



N64W23760 Main Street
Sussex, Wisconsin 53089
Phone (262) 246-5200
FAX (262) 246-5222
Email: info@villagesussex.org
Website: www.villagesussex.org

AGENDA
STRATEGIC PLANNING SESSION, VILLAGE BOARD MEETING
5:30 PM TUESDAY, JUNE 29, 2021
THE GROVE AT VILLAGE PARK
W244N6260 WEAVER DRIVE

1. Consideration and possible action on First Amendment to the Memo of Understanding Equity Trust Company Custodian f/b/o Stewart Wangard IRA and the Village of Sussex, Waukesha County, Wisconsin and the Second Amendment to Highlands Business Park Restated Declaration of Development Standards, Easements and Protective Covenants.
2. Discussion and workshop on Village of Sussex Strategic Planning
3. Adjournment.

Anthony LeDonne
Chairperson

Jeremy Smith
Village Administrator

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact the Village Clerk at 246-5200.



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MEMORANDUM

To: Village Board

From: Jeremy Smith, Village Administrator

Re: Couple Items on 6-29 Board meeting

Date: 6/23/2021

There are a couple of items on tonight's Strategic Board meeting that are not related to the strategic plan, but have been asked by the Highlands Business Park Developer to be acted on in a quick manner because of a closing on a parcel of land in the business park. That closing is scheduled for July 7th and this is the only Board meeting we have between now and then.

The first item is the first amendment to the memo of understanding between the Developer and the Village that reflects the portion of the land that is the Village's collateral on the State Infrastructure Bank loan. The Developer received a low interest loan from the State through the Village and the Developer is responsible to pay it back with interest. The northern parcel of the Development is the collateral for the Village and its value far exceeds the \$766,800 outstanding loan. The Developer is selling a small portion of this parcel and a portion of the land from the southern parcel is transferred back into the northern parcel so the MOU is being updated to reflect the actual legal description of the land being used as collateral. Without this change, the Developer can't complete the land transaction to Adron Tool. Staff has reviewed the new legal and the agreement and finds them to be accurate and the Village still has sufficient collateral against the loan. Please see the memo of understanding for more information.

The second item is an update to the Covenants and Restrictions with changes recommended by the Design Control Architect, Steven Perry Smith. Each business park has a design control process to ensure plans submitted to the Village for buildings in the Park meet the design standards of the community. In this case the Architect is recommending increases to several standards above Village requirements that the Village agrees will help with quality design in the Park. The other change is to make clear that the northern parcel is not part of the business park, which follows the original intent for that parcel. These updated Covenants need to be in place prior to Adron buying the property for legal reasons. Please see the 2nd Amendment to the Covenants for more information.

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

Between

**EQUITY TRUST COMPANY
CUSTODIAN f/b/o STEWART WANGARD IRA**

And

VILLAGE OF SUSSEX, WAUKESHA COUNTY, WISCONSIN

THIS FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING (this “Amendment”) is dated as of this ___ day of _____, 2021, (the “Effective Date”) by and between Equity Trust Company Custodian FBO Stewart Wangard IRA (“Owner”), and the Village of Sussex in the County of Waukesha and the State of Wisconsin (“Village”).

RECITALS:

WHEREAS, Owner and Village are parties to that certain Memorandum of Understanding (“MOU”) dated July 11, 2019 wherein Owner authorized a deferred special charge on the Burdened Land to secure repayment of the SIB Loan Amount to the Village; and

WHEREAS, The definition and legal description of the Burdened Land attached as Exhibit A to the MOU has changed as the result of a lot line adjustment between Owner and Developer and the recording of a new Certified Survey Map with the Waukesha County Register of Deeds Office on _____ as Document No. _____; and

WHEREAS, Owner and Village now desire to amend the MOU to replace Exhibit A attached thereto with the Exhibit A attached to this Amendment, which reflects the current definition and legal description for the Burdened Land.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Burdened Land. The definition and legal description for the Burdened Land attached as Exhibit A to the MOU shall be hereby replaced by Exhibit A attached to this Amendment.
2. Except as otherwise defined herein or as capitalized in ordinary usage, all capitalized terms used herein shall have the same meaning as set forth for such terms in the MOU.
3. Except as expressly provided for herein, all of the terms, covenants and provisions of the MOU shall remain in full force and effect and are hereby ratified and confirmed.
4. This Amendment may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. The parties agree that scanned and electronic signatures shall have the same effect and validity, and may be relied upon in the same manner, as original signatures.

SIGNATURE PAGES TO FOLLOW

SIGNATURE PAGE TO FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed as of the Effective Date.

OWNER

EQUITY TRUST COMPANY
CUSTODIAN FBO STEWART WANGARD IRA

By: _____

Jeffery S. Brown, Authorized Signatory

NOTARY FOR OWNER

STATE OF OHIO
COUNTY OF CUYAHOGA

Personally came before me this ____ day of _____, 2021, the above named **Jeffery S. Brown, Authorized Signatory of Equity Trust Company, Custodian FBO Stewart Wangard IRA**, to me known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF OHIO

My commission expires: _____

SIGNATURE PAGE TO FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed as of the Effective Date.

VILLAGE

VILLAGE OF SUSSEX
WAUKESHA COUNTY, WISCONSIN

Anthony J. LeDonne, VILLAGE President

_____, VILLAGE Clerk

NOTARY FOR VILLAGE

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this ____ day of _____, 2021, the above named Anthony J. LeDonne, VILLAGE President, and _____, _____ Clerk, of the above-named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such VILLAGE President and VILLAGE Clerk-Treasurer of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority and pursuant to the authorization by the VILLAGE Board from their meeting on the ____ day of _____, 2021.

NOTARY PUBLIC, STATE OF WISCONSIN

My commission expires: _____

Exhibit A

Description of Burdened Land

Lot 3 of Certified Survey Map No. _____, recorded in the office of the Register of Deeds for Waukesha County, Wisconsin on _____, 2021, being a redivision of Lot 1 of Certified Survey Map No. 11793, recorded as Document No. 4374771, and Lot 3 of Certified Survey Map No. 11854, recorded as Document No. 4397415, being part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, Town 8 North, Range 19 East, in the Village of Sussex, Waukesha County, State of Wisconsin.

Highlands Business Park SECOND
Amended and Restated Declaration
of Development Standards, Easements
and Protective Covenants

Document Number

Document Title

Document Number	Document Title

Recording Area

Name and Return Address

Chad van Dernoot
Wangard Partners, Inc.
1200 N. Mayfair Road, Suite 310
Milwaukee, Wisconsin 53226

Part of SUXV0273999003;
Part of SUXV027999007;
SUXV027999008;
SUXV0273999009;
SUXV0273999010;
SUXV0273999011

Parcel Identification Number (PIN)

**HIGHLANDS BUSINESS PARK
SECOND
AMENDED AND RESTATED
DECLARATION OF DEVELOPMENT STANDARDS, EASEMENTS AND
PROTECTIVE COVENANTS**

THIS DECLARATION, (“Declaration”), made as of the _____ day of _____, 2021 by Sussex Corporate Park, LLC a Wisconsin limited liability company, with its principal place of business at 1200 North Mayfair Road, Suite 310, Wauwatosa, Wisconsin 53226 (the “Corporation,” as further defined below).

RECITALS

WHEREAS, the Corporation is or was the owner of the real property located at the northwest corner of State Trunk Highway 164 and County Trunk Highway K in the Village of Sussex (the “Municipality,” as further defined below) described on the attached **Exhibit A** (the “Premises”); and

WHEREAS, it is the Corporation's intent to develop the Premises into a corporate park to be known as Highlands Business Park (the “Park”); and

WHEREAS, the Corporation desires that development of the Park accomplish the following purposes:

- (a) To provide for development and use of the Park which is structurally, architecturally and aesthetically acceptable to the Corporation;
- (b) To ensure that any Buildings or Structures within the Park are constructed in a manner acceptable to the Corporation in energy efficiency, appearance, quality, design;
- (c) To provide for adequate off-street parking and loading facilities, sign controls, landscaping, surface drainage, and property maintenance on individual Building Sites; and
- (d) To provide for development and maintenance that will preserve and enhance the value of the Premises, and generally benefit the Corporation, Owners, and each Municipality; and

WHEREAS, to accomplish these purposes, it is the Corporation’s further intent to impose certain covenants, conditions and restrictions upon the Premises (the “Covenants”), and to retain the right (but not the obligation) to enforce the Covenants with respect to any existing or future use of the Premises or any part thereof by Owners their heirs, assigns, lessees, licensees, invitees, successors in interest and personal representatives;

WHEREAS, this Declaration is intended to amend, restate and supersede in its entirety the Highlands Business Park Amended and Restated Declaration of Development Standards, Easements and Protective Covenants made by the Corporation as of July 29, 2020 and recorded in the office of the Register of Deeds of Waukesha County, Wisconsin on July 30, 2020 as Document No. 4497141, which previously amended, restated and superseded in its entirety the Sussex Corporate Park Declaration of Development Standards and Protective Covenants made by the Corporation as of May 7, 2019 and recorded in the office of the Register of Deeds of Waukesha County, Wisconsin on June 19, 2019 as Document No. 4403122 (collectively, the “Previous Declarations”);

WHEREAS, the Previous Declarations affected, not only portions of the Premises, but also certain property adjacent to the Premises (the “IRA Property”) which IRA Property is now intended to be removed, released from and unencumbered by the Previous Declarations and this Declaration;

NOW, THEREFORE, the Corporation hereby declares that the Premises shall be held, sold, conveyed, occupied, developed and maintained in accordance with the Covenants set forth herein, and these Covenants shall run with the land and shall be binding upon any party having any right, title or interest in or to any parcel or portion of the Premises, their heirs, assigns, lessees, licensees, invitees, successors in interest, and personal representatives until these Covenants are terminated in accordance with the provisions hereof.

ARTICLE I DEFINITIONS

Unless the context requires otherwise, the terms used herein have the following meanings:

- 1.1 **Affiliate.** The terms “Affiliate” or “Affiliates” shall mean a parent, sister or subsidiary corporation, joint venturer, partner, manager or member of the Corporation or an Owner or a person who owns more than fifty percent (50%) of the voting stock, partnership or membership interests in an Owner or the Corporation.
- 1.2 **Architect.** The term “Architect” shall mean a person duly licensed as an architect under the laws of Wisconsin or any other state acceptable to the Corporation.
- 1.3 **Association.** The term “Association” shall mean the non-stock, non-profit Wisconsin corporation whose membership consists of Owners of Parcels in Highlands Business Park.
- 1.4 **Building.** The term “Building” shall include both the main portion of any building on the Premises, and all projections and extensions thereof, including but not limited to platforms, docks, eaves, canopies, walls and screens.
- 1.5 **Building Site.** The term “Building Site” or “Site” shall mean any Parcel or contiguous Parcels or portion(s) thereof within the Park upon which Buildings may be erected and used in conformance with these Covenants and the statutes,

regulations, codes and ordinances of the State of Wisconsin, County of Waukesha and the Municipality.

- 1.6 **Common Elements.** The terms “Common Elements” shall mean all real and personal property, fixtures, structures and improvements currently owned or to be owned by the Corporation, located within the Park and conveyed or to be conveyed by the Corporation to the Association or to the Owner of any Parcel pursuant to Section 13.4 below. Common Elements may include, but are not limited to, such things as private sanitary sewer mains and laterals, private water mains and laterals, street lights, structures, maintenance equipment, drainage systems and drainage facilities contemplated in the Master Grading Plan, outlots, wetlands, isolated natural resource areas, open spaces, green ways, sidewalks, walking paths, bike paths, trails, common entry and access ways and other Improvements which have been constructed or maintained for the common good of the Owners.
- 1.7 **Corporation.** The term “Corporation” shall mean, in addition to Sussex Corporate Park, LLC or its Affiliates with ownership interests in the Park, any person or organization which shall be assigned the right to enforce these Covenants under Section 12.1.
- 1.8 **Master Grading Plan.** The term “Master Grading Plan” shall mean the plan adopted by the Corporation describing the drainage pattern of the Premises and outlining the proposed drainage system for the Park, together with any future revisions to said plan, which plan and revisions shall be available for review at the office of the Corporation. The Master Grading Plan may contemplate installation and maintenance of various drainage systems and drainage facilities, including, but shall not be limited to, retention and/or detention ponds or swales, areas of open water, whether permanent or seasonal, natural or man-made, and related facilities forming part of the Park’s drainage system. The Stormwater Management Practices Maintenance Agreement recorded in the office of the Register of Deeds of Waukesha County, Wisconsin on May 21, 2019 as Document No. 4397941 (the “SMPMA”) is hereby deemed to be a part of and incorporated into the Master Grading Plan.
- 1.9 **Engineer.** The term “Engineer” shall mean a person duly licensed as a professional engineer under the laws of Wisconsin or any other State acceptable to the Corporation.
- 1.10 **Improvements.** The term “Improvements” shall mean any man-made changes in the natural condition of the Premises including, but not limited to, Buildings, Structures, or other construction of any kind, (whether above grade, below grade, or on the land surface), fences, walls, signs, additions, alterations, screen enclosures, sewers, drains, disposals, lakes, waterways, roads, paving, utilities, grading, landscaping and exterior illumination, and shall expressly include any changes in existing Improvements.

- 1.11 **Parcel.** The terms “Parcel” or “Parcels” shall mean a fractional part of the Premises which has been designated as a separate parcel by or with the written approval of the Corporation.
- 1.12 **Premises.** The Premises subject to this Declaration shall be only the real property located at the northwest corner of State Trunk Highway 164 and County Trunk Highway K in the Village of Sussex (the “Municipality,” as further defined below) described on the attached **Exhibit A**, and the IRA Property shall be deemed to be removed, released from and unencumbered by this Declaration and the Previous Declarations;
- 1.13 **Municipality.** The term “Municipality” shall mean the Village of Sussex, County of Waukesha, State of Wisconsin in which the Premises is located or such other municipality in which the Premises or any part thereof may be located.
- 1.14 **Occupancy.** The term “Occupancy” shall mean the legal right of any person or organization, whether Owner, lessee, tenant, licensee or such person’s heirs, assigns, successors in interest or personal representatives, to possess and/or use any Parcel or Improvement within the Park as determined by the issuance of an occupancy permit by the Municipality, whether or not such right is exercised. In the event that the Municipality does not have a system of issuing occupancy permits, then “Occupancy” shall occur when the improvements are sufficiently complete such that they are in compliance with all applicable building and zoning codes, local ordinances and state law and can be used for the purposes intended.
- 1.15 **Owner.**
- (a) The term “Owner” shall mean one or more partners, members, managers, persons, trusts, corporations, partnerships, limited liability companies or other entities holding record title to the fee simple interest to a Parcel or Parcels, and shall include land contract purchasers (but not land contract vendors) and secured parties if in possession, their heirs, assigns, successors in interest or personal representatives. An Owner may, upon prior written notice to the Corporation, assign all or part of its rights hereunder to said Owner's tenant or lessee. An Owner may not assign its duties and obligations hereunder.
 - (b) The term “Owner” shall not include the Corporation with respect to Parcels not yet sold and developed by the Corporation, Parcels repurchased by the Corporation pursuant to Section 3.2, or undeveloped Parcels repurchased by the Corporation pursuant to Section 3.3. However, the Corporation shall be considered an Owner with respect to developed Parcels repurchased by the Corporation pursuant to Section 3.3 and with respect to unsold Parcels developed by the Corporation.

- (c) The term “Original Owner” shall mean the first purchaser of each Parcel or Parcels from the Corporation, whether the purchase occurred while this Declaration is in effect or when the Previous Declarations were in effect.
- 1.16 **Plan Commission.** The term “Plan Commission” shall mean the Plan Commission or such other committee of each Municipality authorized to review and approve land use planning.
- 1.17 **Preservation Lands.** The term “Preservation Lands” shall mean all real property and real property interests owned by the Corporation, located within the Park and which at the time of incorporation of the Association the Corporation desires to convey to the Association, and which are determined by the Corporation in its sole judgment to be worthy of preservation. Wetlands, Isolated Natural Resources Areas, open spaces, green ways, and Retention Ponds are examples of real property that may be considered Preservation Lands. Preservation Lands may, at the sole discretion of the Corporation, be used as open space/landscaping in the “Limit on Development” as described in Section 3.4
- 1.18 **Site Plan.** The term “Site Plan” shall mean a comprehensive plan describing the development of a Building Site as described in Section 4.1.
- 1.19 **Structure.** The term “Structure” shall mean an above-ground Improvement.

ARTICLE II PERMITTED USES

- 2.1 **Compliance with Zoning.** All Building Sites in the Park shall be developed in conformance with zoning requirements in effect as of the date of application and approval of necessary building permits or, if deemed more restrictive in the sole judgment of the Corporation, with the zoning requirements in existence on the date of this Declaration for the specific zoning district(s) in which such Sites are located. Owners shall be responsible for ascertaining the zoning classification applicable to their Building Sites, and shall comply with all regulations applicable to such classification. An Owner intending to apply for a zoning amendment, conditional use permit, exception or variance for its Building Site, shall first submit such application to the Corporation for review and approval. Disapproval by the Corporation shall be final notwithstanding later favorable action by the Plan Commission.
- 2.2 **Nuisances.** No noxious or offensive trade or activity, whether or not permitted by applicable zoning, shall be carried on within the Park, nor shall anything be done which is or may become an annoyance or nuisance to adjacent Owners or other Park users, or which is inconsistent with these Covenants or other governmental or private restrictions applicable to the Premises. Violation of these Covenants shall

constitute a nuisance under this section and may be subject to enforcement under Article XII below.

- 2.3 **Hazardous Waste.** Notwithstanding anything to the contrary in these Covenants and/or applicable zoning, no storage of hazardous or toxic waste, or discharge of such waste into the sanitary system or surface drainage system, shall be permitted within the Park without the express prior written approval of the Corporation. Any party violating this provision, whether intentionally, negligently, or otherwise hereby agrees to indemnify, defend and hold harmless the Corporation, its Affiliates and each and every other Owner against any and all liability and costs arising from such violation, including reasonable attorney's fees.

ARTICLE III SITE SPECIFICATIONS AND REQUIREMENTS

- 3.1 **No Subdivision of Parcels.** After a Parcel has been purchased, such Parcel shall not be further subdivided without the written consent of the Corporation. No Owner may sell, lease or rent less than all of a Parcel without the written consent of the Corporation. The Corporation may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to leases to occupy space within a Building developed for said course of business.
- 3.2 **Proceeding with Work: Right of Repurchase.** The Original Owner of a Building Site, and any subsequent Owner, shall have eighteen (18) months, or such longer period as may be approved by the Corporation, from the closing date of the sale of the Site by the Corporation to the Original Owner to begin development of the Site. Once development begins, it shall continue uninterrupted until completion, which shall be no later than eighteen (18) months from commencement, unless a longer period is expressly granted in writing by the Corporation. If an Owner fails to comply with this section or any agreement between the Corporation and an Owner hereunder permitting development at a later date, the Corporation may, but shall not be required to, purchase the Site for eighty-five percent (85%) of the price paid to the Corporation by the Original Owner, if another price is not willingly agreed to in writing by the Corporation and the then Owner, by giving written notice to the then Owner of its intention to repurchase. The notice can be given at any time after failure of an Owner to comply with this section. The Original Owner shall pay all costs incurred by either party in connection with any repurchase under this Section, including but not limited to the costs of providing a title insurance policy insuring the Corporation in the amount of the price, all transfer taxes and all escrow and closing costs.
- 3.3 **Right of First Refusal.** The Corporation shall have the right of first refusal on any contemplated sale of a Building or of a Building Site or other Parcel by any Owner. The Owner shall provide the Corporation with a copy of any bona fide offer which the Owner has accepted or intends to accept, and the Corporation shall have thirty (30) days after receipt thereof to elect, at its option, to purchase the Building, the Site or other Parcel upon the same terms and conditions of such

bonafide offer. If the Corporation elects to purchase pursuant to this section, then the Owner, in addition to complying with all other terms and conditions set forth in such bonafide offer, not later than fifteen (15) days before the date set for closing, shall furnish the Corporation with a commitment for title insurance in the amount of the purchase price, naming the Corporation as the insured and showing title to be in the condition called for in the bona fide offer. If the Corporation rejects the offer or fails to act within thirty (30) days, the Owner may close the transaction with the proposed purchaser upon the terms of the offer submitted to the Corporation. Rejection of or failure of the Corporation to act upon an offer does not waive the Corporation's right of first refusal should the subsequent Owner later decide to sell the Building, Site or Parcel.

This section shall not apply to the sale of a Building, Building Site or other Parcel by an Owner to an Affiliate or to the acquisition and subsequent sale, by a bona fide third-party lender, by reason of a mortgage foreclosure or deed in lieu of foreclosure.

This section shall terminate with respect to any Building Site upon final completion of construction of a Building and related improvements on such Building Site pursuant to a Site Plan approved in accordance with the terms hereof.

- 3.4 **Limit on Development.** No more than seventy-five percent (75%) of any Building Site may be covered with Buildings or other Improvements impervious to surface water absorption, (i.e., drives, parking lots, concrete loading areas). No more than fifty percent (50%) of any Building Site may be covered with Buildings. Preservation Lands shall not be developed with Structures or impervious surfaces.
- 3.5 **Duty to Landscape.** All areas of a Building Site not designated on a Site Plan approved by the Corporation for Buildings, Structures, storage, walks, parking areas and drives shall be fine-graded, seeded and/or sodded, landscaped, watered and maintained in an attractive condition in accordance with the landscaping plans required in Article VII.
- 3.6 **Setbacks.**
- (a) Front or street yard – not less than 40 feet from the right-of-way of all highways, streets or roads.
 - (b) Shore yard – not less than 50 feet from the ordinary high water mark of any navigable water.
 - (c) Side yard – not less than 25 feet from any other lot line.
 - (d) Rear yard – not less than 25 feet from any other lot line.

- (e) Parking Areas – not less than 30 feet from rights-of-way and all highways, with appropriate screening in accordance with local zoning ordinance.

3.7 **Easements.** The minimum front or street setback, shore yard, side yard and rear yard areas described in Section 3.6 above (“Setback Areas”) are and shall be reserved for the use of non-exclusive easements for utilities serving, in whole or in part, the Park or any Parcel located therein. By accepting title to a Parcel each Owner hereby agrees that such Setback Areas may be subjected to easements for utility lines for electricity, sewer, water, gas, telephone, cable television, or other similar utilities. Within fifteen (15) days of written request by the Corporation or the Association, each Owner shall grant specific easements (and cause their lenders to agree to non-disturbance of such easements) at no cost to the Corporation or the Association and upon such other terms as may be reasonably requested. No Improvements may be constructed in the Setback Areas except landscaping, pavement, curb and gutter, signage and aboveground utility boxes, cabinets and apparatus in accordance with plans approved by the Corporation pursuant to Articles IV, V, VII, VIII and IX of these Covenants.

In addition to the foregoing, an access way running east to west, as depicted on the attached **Exhibit B** (the “Access Easement”), is hereby subjected to an easement for vehicular and pedestrian ingress and egress burdening, as a Common Element, the area depicted on such **Exhibit B** and benefiting the Park and each and every Parcel thereof. Such Access Easement shall be maintained with pavement to accommodate vehicular traffic, including but not limited to, semis and all other delivery trucks and vehicles to and from all Building Sites, and such Access Easement shall be kept open, unobstructed and available for vehicular and pedestrian traffic and deliveries at all times.

3.8 **Use of Excavated Materials.** The Corporation shall at its option have the right to free use of any soil, sand, gravel, rock or other material excavated from any Building Site or Parcel, if such material is not used upon the Site or Parcel from which it was excavated. The Owner of the Site or Parcel shall deposit any such material at whatever location within the Park the Corporation shall require. No excavated material shall be removed from the Park without the prior consent of the Corporation.

3.9 **Finish Grade.** Each Owner must strictly adhere to and finish grade its Parcel in accordance with the Master Grading Plan or any amendment thereto approved by the Corporation and on file in the office of the Municipality’s Clerk. The Corporation and/or the Municipality and/or their agents, employees or independent contractors shall have the right to enter upon any Parcel, upon 24 hours’ written notice to Owner, for the purpose of inspection, maintenance, correction of any drainage condition.

3.10 **Maintenance of Sites and Improvements.** In the event the Owner does not properly landscape or maintain any Site or Improvement, or properly maintain any signage, as reasonably determined by the Corporation consistent with the

terms of this Declaration, the Corporation may send written notice to the Owner indicating that the Corporation has determined that the Site, Improvement and/or signage are not being properly landscaped and/or maintained, and further indicating that the Corporation may, at its sole option, perform such landscaping and/or maintenance if not properly done by the Owner. The above-referenced notice shall give the Owner a minimum of seven (7) days to correct the problem. If the Site or Improvement and/or sign is not properly landscaped and/or maintained within the time granted by the above-referenced notice, the Corporation shall then have the authority to landscape and/or maintain any such Site, Improvement and/or sign referred to in said notice and shall have the right to charge the Owners for any costs incurred by the Corporation as a result of said landscaping and/or maintenance under Section 13.3 below. The Municipality, following prior written notification to the Corporation and the Owner, may, if authorized under applicable Municipality ordinance, conduct work to maintain such landscaping of the Site and to maintain Improvements to ensure such are in good working order and appearance. The Municipality may assess the cost to the Owners or the Corporation as special charges pursuant to Section 66.0627, Wis. Stats. If such charges are not paid within the period fixed by the Municipality, the charges shall become a lien on the Parcels as provided in Section 66.0627, Wis. Stats., and shall be extended upon the tax rolls as provided in Section 66.0627, Wis. Stats. The Corporation may, in turn, assess such cost to the Owners as described below.

- 3.11 **Municipal Regulation and Applicable Laws.** The Corporation, its successors and assigns, and all parties hereafter having an interest in the Park, are subject to all rules, codes, regulations, and ordinances of the Municipality, Waukesha County, the State of Wisconsin and the federal government, and the same may be more restrictive than these Covenants. In the event there is a conflict between the requirements of these Covenants and any provision of the Municipality, County, State or federal law or regulation, the more restrictive provisions shall apply.

ARTICLE IV SITE PLANS/DEVELOPMENT

- 4.1 **Site Plan.** No new Improvements, or modifications of any kind or degree to existing Improvements, shall be made or constructed upon a Building Site or other Parcel until a detailed Site Plan of the entire Building Site or Parcel is reviewed and approved, in writing, by the Corporation or its designated representative. An Owner intending to obtain any such approval shall submit such application to the Corporation for review and approval, which approval may be granted or withheld in the sole discretion of the Corporation, with a common scale not smaller than 1" = 100'. The Site Plan review and approval by the Corporation or its designated representative shall be in addition to any approvals required by applicable laws, ordinances or applicable regulatory approval conditions of the Municipality. Disapproval by the Corporation shall be final notwithstanding later favorable action

by the Plan Commission. Improvements shown on such Site Plan shall include, but not be limited to:

- (a) All existing and proposed finished grade levels to National Geodetic Vertical Datum;
- (b) All Buildings and other Structures, showing the setbacks required by Section 3.6;
- (c) Sidewalks and driveways (including types of materials);
- (d) Parking areas (including types of materials);
- (e) Loading areas (including types of materials);
- (f) Utility and storage areas (including types of materials);
- (g) Lawns and landscaped areas (including types and sizes of materials);
- (h) Water impoundments;
- (i) Fences (including types of materials);
- (j) Lights (including types and poles), and illumination levels at Parcel lines measured in foot candles, based on the height of fixtures and manufactured-provided cut sheets;
- (k) Areas of fill or cut;
- (l) Storm water drainage plans and facilities;
- (m) On-Site sewer, water and other utility locations, sizes and easement locations;
- (n) Location and type of refuse collection facilities; and
- (o) All exterior signs and all other signs visible from the exterior of Buildings and Structures.

ARTICLE V ARCHITECTURAL BUILDING PLAN REVIEW

- 5.1 **Building Plan.** No Building or other Structure shall be constructed or placed on any Building Site or other Parcel nor shall any Building or Structure be remodeled nor altered, until detailed plans and specifications for such Building, Structure, or remodeling, alteration or addition thereto, have been reviewed and approved, in writing, by the Corporation or its designated representative. An Owner intending to obtain any such approval shall submit such application to the Corporation for

review and approval, in writing, which approval may be granted or withheld in the sole discretion of the Corporation. The building plan review and approval by the Corporation or its designated representative shall be in addition to any approvals required by applicable laws, ordinances or applicable regulatory approval conditions of the Municipality. Disapproval by the Corporation shall be final notwithstanding later favorable action by the Plan Commission.

Building plans shall comply with the following minimum requirements:

- (a) Plans shall be prepared by an Architect or Engineer in at least 1/8" = 1' scale;
- (b) Plans shall show Building location(s) within the Building Site;
- (c) Floor plans and building elevations shall show all features and information required by the Plan Commission and the State of Wisconsin;
- (d) Plans shall show all public and/or private utility connections and storm water draining systems; and
- (e) Plans shall identify all proposed materials, samples and/or color charts if requested by the Corporation.

5.2 **Building Standards.** Buildings and Structures shall comply with the Municipality's Design Standards, Municipality's Ordinances and other applicable laws and regulatory approval conditions, and the following minimum standards:

- (a) They shall be designed by an Architect or Engineer. No side, elevation or facade of a building or structure is exempt from public view, consequently, all sides, elevations, or facades of all buildings and structures shall be visually pleasing and architecturally and aesthetically compatible with the surrounding environment.
- (b) All Buildings shall be unique in character and the design and exterior appearance shall not be identical to other Buildings to avoid monotony within the Park.
- (c) Each Building shall be designed to provide relief through dimension variation, material type or color(s) to help reduce Building scale.
- (d) The majority of exterior and externally visible opaque surfaces shall be constructed of the following primary materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
 - (i) Brick;

- (ii) Architectural precast concrete panels with painted finish and/or exposed aggregate finish;
- (iii) Decorative concrete block for no more than 90% of the exterior building wall area, except for office buildings in which case it shall not exceed 50% of the exterior wall area);
- (iv) Stone – simulated, cut or full depth;
- (v) Exterior insulation and finish systems (EIFS) is acceptable for retail buildings only but only if installed at 4'-0" above grade and not to exceed 30% of the exterior wall area;
- (vi) Wood (as an accent or trim material but in no event to exceed 30% of the building's exterior area);
- (vii) Prefinished architectural metal panels, profile panels or composite metal panels. Steel panel systems used in metal buildings are not allowed.
- (viii) Other similar buildings materials recommended by an Architect retained by the Corporation; and/or
- (ix) Other building materials being developed, and to be developed, by the construction industry. The use of such materials will be reviewed by the Corporation on a case-by-case basis.

Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other buildings and structures in the Park.

- (e) Metal Buildings will not be allowed within the Park.
- (f) Metal trim materials may be used when in keeping with the architectural and aesthetic character of the Building or Structure.
- (g) All mechanical, electrical, pollution control or waste handling equipment, utility enclosures, whether roof, pedestal or ground mounted, and any outside solid waste, raw material, inventory, finished product, equipment, fuel storage facility or other storage of any kind, shall either be architecturally screened from ground view using materials identical to, or structurally and visibly compatible with, the main Buildings or Structures on the Building Site or based on roof placement relative to Building edge, or shall be landscape screened in accordance with Article VII. All storage areas shall be screened as provided above and shall be hard-surfaced with either concrete or asphalt materials within ninety (90) days from the date of

Occupancy, or as soon thereafter as weather will permit if such period occurs during winter months. A line of sight perspective shall be provided together with all Building plans to confirm screening of mechanical, electrical, pollution control or waste handling equipment and utility enclosures.

- (h) All Buildings to be constructed on a Building Site which are to be heated or cooled shall be designed and constructed in an energy efficient manner consistent with sound and prudent design and construction techniques.

5.3 **Accessory or Ancillary Structures.** Accessory or Ancillary Structures will be approved by the Corporation only if such Structures are necessary to the principal use of the Building Site, are in architectural and aesthetic conformance with other Building(s) or Structure(s) on the Site, are properly screened, meet all requirements of these Covenants and are otherwise satisfactory to the Corporation in its sole discretion. No Building or Structure of a temporary nature may be constructed on any Building Site except construction sheds in use during construction. Such sheds shall be promptly removed upon completion of construction.

5.4 **Utilities.** The Corporation may, in its sole discretion, designate exclusive utility providers for the Park, including but not limited to providers of telephone, cable, Wi-Fi, data and other services. All utilities serving a Building Site shall be installed underground. Associated above-ground apparatus shall be screened from street view with landscaping or an enclosure approved by the Corporation.

ARTICLE VI DRAINAGE

6.1 **Drainage Plan.** Prior to constructing any Improvements upon a Building Site or other Parcel, the Owner shall submit to and obtain written approval from the Corporation of a detailed plan describing all drainage facilities upon the Site.

6.2 **Conformance with Master Grading Plan.** Each Owner shall be responsible for controlling drainage from its Building Site or Parcel, including construction of retention facilities, if deemed necessary by the Corporation. The existing drainage pattern on a Site shall not be changed significantly, and no change to the drainage pattern on other lands within the Park shall be caused by an Owner which varies from the Master Grading Plan as that Plan is amended by the Corporation from time to time. See also section 3.9 concerning the Municipality's requirements.

6.3 **Storm Drainage.** Storm drainage outfall from a completely developed Site, and generated from a 10-year rain storm event, shall not exceed the physical abilities of the streams, drainage ways or storm sewers immediately adjacent to and downstream from the Site to accommodate such outfall. Such drainage shall be in compliance with the Master Grading Plan and with all Wisconsin Department of Natural Resources rules and regulations.

- 6.4 **Erosion Control.** Each Owner shall take whatever steps are deemed reasonably necessary by the Corporation to prevent erosion during the construction of any Improvements.

ARTICLE VII LANDSCAPING

- 7.1 **Landscaping Plan.** The landscaping upon any Building Site or Parcel shall be carried out in accordance with a detailed landscaping plan which has been reviewed and approved, in writing, by the Corporation or its designated representative. An Owner intending to obtain any such approval shall submit such application to the Corporation for review and approval, in writing, which approval may be granted or withheld in the sole discretion of the Corporation. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The landscape plan shall also show all ground cover and mulch areas, landscape and construction materials, and construction details. The landscape plan review and approval by the Corporation or its designated representative shall be in addition to any approvals required by applicable laws, ordinances or regulatory approval conditions of the Municipality. Disapproval by the Corporation shall be final notwithstanding later favorable action by the Plan Commission.
- 7.2 **Landscaping Methods.** Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkling systems, foundations, storm run-off retention ponds, reflective ponds, and landscaping lighting.
- 7.3 **Plant Material.** Selected plant material should provide for a variety of shade trees, evergreen trees and shrubs, ornamental trees and shrubs and ground covers. The Corporation may designate those plant materials permitted in the Park from time to time. In general, plant material selection shall take into consideration the following:
- (a) Disease and insect resistance.
 - (b) Hardiness to the area.
 - (c) The ability to provide seasonal interest.
 - (d) Future maintenance considerations.
- 7.4 **Time for Completion.** All landscaping shall be completed within ninety (90) days following Occupancy, or as soon thereafter as weather will allow if such period occurs within winter months. A landscaping bond or letter of credit approved by the Corporation shall be furnished to the Corporation in an amount deemed reasonable by the Corporation to guarantee enforcement of this section. If any

governmental agency requires a similar landscaping bond, the bond hereunder may be waived to such extent by the Corporation.

- 7.5 **Maintenance.** The Owner of a Building Site shall be responsible for maintaining all landscaping as approved on the original plan for the Building Site. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Corporation. Landscaped areas, materials, fixtures, and Improvements shall be maintained by the Owner of the Building Site, or by such Owner's long-term lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the Building Site landscape in a state of growth and visual beauty. Building Sites shall at all times be kept free of weeds, grass clippings, leaves, branches, and other natural debris as well as paper, cans, empty storage drums, crates, pallets, boxes, tires, and other trash or debris.
- 7.6 **Screening.** Landscape materials planted, located and oriented for the primary purpose of screening an ancillary Structure or appurtenance or storage, loading or parking area under Sections 5.2(d), 5.3, 8.1, 8.7 and 8.8 shall be of sufficient size to immediately screen a minimum of fifty percent (50%) of such Structure or area and be of a plant type that will provide full screening within three (3) years from time of planting.
- 7.7 **Open Water.** Any liability concerning the maintenance of open water on a Building Site or Parcel shall be that of the Owner, and any disposal or diversion of such water from the Site shall be carried out only with written permission of the Corporation and, if affecting lands outside the Park, the permission of the Municipality's Plan Commission.

ARTICLE VIII OFF-STREET SIDEWALKS, PARKING, LOADING AND STORAGE

- 8.1 **Sidewalks, Parking and Loading Areas.** Off-street sidewalks, parking and loading areas shall be provided on each Building Site and shall be of sufficient size to accommodate all planned or anticipated pedestrian, parking and loading needs of all Site occupants and visitors. Loading areas shall be separate from parking areas on any Site where possible, as determined by the Corporation in its sole discretion. Front or street yard parking shall only be allowed provided the same is adequately screened, as determined by the Corporation in its sole discretion but at a minimum standard as provided for in the Municipality's zoning ordinance. Contiguous, pedestrian-only sidewalks from the primary Building entrance to the first row of any customer and/or employee parking also shall be provided.
- 8.2 **No On-Street Parking.** No motor vehicle or trailer may park on any street, driveway, or on any access easement.

- 8.3 **Storage of Trailers and Vehicles.** There shall be no long-term storage of trailers or vehicles on any Building Site unless adequately screened as approved by the Corporation in writing and unless such storage is necessary to the Owner's or lessee's principal business conducted on the Site. Any necessary conditional use for such storage also must be approved by the Municipality. The determination for what types of storage require a conditional use is made by the Municipality per Municipality Ordinance.
- 8.4 **Hard-Surfacing.** All parking, loading and driveway areas shall be hard-surfaced with either concrete or asphalt materials at the date of Occupancy, or as soon thereafter as weather will allow if such period occurs during winter months. All drive entrances (from Site boundary to setback line) and all loading areas shall include concrete aprons to minimize long-term maintenance.
- 8.5 **Drainage.** All parking, loading, and driveway areas shall be properly sloped and graded to ensure positive drainage to common, private drainage facilities, if any, within the Premises. The perimeter of all hard-surfaced areas on the Site shall be edged with a permanent vertical- faced concrete curbing where necessary to facilitate such drainage. Curbing shall be constructed to transition with curbs within the public or private right-of-way.
- 8.6 **Setback.** No perimeter curbing or hard-surfaced areas (which shall be specifically restricted from use as a parking apron but which may serve as an access drive) shall be constructed closer than thirty (30) feet from any front or street property boundary lines and twenty (20) feet from any side or rear yard property boundary lines, except where necessary to afford permanent ingress and egress to the Building Site, and except where there are shared parking facilities or connections to Common Elements consisting of sidewalks, walking paths, bike paths or trails between Building Sites or other Parcels. Any such shared parking facilities must otherwise comply with these Covenants, and must be approved in writing by the Corporation.
- 8.7 **Landscaping.** Every Building Site shall be landscaped consistent with standards that meet or exceed all ordinance and regulatory requirements of the Municipality, including but not limited to, uniform landscaping and details adjacent to all publicly dedicated streets. The visual effect of all parking, loading, storage and driveway areas shall be "softened" by use of the landscaping so as to minimize the visibility of hard-surfaced areas, vehicles and equipment to motorists and people working in the Park.
- 8.8 **Location of Loading Areas.** Truck and truck-trailer loading, receiving and parking areas shall be located away from the street side(s) of any Building wherever possible, and shall be designed and located so as to confine all truck maneuvering to the Building Site. In addition, all such loading areas shall be given priority with respect to landscape screening.

ARTICLE IX SIGNAGE AND LIGHTING

- 9.1 **Sign Approval.** The Corporation recognizes the need for signs advertising the identity of Owners and occupants and the businesses they conduct on the Premises, and also recognizes that acceptable standards for such signs may change from time to time. All requests for signs on any Building Site or other Parcel within the Park shall be submitted to the Corporation for approval and shall contain detail as to size, location, materials, color and lighting together with a full color rendering. The Corporation may approve or disapprove the request, in writing, or may require that the proposal be altered to fulfill the intent of these Covenants. If the Corporation does not act upon a sign proposal within thirty (30) days after submission, the proposal shall be deemed approved. All decisions regarding signs shall be within the sole discretion of the Corporation and subject to any approval required by applicable laws, ordinances and regulatory approval conditions of the Municipality as well.
- 9.2 **Sign Standards.** Any sign located within the Park shall, in addition to complying with applicable Municipality Ordinances and other applicable laws and regulatory approval conditions, meet the following minimum standards:
- (a) Signs may only advertise the name(s) of the Building occupants, the Owners of the Building Site, and the product manufactured or sold on the Building Site.
 - (b) Each Building Site shall contain only one major “monument” type of sign at the entry of each Site, unless approval for additional signage is granted by the Corporation and the Municipality. Additional signage may be mounted on the Building subject to local zoning ordinances and Corporation approval.
 - (c) Signs shall be permanently affixed to the face of the Building or to the ground, and shall not flash, pulsate, rotate or be affixed with moving appurtenances. Roof top signs are prohibited.
 - (d) Signs attached to Buildings shall not extend above the higher of the ceiling line of the top floor or the top of a parapet wall.
 - (e) Smaller signs adjacent to individual tenant entrances and identifying individual tenants or directing traffic may also be allowed at the sole discretion of the Corporation.
 - (f) All signs must be architecturally compatible to other Improvements.
 - (g) It is the Corporation’s intent to require common materials and heights for all signage and common adjacent landscape themes surrounding such signage.

9.3 **Lighting Standards.** Lighting on individual Building Sites shall adhere to applicable governmental lighting codes and ordinances, as well as the following requirements:

- (a) All exterior lighting shall be energy efficient and shall be located, oriented, and of an intensity to illuminate only the Building Site or Parcel where located without detrimentally affecting activity on adjacent Sites or Parcels or traffic on streets and highways.
- (b) Lighting shall not be located on the roofs of Buildings. Any lights affixed to a Building shall be oriented downward at no more than a 45-degree angle from the vertical so as to light only areas immediately adjacent to the Building and shall not be used to illuminate surface parking areas of the Site.
- (c) Lights may neither flash, pulsate, nor be so bright as to impair or hinder vision on public streets or adjacent Building Sites, or otherwise constitute a nuisance in the judgment of the Corporation.
- (d) Only light emitting diode (LED) or modern equivalent lighting types shall be allowed and sodium vapor, incandescent, mercury vapor, and metal halide lighting types shall be prohibited. Integration of similar lighting fixtures is encouraged.
- (e) All plans for lighting must be submitted to the Corporation for approval.
- (f) Illumination levels shall not exceed .5 foot-candles at all Site lines common with land uses subject to more restrictive zoning classifications.
- (g) Light poles, not to exceed 30 feet in height (from the ground elevation to the top of the head), and pole-mounted fixtures shall be installed throughout any surface parking areas to provide safe illumination, consistent with ordinances of the Municipality. Surface parking lots shall not be illuminated by lighting affixed to Buildings.

ARTICLE X AREA-WIDE BENEFITS

10.1 **Improvements not Specifically Addressed.** The construction and placement of Improvements such as special utilities, antennae, receiving dishes, towers, incidental storage buildings, and other facilities not specifically addressed elsewhere within these Covenants shall require the written approval of the Corporation.

10.2 **Maintenance and Repair.** All Improvements on Building Site shall be kept, maintained and repaired in good condition at all times. Regular maintenance routines shall be followed by Owners such that the Improvements continue to be maintained, at all times, as nearly as possible, in the condition set forth in the Site

Plans and Building Plans approved by the Corporation. Any damage resulting from casualty loss to any Improvements shall be immediately replaced or repaired by Owner to their original condition, as nearly as possible, at the Owner's sole expense.

- 10.3 **Right to Enter and Maintain.** The Corporation shall have the right to enter upon any Parcel, at reasonable times and after reasonable notice to the Owner, for the purpose of maintaining, renewing, or reconstructing any utilities, facilities, other Improvements which benefit other Parcels, in addition to benefiting such Parcel or pursuant to the SMPMA. If such Parcels contain public utilities or facilities having an area-wide benefit, which are maintained by the Municipality, the Municipality, following prior written notification to the Corporation and the Owner, may, if necessary to maintain such facilities in good working order and appearance, renew, reconstruct, or maintain such facilities or utilities and assess the cost to the Owners or to the Corporation, which will, in turn, assess such cost to the Owners as described below. No prior written notification shall be required for emergency repairs. Notwithstanding the foregoing, this Section shall not authorize the Corporation or the Municipality to unreasonably interfere with any normal and customary business operations of an Owner or Occupant on their Site. See also Section 3.10 concerning maintenance requirements.
- 10.4 **Right to Assess.** The costs of such maintenance, renewal or reconstruction whether by the Corporation or the Municipality may be assessed against Owners of all Parcels within the Premises, on a pro rata basis, based on the acreage of real estate owned, excluding any acreage designated for Common Elements. Any assessment imposed hereunder shall be a lien against the real property subject to the assessment and enforcement as set forth in Article XII below. Such lien shall be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage. See also Section 3.10 concerning maintenance requirements.

ARTICLE XI PERFORMANCE STANDARDS

- 11.1 **Control of Noise, Vibrations, Dust, Etc.** It is difficult, if not impossible, to set minimum or maximum standards for control of noise, vibration, dirt, dust, smoke, odor, glare, and waste within a mixed-use business park. Therefore, to protect the Corporation's interest in the Premises, and to facilitate the orderly development of the Park, the plans required under Articles IV and V shall contain sufficient engineering data to enable the Corporation to determine whether the proposed Improvements will operate within limits acceptable to the Corporation with respect to noise, vibration, dirt, dust, smoke, order, glare, and waste.
- 11.2 **Operations.** Owner shall operate all Improvements and conduct all of its activities on the Premises in accordance with the limits established pursuant to Section 11.1.

ARTICLE XII ENFORCEMENT, TERMINATION, MODIFICATION

- 12.1 **Right to Enforce.** These Covenants are imposed solely for the benefit of and are enforceable only by the Corporation or such person or organization specifically designated by the Corporation in a document recorded in the office of the Waukesha County Register of Deeds, as its assignee for the purpose of enforcement thereof. Purchase of the Premises or any part or Parcel thereof by any other party shall not alone confer the right to enforce these Covenants.
- 12.2 **Manner of Enforcement.** These Covenants shall be enforceable by the Corporation and its assigns in any manner provided by law or equity, including but not limited to one or more of the following:
- (a) Injunctive relief;
 - (b) Action for specific performance;
 - (c) Action for money damages; and/or
 - (d) Performance of the Covenants by the Corporation on behalf of any party in default therefore for more than thirty (30) days (or any shorter period of time specified in these Covenants), after receipt by such party of written notice from the Corporation describing such default. In such event the defaulting Owner shall be liable to the Corporation for the actual costs of the Corporation in performing these Covenants.
- 12.3 **Reimbursement.** Any amounts expended by the Corporation in enforcing these Covenants, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall constitute a lien against such Owner's or other party's Parcel until such amounts are reimbursed to the Corporation, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- 12.4 **Failure to Enforce Not a Waiver.** Failure of the Corporation or its assigns to enforce any provision contained herein shall not be deemed a waiver of the Corporation's or its assigns' right to enforce these Covenants in the event of a subsequent default.
- 12.5 **Right to Enter.** The Corporation shall have the right to enter upon any Building Site or other Parcel within the Park for the purpose of ascertaining whether the Owner of said Site or Parcel is complying with these Covenants, and, if the Corporation so elects under Section 12.2(d) for the purpose of performing obligations hereunder on behalf of a party in default hereof.
- 12.6 **Right to Vary.** The Corporation may, in its sole discretion, grant variances from the strict application of these Covenants where strict application of any provision would result in exceptional or undue hardship to the Owner of any Building Site or Parcel, or where otherwise deemed appropriate by the Corporation.

- 12.7 **Right to Modify.** The Corporation may, subject to Staff review by the Municipality, which shall not be unreasonably withheld, at any time and from time to time, modify these Covenants in writing. Such modifications shall apply only to Building Sites and Parcels then owned by the Corporation, and to any alterations to existing Improvements or new Improvements on all other Sites and Parcels. Modifications shall take effect upon recording. Notwithstanding the foregoing, no modification of these Covenants which benefit the Municipality (which are deemed to be Sections 2.2, 3.10 or 3.11 or Article VI) shall be modified absent the consent of the Municipality in writing that is duly recorded in the office of the Waukesha County Register of Deeds.
- 12.8 **Duration.** These Covenants shall be binding upon Owners and shall continue and inure to the benefit of the Corporation and its assigns for a period of forty (40) years from the date of recording, unless the Corporation earlier records an instrument terminating and releasing the requirements of these Covenants. At the end of forty (40) years, the Covenants shall continue in effect unless the Corporation or a majority of Owners of Building Sites and Parcels within the Park executes and records an instrument terminating or amending them. The restrictions herein which benefit the Municipality shall have an unlimited and perpetual duration, unless terminated by the Municipality in writing that is duly recorded in the office of the Waukesha County Register of Deeds. Notwithstanding anything herein or in the Previous Declaration to the contrary, this Declaration hereby terminates, amends, restates, replaces and supersedes in its entirety the Previous Declaration.
- 12.9 **Addition to or Subtraction for the Premises.** The Corporation may, in its sole discretion, from time to time subject additional land to the Covenants by recording this document against such land and such additional land shall then be a part of the Premises from and after the date of such recording. The Corporation may also, in its sole discretion, by an appropriate recorded document, remove land owned by the Corporation from the effect of these Covenants and thereby reduce the extent of the Premises, without the consent of the Owners of the remaining portions of the Premises. Removal of the IRA Property from the Previous Declarations was authorized under a paragraph such as this in the Previous Declarations.

ARTICLE XIII OWNER'S ASSOCIATION

- 13.1 **Creation of Owner's Association.** The Corporation has created the Association, by the filing of Articles of Incorporation of the Association with the Wisconsin Department of Financial Institutions. All Owners are entitled and required to be members of the Association. The Association shall be known as the Highlands Business Park Owners' Association, Inc. The Association is incorporated as a non-stock, non-profit corporation under the laws of the State of Wisconsin. The Corporation shall retain control over the operation and management of the Association through appointment or election of all of the Board of Directors until the occurrence of one of the following:

- At the discretion of the Corporation, more than fifty-one percent (51%) and less than ninety-five percent (95%) of the buildable acreage in the Park has been sold to Owners other than the Corporation;
- At the discretion of the Corporation, at any time on or after January 1, 2027; or
- When ninety-five (95%) or more of the buildable acreage in the Park has been sold to Owners.

The percentage of buildable acreage that has been sold shall be determined by the ratio of buildable acreage sold to the total acreage in the last legal description of record for the Park on the date such calculation is made, (excluding acreage designated for Common Elements). When the Corporation has determined it no longer desires or is no longer permitted to appoint the directors to the Board under this Section, the Corporation shall give written notice of a meeting to elect directors to the Board to all Owners who have notified the Corporation of their name and address for notice purposes hereunder. Directors appointed to the Board by the Corporation shall continue to serve until election of successor directors by Owners at the meeting of the Owners. Upon election of the Board's directors by Owners, the Bylaws adopted by the Owners for the Association shall control the operation and management of the Association and the election of directors to the Board. The Bylaws for the Association shall provide for the appointment of a manager and shall set forth the rights, duties and obligations of the manager to act on behalf of the Association. Said rights shall include, but not be limited to, the right to establish and administer bank and other accounts on behalf of the Association.

13.2 **General Purposes of the Association.** The Association, shall, in addition to the Corporation, be responsible for implementing and insuring adherence to the Covenants and shall have the exclusive management and control of the Common Elements and Preservation Lands and enforcement of the restrictions contained herein.

13.3 **Charges, Assessment and Special Assessments.** According to the following procedures, initially the Corporation and, when the Corporation no longer controls the Association, the Association shall levy such charges and assessments as may be necessary to carry out its stated purposes:

- (a) **General Annual Assessment.** All Parcels and the Owners thereof shall be subject to a general annual assessment, determined and levied by the Corporation or the Association, for the purpose of defraying the costs and expenses of the Corporation or the Association in performing their respective stated purposes and functions, including but not limited to the maintenance and operation of the Common Elements and Preservation Lands, the enforcement of the Covenants and establishment of reserves. By December 15 of each year the Corporation or the Board of Directors of the

Association shall prepare an annual budget and shall determine a general annual assessment based thereon which shall be sufficient to meet the estimated costs and expenses of the Corporation or the Association for the ensuing year, together with reasonable reserves. Until the formation of the Association, the annual budget will be set solely by the Corporation in its discretion. The annual budget shall be considered and approved at the annual meeting by the members of the Association after the Board of Directors are no longer appointed by the Corporation. Votes shall be allocated to Owners of Parcels based on the amount of buildable acreage in the Park owned by Owners (excluding Common Elements). Each Owner shall be allocated one vote for up to five acres owned (of any Parcel but excluding any Common Element), and one additional vote for each additional full three acres owned (of any Parcel but excluding any Common Element). For example, if an Owner owns any Parcel of four acres, it shall be entitled to one vote. If an Owner owns Parcels containing seven acres, it shall also be entitled to only one vote, but if it owns Parcels containing eight acres, it shall be entitled to two votes, and so on. For purposes of determining the number of votes allocated to an Owner, all Parcels owned by an Owner shall be aggregated and all Common Elements shall be excluded. The general annual assessment shall be allocated and assessed against Owners of all Parcels within the Premises, on a pro rata basis, based on the buildable acreage of real estate owned (and excluding acreage designated for Common Elements), and shall be paid at the time and in the manner determined by the Corporation or the Board of Directors of the Association, which time shall not be sooner than January 15 of the year for which the budget applies.

- (b) Special Assessments. Each Parcel and the Owners thereof shall be subject to special assessments by the Corporation or the Board of Directors of the Association to cover all or any part of any extraordinary expenses incurred by the Corporation or the Association but not included in the annual budget. Such special assessments shall be assessed against Owners of all Parcels within the Premises, on a pro rata basis, based on the buildable acreage of real estate owned (excluding acreage designated for Common Elements). Special assessments shall be due and payable sixty (60) days after written notice thereof shall have been mailed to the Owners.
- (c) Collection and Enforcement. The right to collect or enforce the collection of charges, assessments and special assessments is hereby delegated exclusively to the Corporation and to the Association. The Owners of Parcels shall be personally obligated to pay such charges, assessments and special assessments upon the Parcels owned by them, and such charges, assessments and special assessments shall also be and constitute a lien, until paid, against the Parcel to which charged. All charges, assessments and special assessments levied which are unpaid when due shall bear interest from such due date at the rate of twelve percent (12%) per annum until paid in full, any such interest, together with the underlying assessment, shall

from such time become and remain a part of the lien upon such Parcel until paid.

The Corporation and the Association shall have the exclusive and sole right and power to collect or enforce the collection of charges, annual assessments and special assessments, and to bring any and all actions and proceedings for the collection thereof and for the foreclosure of liens therefore. The Corporation or the Association, acting through the Board of Directors, and as representative of all members, may bring an action at law against any Owner personally obligated for payment of unpaid assessments, or may foreclose the lien against any Parcel. Any such foreclosure action shall be brought in the same manner as an action to foreclose a real estate mortgage, and there shall be added to the amount due the costs of suit and interest, together with reasonable attorney's fees.

- (d) **Liability for Payment of Charges and Assessments.** No Owner may exempt itself or its Parcel from liability for contribution for charges and assessments levied by the Association by waiver of use of any of the Common Element or Preservation Lands, or by the abandonment of his Parcel; no conveyance shall relieve the seller or his Parcel of such liability, and it shall be jointly, severally and personally liable along with the purchaser in any such conveyance for the charges and assessments until all charges and assessments against the Parcel have been paid. Any interested person shall be entitled to a statement of unpaid assessments with respect to any Parcel upon written request to the Corporation or to the secretary of the Association, when formed.
- (e) **No Fees or Assessments in Event of Tax Forfeiture.** Neither Waukesha County nor the Municipality shall be liable for any fees or special assessment in the event that Waukesha County or the Municipality become the Owner of one or more Parcels in the Park by reason of tax delinquency.

- 13.4 **Ownership of Common Elements and Preservation Lands.** After completion of any Common Element and as determined appropriate by the Corporation in its discretion, the Corporation will convey to the Association or any Owner of a Parcel, by quit claim deed and quit claim bill of sale, any and all real and personal property, fixtures, structures, Improvements and Preservation Lands which the Corporation, in its sole discretion, may deem to be Common Elements or Preservation Lands as of the date of such conveyance.

ARTICLE XIV

MISCELLANEOUS

- 14.1 **Submission of Plans.** Whenever an Owner is required by these Covenants to submit plans of any kind to the Corporation, such plans shall be submitted in duplicate. After the plans have been reviewed, one set shall be returned to the

Owner with Corporation's approval and/or comments. The other set shall be retained by the Corporation.

- 14.2 **Time for Approval.** Unless otherwise specifically provided herein whenever the Corporation's approval or consent is required hereunder, the Corporation shall take action within thirty (30) days after receipt of the request for approval, together with all plans, specifications, or other documents required for evaluation of such request (unless a longer time is specifically provided for herein). If the Corporation determines that additional material or information is necessary, this time period shall not begin until after such additional material or information is provided. If the Corporation elects not to grant its consent or approval, it shall so notify the Party requesting such consent or approval in writing within the thirty (30) day time period provided herein, otherwise the request shall be deemed to have been disapproved.
- 14.3 **Corporation not Liable.** The Corporation shall not be liable for any damage, loss, or prejudice suffered or claimed by any person on account of:
- (a) The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
 - (b) The construction of any Improvement, or performance of any work, whether pursuant to approved plans, drawings, and specifications;
 - (c) The development of any Building Site or other Parcel within the Park;
 - (d) Waiver, variance, modification or termination of these Covenants; or
 - (e) The enforcement or lack of enforcement of any provision of these Covenants.
- 14.4 **Invalidity.** Invalidation of any of the provisions of these Covenants, whether by court order or otherwise, shall in no way affect the validity of the remaining provisions which shall remain in full force and effect.
- 14.5 **Captions.** The captions or articles and sections herein are for convenience only and are not intended to be part of the Covenants or in any way to define, limit or describe the scope and intent of the particular article or section to which they refer.
- 14.6 **Recording.** Any reference herein to recording a document shall mean recording in the office of the Register of Deeds for Waukesha County, Wisconsin.
- 14.7 **Notices.** Every Owner shall give written notice to the Corporation and the Association of its name and address for notice purposes (identifying the Parcel it has acquired) within ten (10) days of becoming an Owner. The Corporation's address shall be Sussex Corporate Park, LLC, 1200 North Mayfair Road, Suite 310, Milwaukee, WI 53226-3288, c/o General Counsel. The Municipality's address shall be Village of Sussex, N64 W23760 Main Street, Sussex, WI 53089, c/o Village Administrator. Any Owner, or the Corporation, the Association or the

Municipality may change its address for notices under this Section at any time by the mailing of written notice to all other parties or by recording, in the office of the Register of Deeds for Waukesha County, Wisconsin, a written change of notice address referencing the Premises and these Covenants.

14.8 **Costs for Review of Plans.** If the Corporation elects to designate an independent Architect, Engineer, or third party subject matter expert to review all or any aspect of any plans submitted to the Corporation under these Covenants, the Owner that submitted such plans shall pay all third party review costs.

14.9 **Previous Declaration Terminated.** The Previous Declaration is deemed to be terminated, amended, restated, superseded and replaced by this Declaration.

IN WITNESS WHEREOF, the Corporation has caused this Declaration and the Covenants herein to be executed and recorded on the date hereof.

Dated: _____, 2021

COMPANY:

SUSSEX CORPORATE PARK, LLC

By: _____
Stewart M. Wangard, its Manager

STATE OF WISCONSIN)
) SS.
COUNTY OF _____)

Personally came before me this ____ day of _____, 2021, the above named Stewart M. Wangard, the Manager of Sussex Corporate Park, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

Drafted by Deborah C. Tomczyk, Esq.
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Consented to this ____ day of _____, 2021.

VILLAGE OF SUSSEX

BY _____
Jeremy Smith, Village Administrator

STATE OF WISCONSIN)
) SS.
COUNTY OF _____)

Personally came before me this ____ day of _____, 2021, the above named Jeremy Smith, the Village Administrator of the Village of Sussex, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

CONSENT OF MORTGAGEE

National Exchange Bank & Trust (“Mortgagee”), holder of a Mortgage dated May 15, 2019, and recorded May 21, 2019, as Document Number 4397690 and other security interests of Mortgagee (collectively, the “Mortgage”), covering the Premises, hereby consents to the execution and recording of the within Second Amended and Restated Declaration of Development Standards, Easements and Protective Covenants.

IN WITNESS WHEREOF, Mortgagee has caused this instrument to be signed by its duly authorized officers on its behalf at _____, Wisconsin on this ____ day of _____, 2021.

MORTGAGEE:

National Exchange Bank & Trust

By: _____

Its: _____

State of Wisconsin)
) SS.
County of _____)

On this ____ day of _____, 2021, before me, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities.

*

Notary Public, State of Wisconsin
My Commission Expires: _____
(Affix Seal)

OWNER:

EDUCATORS CREDIT UNION

By: _____

Its: _____

State of Wisconsin)
) SS.
County of _____)

On this ____ day of _____, 2021, before me, personally appeared _____, the _____ of Educators Credit Union, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity.

*

Notary Public, State of Wisconsin
My Commission Expires: _____

EXHIBIT A

The Premises

The Premises subject to these Covenants is described as follows:

Lots 1 and 2 of Certified Survey Map No. _____, recorded as Document No. _____, Outlot 1 of Certified Survey Map No. 11854 recorded as Document No. 4397415, and Lots 1, 2, and 3 of Certified Survey Map No. 12010 recorded as Document No. 4477203, all being part of the Northeast 1/4 of the Northeast 1/4 of Section 33, in Town 8 North, Range 19 East, in the Village of Sussex, Waukesha County, State of Wisconsin.

Tax Parcel No.: Part of SUXV0273999003; Part of SUXV0273999007; SUXV0273999008; SUXV0273999009; SUXV0273999010; SUXV0273999011

However, the Corporation is, in its discretion, removing the following portion of the Premises from the effect of the Previous Declarations consistent with Section 12.9 of the Previous Declarations and removing the following from these Covenants (the "IRA Property"):

That part of Lot 3 of Certified Survey Map No. _____, recorded as Document No. _____, in the Northeast 1/4 of the Northeast 1/4 of Section 33, in Town 8 North, Range 19 East, in the Village of Sussex, Waukesha County, State of Wisconsin, bounded and described as follows:

Beginning at the southerly most corner of said Lot 3; thence North 49°08'29" West, 134.52 feet along the southwesterly line of said Lot 3; thence North 89°55'58" East, 330.02 feet to the southeasterly line of said Lot 3 on a 340.00 foot radius curve to the left whose chord bears South 68°49'59" West, 244.79 feet; thence southwesterly 250.42 feet along said line and along the arc of said curve to the point of beginning.

EXHIBIT B

Access Easement

That part of Lot 1 of Certified Survey Map No. 12010 recorded as Document No. 4477203, being part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, Town 8 North, Range 19 East, in the Village of Sussex, Waukesha County, State of Wisconsin, bounded and described as follows:

Commencing at the southeast corner of Lot 3 of said Certified Survey Map No. 12010; thence South 89°53'56" West, 680.12 feet along the south line of Lots 2 and 3 of said Certified Survey Map No. 12010; thence North 53°20'33" West, 50.06 feet; thence North 0°17'30" West, 127.06 feet to the beginning of a 460.00 foot radius curve to the right whose chord bears North 8°25'16" East, 139.41 feet; thence northeasterly 139.95 feet along the arc of said curve to the point of beginning; continue thence northeasterly 42.55 feet along said 460.00 foot radius curve to the right whose chord bears North 19°47'13" East, 42.54 feet; thence North 89°53'51" East, 499.34 feet; thence South 00°06'32" East, 40.00 feet; thence; thence South 89°53'51" West, 513.81 feet to the point of beginning.

