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North Etowah Industrial Park

City of Etowah, McMinn County, Tennessee

Declaration of Covenants, Conditions, and Restrictions

Prepared by:

McMinn County Economic Development Authority

5 South Hill Street, Suite C
Athens, TN 37303

Adopted: April 22, 2014

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made and entered into this 22nd day of April, 2014 by the McMinn County Economic Development Authority Board of Directors, a Tennessee Corporation (hereinafter referred to as "Declarant") for the benefit of its successors and assigns.

Witnesseth:

WHEREAS, the Declarant is the Owner of certain real property located within the City of Etowah and the County of McMinn, Tennessee, commonly known as the North Etowah Industrial Park (hereinafter referred to as "Property"); and

WHEREAS, the Declarant desires that the Property be developed and maintained as a planned business development intended as a premier regional location for industrial businesses desiring to be associated with a quality designed location offering amenities and within close proximity to an primary interstate with an accessible and convenient location. The Property is designed to encourage significant capital investment and job creation.

WHEREAS, Declarant desires to establish certain covenants, conditions, and restrictions regarding the use and occupancy of the Property.

NOW, THEREFORE, in consideration of the premises herein contained, the Declarant hereby subjects the Property to the following covenants, charges, assessments, conditions, and restrictions and declares that the Property is and shall be held, transferred, sold, conveyed, leased, subleased, and occupied subject to the following conditions, covenants, charges, assessments, restrictions, easements, and reservations hereinafter set forth (collectively, the "Restrictions").

Article 1 – Definition of Terms

The following terms and words are defined for use herein as follows:

Building shall mean and include, but not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including but not limited to outside platforms and docks, canopies and enclosed accessory structures.

Building Site shall mean any tract of real property within the Property, as determined by legal description in a conveyance or lease from the Declarant to another entity, upon which improvements are to be constructed. If fee simple title to two or more Building Sites, as defined hereinabove, is acquired by the same owner, such commonly owned site may, at the option of said owner, be combined and treated as a single building site for purposes of this Declaration, provided that the location of the improvements on such combined sites shall be subject to the prior written approval of Declarant.

Common Area shall mean and include those tracts of real property intended to be devoted to the common use and enjoyment of the Owners and Occupants of the Property. Common Area shall include road rights of ways and land areas that are or shall be established for the common use of the Owners and Occupants, and any other portion of the Property except Building Sites.

Common Facilities shall mean and include all Improvements located on Common Areas.

Declarant shall mean the McMinn County Economic Development Authority Board of Directors.

Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions, together with all of the provisions contained herein as they now appear and as they may be hereafter amended.

Design Review Board and **Board** shall mean the Board of Directors of the McMinn County Economic Development Authority (MCEDA) or its successors.

Improvements shall mean and include, but not limited to, buildings, accessory buildings and structures, roads, driveways, parking areas, fences, walls, paved areas, signs, utilities, lawns, landscaping, walkways, or similar physical changes to and located on Building Sites, together with any construction, work or treatment done or applies to a Building Site in connection therewith.

Occupant shall mean an entity or person, including without limitation, an individual, corporation, joint venture, partnership, limited liability company, or association, which has purchased, leased, rented, or otherwise legally acquired the right to occupy and use any Building or Building Site or other tract of real property located in the Property.

Owner shall mean an entity or person, including without limitation, an individual, corporation, joint venture, partnership, limited liability company, or association, which is record owner of a fee simple estate in a Building Site or other tract of real property located in the Property.

Plans shall mean those design submittals required by the Design Evaluation Criteria for the construction of Improvements on a Building Site.

Property shall mean all lands included in the recorded plat of subdivision.

Tenant shall mean an entity, whether it is an individual, corporation, joint venture, partnership or association, which has leased any building or site or any portion of thereof, whether or not such lease rights have been exercised.

Article 2 – Purpose of Declaration

This Declaration is made to ensure property use, development, and improvement of the Property so as to: 1) protect Owners and Occupants against such use of neighboring Building Site as might depreciate the value of their property; 2) guard against the erection in the Property of structures built with unsuitable materials or with improper quality or methods of construction; 3) ensure adequate and reasonable development of the Property; 4) encourage the erection of attractive, permanent Improvements appropriately located to ensure harmonious appearances and functions; 5) provide adequate off-street parking space and loading facilities; and 6) encourage the development of advanced technological, architectural and engineering design and, in general, provide a harmonious development that will promote the general welfare of Owners and Occupants of the Property.

Article 3 – Design Review

Physical improvements to the Property require review and approval prior to purchase. The Board shall meet as needed to expedite the review process.

Article 4 – Design Review Process

The Board shall review and approve all planned improvements within the park. Upon site selection, the application shall meet informally with staff of the McMinn County Economic Development Authority to review these standards and to establish an acceptable date and time for submittal of site plan for approval. Plans shall be submitted not less than 10 days prior to the Board’s meeting. During this period, staff shall review the plans to determine compliance with the spirit and intent of the design standards. Site and construction plans shall be prepared by a Tennessee licensed design professional (architect, engineer, or landscape architect), and drawn at an appropriate scale clearly displaying all pertinent features and improvements. At a minimum, plans shall contain the following sheets: existing and proposed topography, site plan, storm water drainage, utilities, landscape plan and material list, and a general details/specifications sheet which includes at a minimum building elevations, signs and lighting. In addition, exterior paint colors and/or samples of materials shall be presented as part of the process. A minimum of six (6) copies of the plan sheets shall be submitted for review. Under separate cover, applicant shall prepare a description of the planned use including the manufacturing process, transportation of materials, storage of materials, waste generation, utility consumption, employment estimates, and other pertinent information the Board may deem appropriate to determine the suitability of the business. The Design Review Board process does not supersede the City of Etowah approval process. Article 5 discusses the City of Etowah Review Process.

Article 5 – City of Etowah Review Process

In addition to the plans review and approval by the Board, the City of Etowah requires submittal and approval of plans prior to the issuance of a building permit. While the park design standards are typically of a higher standard in contrast to local zoning provisions, approval of the City is necessary. The staff of the McMinn County Economic Development Authority will assist in representing the applicant at meetings of the City of Etowah in order to expedite the approval process, as necessary. Special meetings may be held to accommodate construction schedules.

Article 6 – Waivers to Design Standards

The Board maintains the authority to issue waivers or modifications from the standards. Waivers shall be considered only if the applicant can demonstrate that compliance is impractical or alternatives exist that satisfy the spirit and intent of the standards. All waivers shall be considered during the review process, and if approved shall be specifically shown on the construction plans and minutes of the Board’s meeting.

Article 7 – Design Guidelines and Property Restrictions

The following guidelines/restrictions are imposed on the Property, and are in addition to zoning restrictions and regulations, applicable building and inspection codes and regulations and any other government restrictions and requirements, and any private restrictive covenants applicable to the Property (these regulations and restrictions being collectively referred to herein as the “Regulations”).

7.1 Construction Materials

All exterior construction materials used shall establish a look of quality, permanence, and uniformity. It is the intent of these standards to create visual interest in buildings and walls. The primary front facing façade should incorporate a combination of materials and architectural elements to establish an individual character. Materials shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. Building shall normally be faced in medium-value range and earth tones should predominate. Use of excessively bright primary colors is normally not

permitted except as intermittent accents or for signs. All principal and accessory structures shall, at a minimum, be designed to include brick, brick veneers, stone, stone veneers, pre-cast concrete, tilt-up concrete panels, stucco, decorative block, or similar material along the exterior façade to a minimum height of forty percent (40%) of the height of the eaves. It is prohibited for a building façade to include one hundred percent (100%) corrugated metal skin, exposed concrete block, wood, or similar nonpermanent materials.

7.2 Temporary Structures

Temporary buildings or other temporary structures are not permitted, except as required for efficient construction purposes, and then only during the reasonable construction period of a permanent building. Such structures shall be placed as inconspicuously as possible, shall cause no inconvenience to other Owners and Occupants, and shall be removed no later than fourteen days after date of occupancy of the permanent building.

7.3 Accessory Structures

All accessory structures including service storage areas, loading docks, and refuse containers shall be concealed and contained within the building or will be concealed and contained by means of a screen wall of material similar to and compatible with that of the primary building. Accessory structures shall be located in the most inconspicuous manner possible and at least 25 feet from a principal building and shall be of similar and compatible design and material.

7.4 Docks and Storage Areas

Docks and storage areas shall typically not be visible from either interior roads within the park. Efforts shall be made to position the building on the site in such a manner to reduce the visual effects of loading and dock areas. A combination of landscape materials, earthen berms, and architectural screens shall be used to effectively buffer/screen such areas from adjoining properties and public roads. Exterior storage areas for raw or finished products and packing material, or similar items are normally not permitted unless approved by the Board and sufficient screening is provided. Areas not intended for landscaping and buildings shall be paved and curbed.

7.5 Parking and Access

Parking lots shall fit the terrain through terracing to minimize cut and fill. Entrance roads to each building site, when practical, shall meander with the topography in order to avoid steep and continuous grades. Pavement cross sections shall reflect the intensity level of use in determining pavement surface, base, and binder depths. Parking areas, access, and internal traffic lanes shall be paved and preferably curbed. Parking areas shall be screened from neighboring properties and public roads. A combination of evergreen plant material and earthen berms are appropriate screening materials and shall provide a screen not less than 4 feet in height. Parking setbacks are measured from the edge of the property line to the edge of the curb. Parking setbacks shall be 10 feet. All parking spaces shall be clearly striped to indicate no less than a ten feet (10') by twenty feet (20') space for employee parking. Parking must be designed in accordance with acceptable engineering practices provided in the "Institute of Transportation Engineers Parking Design Guide." Parking design must adhere to The Municipal Zoning Ordinance.

7.6 Building Setbacks and Height Requirements

The minimum building setback is measured from the property line to the nearest building façade. Building setbacks and height should follow The Municipal Zoning Ordinance for the City of Etowah,

Tennessee.

7.7 Landscaping, Screening and Buffering

Owner or lessee shall landscape that portion of Property between building or buildings and the curbed line of abutting streets and shall remove undergrowth, weeds, debris and any other unsightly materials from the remainder of the property at their expense. Landscaping materials shall meet industry standards for quality and longevity for this climate region. Plant material shall be maintained in an appropriate manner and replaced if it fails to survive. Areas not paved or designated for landscaped planting areas shall be seeded and mulched to ensure an established grassed lawn area. Grassed areas shall be mowed regularly during the typical growing season. Areas shall be mowed if the grass exceeds 6 inch in height. Landscaping must follow the City of Etowah Landscape Ordinance. A landscape plan shall accompany all site plans. Owner or lessee shall maintain Property landscaping in a safe, clean, and attractive condition.

7.8 Site Development, Grading, and Stormwater Management

Grading must be done in such a way as to preserve topographic features as much as practicable and sustainable stormwater management practices are encouraged. Site Development and Grading must follow the City of Etowah Grading Permit Policy. Stormwater detention must follow the City of Etowah Stormwater Management Policy. All storm water conveyances shall be designed in accordance with the City of Etowah land use standards. Catch basins shall be incorporated into parking areas and driveways, which shall discharge storm water through pipes or open drainage channels. During land disturbance activity, erosion control measures shall be instituted at all times. A grading plan and erosion and sedimentation control plan must accompany all site plans.

7.9 Vehicle Maneuvering

Internal circulation shall allow sufficient maneuvering of transit vehicles for loading and unloading. Employee and guest parking areas shall be separated from areas designated for use by transit vehicles or heavy equipment.

7.10 Rooftop Structures

All rooftop mechanical equipment shall be grouped in an orderly manner or screened from view with material that is architecturally compatible and appropriate with the building in such a way as to minimize its impact on the aesthetic quality of the structure.

7.11 Lighting

As lighting function changes from roadway orientation to parking and pedestrian orientation, the consistency in style and design should be maintained. All lighting shall be designed to avoid glare to adjoining properties and public rights of way. Parking area lighting standards shall use high-pressure sodium or preferably Light Emitting Diode (LED). Light standards shall be limited to a neutral color. In preparing a lighting plan, it is recommended that all site lighting shall provide uniform illumination. In addition, it is recommended that lighting should highlight and accent landscape and building elements through the use of concealed lighting sources.

7.12 Utilities

All electric power lines and piping shall be installed and maintained below the surface of the ground. The Board shall approve all above ground structures during plan approval. Utility boxes shall be screened using appropriate plant material.

7.13 Fencing

The Board shall approve all fence materials including location and height. Chain-link fences are permitted, but shall not be nearer the street than the front façade of the building on these sites.

7.14 Signs

All building sites shall provide no more than one ground mounted building identification sign near the entrance to the principal building. The maximum sign face shall not exceed 60 square feet, with the maximum sign height not to exceed 8 feet above the finished grade and located no closer than 10 feet to the road right-of-way. The Board may approve and construct a unipole multi-tenant sign at the park entrance. All ground-mounted signs shall be monument style and illuminated internally or non-illuminated. No more than two wall signs shall be permitted. Wall signs shall not exceed two (2) square feet per linear foot of the wall to which it is attached. Wall signs shall include only the standard name and logo of the business and shall be indirectly illuminated or non-illuminated. Additional signs essential to inform and direct the public such as tenant identification signs, receiving/shipping access, areas specified for parking, or other similar signs shall be permitted with no one sign exceeding an area of six square feet unless approved by the Board. Billboards and movable or portable signs are prohibited throughout the property. Temporary signs are prohibited except during times of construction and then properly placed signs advertising construction contractor, engineering firms, etc. and permit displays will be allowed. Location of the temporary construction signs must be approved by The Board. In the event of a conflict between this signage restriction and the City of Etowah's Zoning Regulations, the more restrictive requirement shall apply. Signage requires a permit from the City of Etowah in addition to the approval of The Board.

7.15 Permitted and Prohibited Uses

All properties shall conform to The Municipal Zoning Ordinance for the City of Etowah for the appropriate zoning designation for both permitted and prohibited uses. No noxious or offensive trades, services, or activities shall be conducted on the premises, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owner or Occupants. Adult entertainment/oriented uses are specifically prohibited. The Owner and Occupant of any property shall at all times keep the site and improvements in a safe, clean condition that comply in all respects with government health and fire policy requirements and regulations. The Owner and/or Occupant shall be responsible for removing and adequately disposing of all waste generated on the property at its own expense and shall not burn any materials or rubbish of any description. The property shall not be used for any solid waste disposal including but not limited to demolition landfilling, fly ash landfilling, or sanitary landfilling.

7.16 Subdividing Property for Resale

The subdivision and/or resale of undeveloped property without approval of The Board are expressly prohibited.

7.17 Platting of Adjoining Lands

Owners requesting to purchase adjoining land to the Property for use in conjunction with improvements located on the Property shall be required to submit a plat incorporating all the lands in question. Upon recording of the plat, the adjoining lands shall be subject to the requirements of this Declaration.

7.18 Conflicts with Existing Requirements

Whenever a conflict arises between the standards of this Declarant and the land use or utility requirements of the City of Etowah or other governmental entity the more stringent requirement shall prevail.

7.19 Grandfather Clause

Notwithstanding the above provisions in this Article 7, those Dwellings and Improvements existing on the Property at the time of the creation and recordation of these Restrictive Covenants are deemed to be in compliance with the Design Guidelines and Property Restrictions established hereby. However, in the event of additional Improvement to any existing Dwelling on the Property after the creation and recordation of these Restrictive Covenants, such Improvement shall be subject to the provisions of this Article 7.

Article 8 - Approval of Property Sales

The Property is owned by the McMinn County Economic Development Authority and is a joint venture between the City and County developed to promote a sound economic base for the community with emphasis on creating high capital investment, wages, and quality in design. The Board shall review and approve all sales of property within the park. The Property shall not be sold for speculative purposes. If Declarant determines the proposed project is inappropriate or incompatible, the property will not be sold and all option or earnest money will be returned. The Declarant has the discretion to attach conditions for repurchase in the event development does not commence within a specified time frame as described in Article 9.

Article 9 – Recapture Clause

If construction is not begun within 12 months from the original date of sale, the Declarant has the right to buy the property back at the original acquisition price. No resale of the property shall be made before construction is completed except with approval of The Board. An extension of the recapture clause may be granted by The Board after receiving a written request of extension by the Property Owner. Any changes to the proposed use of the Property between the date of sale or granting of option and beginning of construction must be approved by The Board.

Article 10 - Covenants and Restrictions to Run with the Land

The Restrictions contained in this instrument are not personal, but are permanent and shall run with the land. Each and every Restriction is for the benefit of each Owner, Occupant, mortgagee, or other interest therein. Each Owner or Occupant, by acceptance of a deed or a lease to a lot, parcel, tract of real property, or a building located within the Property (whether or not it shall be so expressed in such deed or other conveyance) accepts the same subject to the restrictions and agrees for such property, interested owners and all heirs, successors, and assigns to be bound by each of the restrictions jointly and severally.

Article 10 – Privity of Contract and/or Estate

This declaration will create privity of contract and/or estate with and among the Declarant, all grantees of any lot, parcel or tract of real property located on the Property, their heirs, successors, executors, administration, representatives, or assigns.

Article 11 - Enforcement

Enforcement of the provisions of this Declaration shall be by the terms hereof or by any appropriate proceedings at law or in equity against any person, corporation or other entity violating or attempting to violate said provisions, either to restrain such violation, to enforce personal liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue hereof, or any combination of the above. The failure of the Declarant, Owner, or Occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of

the right to do so thereafter. Every Owner or Occupant shall be obligated to pay the attorney's fees of the party or parties bringing an action against each Owner or Occupant for the enforcement of the provisions of this Declaration, provided such party or parties bringing said action has obtained a judgment in its favor by court of record and such judgment has become final. The court involved in such proceedings shall determine the amount of attorneys' fees.

Article 12 – Miscellaneous

12.1 Severability

Each and every Restriction shall be considered to be an independent separate covenant and agreement and in the event any one or more of the Restrictions shall for any reason be held to be unenforceable, all remaining Restrictions shall nevertheless remain in full force and effect.

12.2 Terms and Extensions

The conditions, covenants, restrictions, easements, and reservations set forth in this Declaration shall run with and bind the land within the Property, as well as any adjoining real property to which this Declaration is extended in accordance with the provisions for extension of this Declaration to adjoining property as herein stated and shall be and remain in effect, shall inure to the benefit of and be enforceable by Declarant and/or any Occupant of the property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of 40 years from the date this Declaration is recorded and shall automatically extend for an additional 40 year period unless amended or deleted at any time by a majority of Property owners.

12.3 Amendment, Termination or Extension

This Declaration may be: (i) amended from time to time, (ii) terminated, or (iii) renewed and extended in whole or in part beyond the aforementioned terms for successive periods not to exceed 10 years each. Any of the foregoing shall be done by an instrument in writing, properly executed, acknowledged, and filed with the Register of Deeds for McMinn County, Tennessee, in accordance with the following provisions: If Declarant is an Owner of fifty percent (50%) or more of the total acreage of the Property, Declarant shall have the right to amend, terminate, or extend this Declaration. If Declarant is an Owner of more than one percent (1%), but less than fifty percent (50%) of the total acreage of the Property, this Declaration may be amended, terminated, or extended by Declarant and any remaining Owners which together with Declarant own fifty percent (50%) of the remaining acreage of the Property. If Declarant is not an Owner of any acreage in the Property, this Declaration may be amended, terminated, or extended by the Owners of two-thirds of the total acreage of the Property. Any extension shall specify which conditions, covenants, restrictions, easements, and reservations are renewed and extended and the term for which they are extended. Any such extension shall be filed for record at least 90 days prior to the effective date thereof. Each purchaser, lessee, or grantee of any interest in any real property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance thereof, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration are applicable to such property and that they may be amended, terminated, or extended as provided above.

12.4 Modification, Amendment, or Release

Any tenant or any mortgagee of all or any portion of the Property is hereby put on notice that this instrument may be released, subordinated, modified, rescinded, or amended as authorized under the terms of this Declaration without the necessity of obtaining consent of the tenants or mortgagees.

In WITNESS WHEREOF, the parties have caused this instrument to be executed on the day and year first above written.

DECLARANT: McMinn County Economic Development Authority

Signed: Kathy Knight
Printed Name: Kathy Knight
Title: Executive Director
Date: 5/7/14

**STATE OF TENNESSEE
COUNTY OF McMINN**

Before me, the undersigned, a Notary Public in and for the state and county aforesaid, personally appeared Kathy Knight, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be an Officer of the McMinn County Economic Development Authority, the within named bargainer, corporation, political subdivision, and that he as such being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal on this the 7th day of May, 2014.

Joni Belle Walker
Notary Public

My Commission Expires: 8/22/17

