoln County prior to the termination of the Founders Class Membership. If at any time, Lincoln County should own one or more Lots subsequent to the termination of the Founders Class Membership, Lincoln County shall then be an Owners Class Member.

**(b) Founders Class Membership** Lincoln County (or a successor by way of bulk transfer) only, shall be the sole Founders Class Member. The Founders Class Membership shall terminate upon the first to occur of:

1. December 1, 2015,
2. Such time as Lincoln County shall have conveyed all of its interest in the Property (including any Additions), or
3. At the discretion of Lincoln County.

**Section 3. Duties** To the extent that the following duties are not performed by Lincoln County, they shall be the

duty of the Association:

1. Provide for the upkeep and maintenance for any Common Property;
2. Charge assessments as may be necessary for the purposes described herein;
3. Keep records of all assessments charged and the payments made thereon by the Owners; and
4. Collect assessments, maintain a bank account, and apply assessments to appropriate expenses.

## ARTICLE VI

### Voting

**Section 1. Owners Class** Except for (1) matters concerning special assessments and (2) (subsequent to the events described in Article XII) amendments to this Declaration, Owners Class Members shall not be entitled to vote until the termination of the Founders Class Membership, at which time Owners Class Members shall be entitled to one vote for each acre owned in the Property plus a fractional (hundredths) vote for each fractional (hundredths) acre thereof. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be split or cast separately.

**Section 2. Founders Class** Except for special assessments, the Founders Class Members shall be the only Members entitled to vote in the Association until such time as the Founders Class Membership terminates. Founders Class Members shall be entitled to one vote for each acre owned in the Property plus a fractional (hundredths) vote for each fractional (hundredths) acre thereof. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be split or cast separately.

**Section 3. Special Assessment and Amendments** On all matters concerning: (1) a special assessment relating to the Common Property or, (2) subsequent to the events described in Article XII which terminate Declarant's ability to unilaterally modify or amend the Declaration, an amendment to this Declaration; the voting shall, prior to termination of the Founders Class Membership, be as follows:

**(a) Owners Class** The Owners Class membership shall have one vote for each acre owned of the Property plus a fractional vote for each fractional acre.

**(b) Founders Class** Any Founders Class Member shall have one vote for each acre owned of the Property, plus a fractional vote for each fractional acre.

**Section 4. Exclusion of Designated Common Property** Designated Common Property shall be excluded for purposes of computation of voting rights.

**Section 5. Actions** Special Assessments may only be assessed upon receiving 51% of a vote of the Founders Class and the Owners Class Members.

## ARTICLE VII

### Assessments

**Section 1. Creation of Lien and Personal Obligation of Assessments** Owners only shall be liable for, and shall pay, annual and special assessments. Each Owner of any Lot shall, by acceptance of a conveyance thereof, whether or not it is so expressed in any conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and promises to pay to the Association both annual and special assessments and

charges, such as are established and to be collected from time to time as hereinafter provided. The annual and special assessments and charges, together with such interest thereon and costs of collection as are hereinafter provided, shall be a charge and continuing lien upon the Lot against which such assessment is made as of the effective date of said assessment. Each such assessment, together with interest thereon and any costs of collection as are hereinafter provided, shall also be the personal obligation of the person or entity who was Owner of such Lot at the time when the assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of any assessment.

**Section 2. Purpose of Annual Assessments** The Association may determine and assess annual assessments which shall be used for the improvement, maintenance, operation, repair, replacement of and additions to the Common Property, including, but not limited to, the payment of taxes and insurance thereon, the payment of utility charges related thereto (including water for any sprinkler or irrigation systems), maintaining, operating and improving streets, roads, drives and rights-of-way and other Common Property facilities and amenities, collection and disposal of garbage, rubbish and the like, employing security service, maintenance personnel, and for the cost of labor, equipment, materials, and the management and supervision thereof. Declarants may employ a related entity or entities to manage the maintenance, operation and repair of the Common Property. Notwithstanding anything to the contrary, nothing herein shall obligate Declarants or the Association to build all or any portion of the facilities and amenities listed above as possible Common Property facilities and amenities. In addition, the Association may use annual assessments for the purpose of doing any other things necessary or desirable, in the discretion of the Association, to keep Common Property facilities and amenities in neat and good order, to provide for the health, welfare and safety of the Owners and Occupants of the Property, to advance or maintain the general appearance and function of the Industrial Park, and to carry out the eleven goals described in the preliminary statement of this Declaration.

By acceptance of any conveyance of any Lot, each Owner acknowledges that neither the precise acreage and dimensions of the Common Property, nor the type of amenities, improvements and structures to be located within the Common Property have been (and may not be) specifically defined until the sale of the last Lot within the Property. Notwithstanding the lack of specificity relating to the size and development of the Common Property, each Owner acknowledges that it is a knowledgeable business person familiar with developments such as the one established under this Declaration and hereby agrees to accept and pay annual and special assessments levied by the Association pursuant to this Declaration. Each Owner agrees to accept such Common Property as may be designated and/or conveyed by the Declarants, provided that said Common Property must be located within the bounds of the Property.

Declarants may have formulated a general plan of development and use for the Property which may have previously been submitted to and reviewed by some or all of the Owners in the form of maps or other design information. Notwithstanding anything to the contrary, said maps or design information will not necessarily conform to the ultimate development of the Property.

**Section 3. Maximum Annual Assessment** The maximum annual assessment shall be Three Hundred Dollars (\$300.00) for each acre, with fractions of acres and fractions of the calendar year to be computed and prorated equitably. For each calendar year after 2001, the maximum annual assessment per acre may annually be increased by the Association but not more than the greater of five percent (5%) or the "applicable CPI increase". After calendar year 2010, the maximum annual assessments shall be determined by majority vote of the Association.

For purposes of this Article VII, Section 3, the term "applicable CPI increase" shall mean that amount by which the "CPI" for the month of October immediately preceding the calendar year of the proposed Assessment exceeds the CPI for the month of October one year earlier. "CPI" refers to the "Consumer Price Index" published by the

Bureau of Labor Statistics of the U.S. Department of Labor (all Items, U.S. City Average, for urban wage earners and clerical workers, or a successor or substitute index appropriately adjusted).

The Declarants, Association, or other party who shall then maintain the books and records pertaining to Assessments shall, upon written request by any Owner, issue within fifteen (15) days an estoppel certificate detailing the status of that Owner's Assessment account and such letter will estop the Association and Declarants from later collecting any previously billed amount not listed thereon.

**Section 4. Special Assessments** In addition to the annual assessments hereinabove authorized, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Property, including the necessary fixtures and personal property related thereto. Special Assessments shall be assessed uniformly against all Owners on the basis of the acreage of each Owners Lot, except that Special Assessments may be directly assessed against one or more individual Lot Owners if those Owners or their agents have damaged Common Property and created the need for the repair or reconstruction by their intentional or grossly negligent acts.

**Section 5. Commencement** Assessments shall commence on the date fixed by the Association, but not prior to January 1, 2001, or upon purchase of a Lot from Declarants, whichever later occurs.

**Section 6. Due Date** Unless otherwise provided herein, assessments shall be due and payable in full within 30 days after they are billed to an Owner.

**Section 7. Effect of Non-Payment of Assessment** If any assessment is not paid on the date when due, then such assessment shall be delinquent and shall accrue interest thereon at the "prime rate" published by the Wall Street Journal (or if such rate shall cease to be published, another national publication or national lender) plus two percent (2%) per annum (such rate to change from time to time as the prime rate changes) unless a lesser rate is required under Applicable Law in which event interest will accrue at the maximum required lesser rate. If such assessment is not paid within ten (10) days after the due date, then the Association may bring an action at law against the Owner directly and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessments all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessments as indicated above.

**Section 8. Exemption** Declarants and all property owned by Declarants shall be exempt from all assessments and special assessments and the liens therefore of every type, except as hereinafter expressly provided.

**Section 9. Contribution by Lincoln County** Declarant Lincoln County agrees to contribute to the Association such funds as may be required to maintain any Common Property and to generally mow and maintain the Property (or to do the work through its own agents), to the extent that the maximum annual assessments are insufficient to pay the cost thereof, through the year 2003 or until Lincoln County is no longer a member of the Founders Class Membership, whichever first occurs.

## **ARTICLE VIII**

### **Architectural Review Committee**

**Section 1. Membership** There is hereby established an Architectural Review Committee which will consist of not less than four (4) members.

One of the members must be selected from the following groups: licensed architects, engineers, landscape architects or persons with building construction experience. The other members need not have any specific professional certification.

Three (3) of the members shall be appointed by the LEDA and such appointees may be members or employees of the LEDA.

Declarants will, by consensus, select the remaining membership of the Committee other than those members appointed by the LEDA. In the event of future vacancies of the members not appointed by LEDA, Declarants shall appoint successor members to fill the vacancies. Declarants may also appoint members to terms of limited duration or replace any or all members (other than those members appointed by the LEDA) at intervals. By written notice to the Association, either or both of Declarants and the LEDA may delegate their respective rights to appoint members of the Committee to the Association or the Owners.

**Section 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, and (3) perform all other duties delegated to and imposed upon it by this Declaration.

**Section 3. Architectural and Site Guidelines** The Declarants have promulgated certain rules, guidelines and statements of policy which will be known as the initial "Architectural and Site Guidelines." Hereafter, from time to time the Committee may, by majority vote, adopt, amend and repeal such rules, guidelines and statements of policy and thus modify 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 will interpret and implement the provisions of this Declaration by detailing the standards and procedures for review, guidelines for building and site design, placement of buildings and other improvements, landscaping, color schemes, lighting, parking, exterior furnishings, materials, signage and maintenance which may be used, or is required, within the Industrial Park. Such guidelines may be interpretations and expansions of, but not in contradiction to, the terms of this Declaration.

The initial 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. The initial Architectural and Site Guidelines are attached hereto as Exhibit "B" and incorporated herein. Notwithstanding the powers granted to the Committee by this Section 3, no future Architectural and Site Guidelines or amendments thereto shall be less restrictive than those attached hereto as Exhibit "B".

**Section 4. Right of Inspection** Members and agents of the Architectural Review Committee, and Declarants and their agents may, at any reasonable and safe time 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.

**Section 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 Property, amenities or Improvements in the Industrial 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 up to ten percent (10%) of the total Setback Distance required. The Committee will not, however, grant any variance for setbacks less than those required by applicable zoning ordinances unless the Owner also obtains a variance from

obtains a variance from the appropriate governmental authority empowered to grant such variances.

**Section 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) if such Improvement or use is of a nature that it may be rejected under the terms of this Declaration or the Architectural and Site Guidelines. 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.

## **ARTICLE IX Review Procedures**

**Section 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.

**Section 2. Materials to be Submitted for Site Plan Approval** Before initiating any construction, alteration of existing Improvements (including awnings, satellite dish, antenna or other attachment to roof or exterior), grading or any site or structural work upon any Lot, the Owner must first submit construction, site and landscape plans as described in the Architectural and Site Guidelines (see Exhibit "B").

**Section 3. Filing Fee** In order to defray the expense of the Committee, the Committee may require a reasonable fee for review of plans. The filing fee may only be charged to defray actual out-of-pocket costs to the Declarants, such as attendance fees or travel reimbursements to the Committee Members.

**Section 4. Approval Criteria** The Committee shall specifically have the right to disapprove plans, specifications or details submitted to it for any of the following reasons:

1. The submission fails to comply with the terms of this Declaration or the Architectural and Site Guidelines;
2. Insufficient information or failure to provide detail reasonably requested by the Committee;
3. 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;
4. Perceived incompatibility with other proposed or existing improvements or use;
5. Reasonable objection to the grading plan for any portion of the Lot;
6. Reasonable objection to design or location of loading or storage areas;
7. Reasonable objection to the finish, proportions, style, height, bulk or appropriateness of any structures;
8. An insufficient number of parking spaces;
9. The plans are not prepared by licensed architects, engineers or landscape architects;
10. The plans do not adequately provide for surface water control, required screening or other planning matters which affect other Lots in the Industrial Park; and
11. Such other matters which, in the sole discretion of the Committee, would be inappropriate or inharmonious with the general plan of development within the Industrial Park.

**Section 5. Time for Review** Upon submission of all detail reasonably requested by the Committee, the submitting Owner shall receive, in writing, the decision of the Committee within thirty (30) business days. Failure of the Committee to render a written decision within thirty (30) business days shall be deemed approval of the submission.

**Section 6. Certification of Approval** Upon the request of Owner, the Committee shall confirm its approval of the Owner's plans by issuing a written certificate or letter describing the specific Lot and plans which have been approved.

**Section 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 Declarants 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 Declarants, 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, plans, drawings or specifications, construction or performance of any work or the development of any Property within the Industrial Park.

**Section 8. Commencement of Work** Beginning with the approval of the Committee as described in this Article IX, 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.

## **ARTICLE X Improvements and Uses**

**Section 1. Prohibited Uses** Any use which is not compatible with a high quality, controlled industrial park development and all of the following uses are prohibited:

1. Labor camps,
2. Refining of petroleum or any of its products,
3. Cemeteries,
4. Commercial or private raising of poultry, livestock or swine,
5. Feeder lots for any poultry, livestock or swine, rearing of any other birds, fish, insects, mammals, reptiles,
6. Animal kennels,
7. Junk yards,
8. Quarries,
9. Raceways,
10. Dry cleaning,
11. Landfills,
12. Fuel oil dealers,
13. Sale of motor vehicle fuel,
14. Auto repair and maintenance,
15. Storage or transportation of hazardous waste materials,
16. "Mini-warehouses", or
17. Unsanitary, obnoxious or objectionable businesses which may produce or emit substantial gases, smoke, odors or noises that would be unsuitable for a high quality, controlled industrial park development.



**Section 2. Landscaping** All landscaping must conform with 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 Association 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 Association 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 Association, 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 Association in the landscaping and upkeep of the Common Property. If, in the reasonable discretion of the Association, any Owner fails to observe the required maintenance standards for the terrain and landscaping of that Owner's Lot, the Association 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 Association may enter upon the Lot and improve the landscaping to a grade equal to that of the Common Property. 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 VII, Section 7. The assessment shall be a lien against the Lot and the Association shall retain all remedies as described in Article VII, Section 7.

**Section 3. Reservation of Maintenance Option** Declarants hereby reserve, for the benefit of the Association, 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 Industrial Park. The Association may exercise its option of exclusive maintenance either on a continuing basis or from time to time at 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 Association. All expenses of this maintenance option shall be assessed by the Association as annual or special assessments.

**Section 4. Street Parking** On street parking is prohibited within the Industrial Park.

**Section 5. Temporary Structures** Temporary Structures are prohibited within the Industrial 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.

**Section 6. 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 effect the safety, health, comfort or intended property use by persons within the Industrial Park, are strictly prohibited.

**Section 7. Grading Rights** Until such time as the Owner's plans have been approved by the Committee, Declarants may make cuts and fills upon any Lot or other portion of the Industrial Park and do such grading, panning and earth moving, as in its sole reasonable discretion, may be necessary to improve or maintain the streets within the Industrial Park or to drain surface waters there from. Declarants may assign such rights to any appropriate municipal or other governmental authority. After the Owner's plans for the Principal Improvements to be constructed upon a Lot have been submitted to and approved by the Committee, the rights of Declarants with

respect to this Section 11 shall terminate with respect to all parts of that Lot. Declarants and their successors or assigns shall at all times have the right to maintain existing streets and drainage facilities.

**Section 8. Violations** In the event that any Lot is developed or improved other than in strict conformity with this Declaration and the approval of the Committee, any such Improvement or development must be removed or altered so as to be in compliance and any unauthorized use of the Lot must be ended so as to extinguish any violations of this Declaration or the approval granted by the Committee. At any time a violation of this Declaration or the approval granted by the Committee may be found to exist, regardless of the length of time of such violation, the Declarants or the Committee may deliver written notice of such violation to the Owner of the Lot in violation and any other responsible parties. If reasonable measures have not been taken by the Owner or other responsible parties to terminate the violation within ten (10) business days, the Declarants or Committee may, through agents or employees, enter onto the Lot and take such measures as may reasonably be necessary to abate the violation. Such entry shall not be deemed a trespass and those parties entering on behalf of Declarants or the Committee shall have no liability to the Owner or other parties having an interest in the Lot for any entry taken in connection with the abatement of a violation. All costs and expenses, including legal fees, permits, mobilization costs and insurance plus a fifteen percent (15%) allowance for general overhead and intangible costs, shall be a binding obligation of the Owner of the Lot in violation. In addition, all costs shall be a lien upon the Lot, enforceable in the same manner as an assessment made upon the Lot.

**Section 9. Construction** Construction of all Improvements and other development upon the Lot shall be the responsibility of the Owner. Neither Declarants nor the Committee shall have any responsibility whatsoever for monitoring or control of construction. The lack of duty to oversee construction, however, does not prevent Declarants or the Committee from exercising its powers in the event of any violation.

Upon written notice of the completion of a Structure, the Committee shall have ten (10) days to make such reasonable inspections as it deems necessary. In the event that the Committee discovers that Improvements or other work upon the Lot have been done other than in accordance with the plans approved, the Committee shall give Owner written notice of such violations. In the event that the Committee finds that all Improvements and work upon the Lot have been accomplished in accordance with the plans approved, then, the Committee shall issue a certificate of compliance to the Owner. No occupancy of any Structure is permitted without the certificate of compliance even though a certificate of occupancy has been issued by the appropriate municipal authorities.

**Section 10. General Repair and Maintenance** It shall be the duty of Owner to keep and maintain all of the Lot, except as expressly stated otherwise herein, including those areas within Setback Distances, easements and Open Space. The Owner shall keep the entire Lot safe, neat, free of hazards and shall comply with all fire, zoning, health, environmental and other requirements as may legally apply to the Lot. Owner shall keep the Lot clear, clean and free of all unsightly scrap, rubbish or other materials at all times, including the construction period.

**Section 11. Utility Lines** No above ground utility service lines shall be constructed within the Industrial Park. Only distribution lines supplying service to the entire site of the Industrial Park may be located above ground.

## **ARTICLE XI**

### **Waste Management and Environmental Hygiene**

**Section 1. General Waste Management** Because releases of hazardous or toxic materials upon any Lot within the Industrial Park could have enormous adverse impact upon any or all of the other Lots and other Property within the Industrial 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

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.

**Section 2. Underground Storage Tanks** Before installation of any underground storage tank ("UST"), the Owner shall deliver to the Association 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 Association 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, Owner shall immediately, at its sole expense, take all remediation measures required by Applicable Laws.

## **ARTICLE XII Duration, Modification and Termination**

The restrictions contained in this Declaration shall be appurtenant to and run with the land and shall be binding upon and inure to the benefit of Declarants, the Owners, Lessees, Licensees, Occupants, their heirs, successors and assigns, and all other parties hereinafter having an interest in any of the Property and all parties claiming under them for a period ending on February 15, 2030, after which time they shall be automatically extended for successive periods of 10 years each, for a total, including the initial term of 65 years, unless Association Members holding at least 60 percent of the votes in the Association vote to not continue this Declaration in existence. At any time during the effective period of this Declaration, but not sooner than fifty years after this Declaration is originally Filed, the Association Members may vote to extend the maximum effective period to a specific date beyond a 65 year term and such vote will be binding and effective on all Owners in the Industrial Park if approved by a seventy five percent (75%) vote.

After the last to occur of (1) Feb 15, 2015, or, (2) such time as the Declarants collectively own less than ten percent (10%) of the land (excluding Common Property but including Additions) subject to this Declaration, the restrictions contained herein may be modified by the Filing of an instrument in good legal form setting forth any modifications, deletions or changes which instrument is executed by Association Members holding at least sixty percent (60%) of the votes in the Association.

Prior to February 15, 2015, or such later time as Declarants may collectively own less than ten percent (10%) of the land subject to this Declaration, this Declaration may be modified or amended by Filed supplementary or amended declarations signed by all Declarants without the vote or joinder of any other Owner.

Any Amendment or Modification of the Declaration which restricts permitted uses shall not apply to any Lot which has previously been lawfully occupied for such restricted use. Any Amendment or Modification of the Declaration which imposes more restrictive set-backs, building requirements or the like within the Industrial Park shall not apply to Improvements which were constructed in reasonable conformity with plans approved by the Architectural Review Committee and which conformed to the Declaration at the time the plans were approved.

No Amendment or Modification of the Declaration shall be made which would require any Owner to make material modifications to existing Improvements without the express consent of the Owner of the affected Lot.

### **ARTICLE XIII Enforcement**

Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any party empowered to enforce this Declaration may avail itself of all remedies available under Applicable Laws for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law. This Declaration may be enforced by Declarant, its successors and assigns (including without limitation the Association after the termination of Founders Class Membership), by proceedings at law or in equity against the person or entity violating or attempting to violate any covenant or restriction, either to restrain the violation thereof, abate or remediate damage caused by the violation, or to recover damages, all together with reasonable attorney's fees and court costs. Further, after the termination of Declarants Founder Class membership in the Association, in the event the Association fails to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these covenants and restrictions as aforesaid against any other Owner except, however, the Declarants option to purchase described below in Article XIV, Section 1, shall be enforceable only by Declarants and not by an Owner unless specifically assigned thereunto by Declarants in writing. In addition to the remedy of enforcement as provided above, Declarants and the Architectural Review Committee shall have the right, through their agents and employees, to enter upon the Lot and summarily abate, remove and extinguish any thing or condition that may exist thereon contrary to the provisions hereof and said parties shall not thereby be deemed to have trespassed upon such Lot and shall be subject to no liability to the Owner or Occupant of such Lot for such entry, abatement or removal. The cost of any abatement or removal of violations authorized under this Declaration shall be a binding, personal obligation of the Owner of the Lot upon which such violation has occurred as well as a lien, enforceable in the same manner as an assessment against a Lot, upon such Lot. No failure to exercise its enforcement powers shall be deemed a waiver thereof by the Declarants or the Committee.

In addition to all other rights and remedies available for the enforcement of this Declaration, the Declarants or the Association may, beginning 30 days after delivery of written notice to the Owner of a Lot on which a violation is occurring, impose a fine against such Owner for each day the violation continues following delivery of the Notice. The fine imposed hereunder shall not exceed \$50 per day. The fine shall constitute a lien against the Lot on which the violation occurs, which may be enforced in the same manner as the lien for an assessment. Any such notice to an Owner shall describe the Lot, the specific violation, a reference to the provisions of the Declaration, or architectural and site guidelines which are being violated, and a notice that a fine will be levied if the violation is not cured within a 30-day period. The notice shall be deemed delivered if sent by certified mail, return receipt requested, posted in a prominent location upon the Lot, or sent to the Owner via national overnight courier service.

### **ARTICLE XIV Easements and Retained Rights**

**Section 1. Right of Repurchase** In the event that Commencement of Construction has not occurred upon a Lot within thirty six (36) months following the conveyance from a Declarant to any Owner (the "Building Period"), the Declarant or Declarants from whom the Owner of such Lot took title (the "Transferee Declarant") shall have the right to repurchase the Lot at any time within twenty four (24) months after the expiration of the Building Period (the "Notice Period"). In order to exercise this Right of Repurchase, the Transferee Declarant 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 the price paid upon the conveyance from the Transferee Declarant, reduced

Declarant, reduced (but not below Ten Dollars) by 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 Transferee Declarant by Special Warranty Deed. Owners expressly agree that the Transferee Declarant is entitled to specific performance of all duties imposed upon Owners by this Section.

**Section 2. Utility Easements** Declarants hereby reserve permanent non-exclusive easements and rights-of-way over, under, along and within those twenty foot (20') strips of land located contiguous to and within the front, side and rear boundary lines of each and every Lot for the installation and maintenance of such Utility lines, conduits, pipes and other equipment necessary for furnishing electric, natural gas, telephone service, water, sanitary sewage service, and such drainage facilities as may be, in the Declarants' reasonable judgment, necessary. Declarants also reserve a temporary general right of access as is necessary from time to time to do installation or maintenance work within such twenty foot (20') easements. This reservation of easements does not prohibit construction of driveways at locations approved by the Committee.

**Section 3. Assignability of Rights** All rights, powers and reservations of Declarants stated herein may be assigned.

**Section 4. Exoneration of Declarants** It is agreed by all Owners and by any other party having an interest in any Lot that Declarants have no duty to enforce any of the covenants and restrictions contained herein. Declarants shall not be subject to liability to any party by reason of any failure to enforce any covenant, condition or restriction herein.

**Section 5. Easements for Benefit of Other Lands** The Association may hereafter grant and accept, and Declarants hereby reserve unto themselves, their successors and assigns, easements and other rights for the benefit of the Property and also for the benefit of other, adjacent land now or hereafter to be developed by Declarants, adjacent, contiguous or in the vicinity of the Property, for the purpose of providing such benefits as shared facilities and amenities, reasonable access for pedestrian and vehicular traffic, open areas, green spaces, park lands and other suitable shared uses in, along and over any portion of the Common Property, provided, however, that the rights herein reserved by Declarants in, along or over the Common Property for the benefit of adjacent or other property, shall not be available to the owner(s) of such adjacent or other land unless the owner(s) of such adjacent or other land shall agree to be bound to share with the Owners of Lots in the expenses of operation, maintenance, repair and replacement of the Common Property as are made available to the owner(s) of such land based upon the total number of acres which are or will be entitled to the use and benefit of the Common Property, provided, further, that the obligations to be incurred in connection with the Common Property by such owner(s) of adjacent lands shall not accrue or be incurred or due until the date such parties are entitled to actual usage of the Common Property. Each Owner hereby grants to the Association and Declarants an irrevocable durable power of attorney (which, in the case of individuals, shall survive incompetency and in all cases is coupled with an interest) to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing.

## **ARTICLE XV Partial Taking**

In the event that any portion of the Industrial 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 this Declaration.

## **ARTICLE XVI Revocation of Prior Restrictive Covenants**

Whereas the undersigned are owners of all of the lands burdened and benefited by those "Restrictive Covenants - Lincoln County Business Park" Filed of record November 17, 1995, at Book 0922, Page 0292 of the Lincoln County Registry (the "Prior Declaration"); and

Whereas it is the intent of the undersigned to terminate the Prior Declaration and in its place impose the covenants, conditions, easements and restrictions set forth in this Declaration;

The Prior Declaration is hereby terminated and all property previously burdened by the Prior Declaration is released from the effect thereof.

## **ARTICLE XVII**

### **General**

**Section 1. Mortgagees' Protection** Violation of this Declaration 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 this Declaration as fully as any other Owner.

**Section 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 this Declaration, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration 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.

**Section 3. Ambiguities** If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarants in their sole discretion. Declarants shall have the right to interpret the provisions of this Declaration 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 Declarants 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 Declarants.

**Section 4. No Reversionary Interest** This Declaration 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 XIV, Section 1 above. Except as provided above, all reversionary rights are hereby expressly waived by Declarants.

**Section 5. Zoning Requirements** This Declaration 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. Prior to February 15, 2015, no Owner shall petition for a re-zoning of any Lot without the written consent of Declarants.

**Section 6. Effect of Invalidation** If any provision of this Declaration 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 this Declaration and all remaining restrictions, covenants, reservations, easements and agreements contained herein shall continue in full force and effect.

**Section 7. Gender** All pronouns used herein shall be deemed to be singular, plural, masculine, feminine or neuter as application to specific circumstances may require.

**IN WITNESS WHEREOF**, the Declarants have executed this Declaration through their authorized officers, agents, managers or partners.

\*

## **EXHIBIT "B"**

### **INITIAL ARCHITECTURAL AND SITE GUIDELINES FOR**

#### **The Lincoln County Industrial Park**

Drawn by and mail to:  
Mitchell, Rallings & Tissue, PLLC  
1800 Carillon  
227 West Trade Street  
Charlotte, NC 28202  
704-376-6574

Pursuant to Article VIII, Section 3 of the Declaration of Covenants, Conditions and Restrictions for The Lincoln County Industrial Park, the following rules and guidelines are adopted to (1) create specific standards and procedures for review of Owners' plans by the Committee and, (2) serve as a statement of policy for such review of proposed Improvements and other work upon Lots within the Industrial Park.

All terms which are specifically defined in Article I of the Declaration of Covenants, Conditions and Restrictions for The Lincoln County Industrial Park shall be given the same definition herein.

#### **PROCEDURES FOR REVIEW OF PLANS**

##### **Section A. Preliminary Plans**

It is strongly recommended that, prior to the creation of final design plans, Owners first submit general design plans for preliminary review by the Committee. Materials submitted for preliminary review should include the following:

1. General site plan indicating building footprints, general grading, landscaping features, parking and service areas;
2. General description of building materials to be used, especially those materials used for the exterior of Structures; and
3. Exterior elevations.

Preliminary plans will be reviewed by the Committee and a written response returned to the Owner within ten (10) business days of submission. No additional fee shall be charged for review of preliminary plans. Preliminary plans shall be submitted to the Committee in triplicate and the Committee shall return one set to the Owner with redlines and comments.



## **Section B. Review of Final Plans**

Even though preliminary plans have been submitted to the Committee for comments, no Owner shall begin construction or grading upon any Lot until the Committee has approved final site and construction plans for that Lot. Final plans shall be submitted to the Committee in triplicate and the Committee shall return one set to the Owner with redlines and comments. The Committee shall respond in writing to the submission of proposed final plans within ten (10) business days. Final plans submitted to the Committee shall include:

1. Detailed site development plan indicating the location and nature of all structures, improvements, lighting fixtures, landscaping, parking areas, irrigation systems and signage. The site plan should indicate all applicable Setback Distances and show all earthmoving, grading and cuts necessary for the planned development;
2. Floor plans for all structures showing entrances and exits, docks, truck loading areas, dumpster areas and outdoor storage areas;
3. Exterior elevations;
4. Color boards for the exterior of all structures; and
5. Detailed drawings and descriptions of all signage, outdoor lighting fixtures, screening (for ground level areas as well as any equipment located upon the structures), retaining walls and landscaping. The detailed description should indicate, at a minimum, the nature of the items, specific materials to be used, color, shape, size, and botanical variety of living landscape materials.

Fees for the review of final plans as described in Article IX, Section 3, of the Declaration, shall be due within thirty (30) days after they are assessed by the Committee.

## **FUNDAMENTAL DESIGN PHILOSOPHY**

The Committee shall be charged with the duty to ensure that all structures erected within the Industrial Park shall be of consistently high quality and, to the extent possible within an industrial setting, harmonious design and style.

Exterior use of materials such as unfinished hollow core concrete block, galvanized steel corrugated panels, or other materials traditionally associated with low quality or temporary construction may be discouraged and must have express approval from the Committee.

## **SITE DEVELOPMENT STANDARDS**

### **Section A. Landscaping**

1. Landscaping must comply with the pertinent portions of the Lincoln County Zoning Ordinance, specifically including those portions requiring the planting of trees.
2. Landscaping plans should address and propose solutions to the following landscape problems:

- a. Erosion control,
  - b. Location of utility lines,
  - c. Surface water control and storm drainage, and
  - d. General clearing of the building site that retains as many mature trees as possible
3. Unpaved areas shall be landscaped utilizing ground cover and/or shrub and tree materials. Preservation, when possible, of existing mature trees is encouraged.
  4. Trees planted in parking areas should be limited in variety. Selections should be repeated to give continuity. Regular spacing is not required and irregular groupings may add interest. Care should be exercised to allow plants to grow and maintain their ultimate size without restriction.
  5. Earth berms, if used, must be rounded and stable.
  6. Outdoor refuse collection areas, dumpsters, storage areas, and loading docks and areas shall be visibly screened from access streets and adjacent property. Plant screening, if used, shall form a complete opaque screen.
  7. Landscaping, as approved by the Committee, must be substantially installed within Ninety (90) days from Substantial Completion of the Principal Improvements upon a Lot.

**Section B. Parking**

All parking areas shall be paved with asphalt or concrete or other like substance approved in writing by the Committee.

**Section C. Signage**

During the construction period one temporary Sign will be permitted on a Lot. The temporary Sign shall be replaced by one permanent identification Sign per Structure no later than such time as any Structure on the Lot is certified as fit for occupancy.

**Section D. Site Lighting**

Any scheme of lighting primarily designed to highlight structural facades must be specifically approved by the Committee.

Parking lot lighting should be of a uniform nature. Sodium Vapor light fixtures shall be required for parking lot lighting. The light standards shall be of bronze colored anodized aluminum with a cutoff shoebox fixture. The recommended minimum average illumination level for parking areas is five footcandles.

**Section E. Maintenance**

All Owners shall be responsible for keeping their Lots in a neat, well kept and attractive condition. This requirement also applies, to the extent feasible, to periods of construction or renovation.

Landscaping shall be maintained in a neat and orderly fashion. Planting areas are to be kept free of weeds and debris and Lawn and ground covers will be kept trimmed and/or mowed regularly. All plantings shall be kept in a healthy and growing condition.

The Association will monitor the maintenance of each Lot and in the event that said maintenance falls below the

standard required hereby, the Association shall give written notice to the Owner. If the Owner has not taken reasonable measures to correct the below standard maintenance of the Lot, the Association may, at its option, enter upon the Lot for the purpose of removing unsightly debris or rubbish and otherwise upgrading the maintenance to a standard compatible with the requirements of the Declaration and these guidelines. The costs of such entry and upgrading, plus a fifteen percent (15%) charge for general overhead and intangible expenses shall be due and payable from the Owner. If the Owner fails to pay such expenses within fifteen (15) days after being billed for said expenses, the costs shall be a lien upon the Lot. Said lien shall be enforceable as is provided for assessments and other liens by the Declaration.

**Section F. Setbacks**

**For Structures:**

Street Setbacks shall be forty feet (40');  
Side Setbacks shall be twenty feet (20') and  
Rear Setbacks shall be twenty feet (20').

**For parking, paving and associated curbing:**

Street Setbacks shall be twenty feet (20');  
Side Setbacks shall be ten feet (10') and  
Rear Setbacks shall be ten feet (10').

On lots of less than five (5) acres, the Committee, may at its discretion, permit a lesser Side Setback for parking, paving and associated curbing.

**Section G. Outdoor Storage**

Outdoor Storage is permitted as an Accessory Use. Outdoor Storage which is not an Accessory Use is not permitted. Outside storage must be completely screened from view both from outside the Industrial Park and from other lots within the Industrial Park. Screening must be effective at the time of installation and the Committee shall have discretion to disapprove such screening as it may reasonably consider ineffective. All outdoor storage areas are deemed to be Structures for purposes of conforming to the setback requirements described herein.