DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE PHILLIPS SPRING BUSINESS PARK

This Declaration, made this 25th day of October, 2021 by the City of Saco is made with reference to the following facts:

RECVITALS:

1. The City of Saco is the owner of certain real property in the City of Saco, County of York, State of Maine, as shown on a certain subdivision plan recorded in the York County Registry of Deeds in Plan Book 403, Page 33.

2. This four (4) lot subdivision is identified on the referenced plan drawing as an expansion of the City’s existing Spring Hill Industrial Park. The City, however, intends to re-name and denominate this portion of the Spring Hill Industrial Park as “Phillips Spring Business Park” to set it apart from the existing Spring Hill lots. This will improve marketing and allow for the implementation of improved standards for development.

3. The Phillips Spring Business Park is being developed as a business park. It is the City of Saco’s desire and intention to subject the real property in said Business Park to these covenants, conditions, and restrictions, which are deemed to be real covenants which shall run with the land, for the benefit of the property, the City of Saco, and the owners and lessees of Lots in the Phillips Spring Business Park. It is intended that said covenants, conditions, and restrictions bind and benefit not only said owners and lessees within the Phillips Spring Business Park, but also their respective successors, heirs, and assigns and that all Lots in the Phillips Spring Business Park shall be held, used, leased, transferred and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.

4. It is the intention of the City of Saco to further a plan of subdivision by means of the covenants, conditions, and restrictions set forth in this Declaration. Said covenants, conditions, and restrictions are intended to be common to all of the Lots in the Phillips Spring Business Park, and thereby enhance and protect the value, desirability and attractiveness of all such Lots to their mutual benefit.

5. It is also the intention of the City of Saco to increase the job base and job diversity in the Community, and to increase the City’s tax base by undertaking construction and management of the Business Park. Limitations on use, preference for certain uses over other uses, a limitation on non-taxable uses, construction and appearance standards, and many other standards of these covenants are designed toward these ends.
ARTICLE I
DEFINITIONS

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

1.1 Declarant. The City of Saco and its successors and assigns.

1.2 Declaration. This Declaration of Covenants, Conditions, and Restrictions for the Phillips Spring Business Park as it may from time to time be amended or supplemented.

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

1.4 Letter of Credit. A financial instrument underwritten and provided by a federally chartered and insured banking institution, and made payable to the Declarant, which shall provide and pay for the completion of all required and approved improvements for a subject Lot.

1.5 Life-Safety Codes. Those fire, electrical and building codes in force and effect in the City of Saco, including but not limited to the Life-Safety 101 Code (Fire), National Electrical Code (Electrical) and International Building Code (Building) and any successor provisions adopted hereafter by the City of Saco.

1.6 Lot. A fractional part of the subject property as subdivided on subdivision or parcel maps recorded from time to time in the York County Registry of Deeds.

1.7 Mortgagee. A beneficiary or holder under a mortgage.

1.8 Occupant. A Lot owner, a lessee, a sublessee or any other person or entity other than the owner in lawful possession of a Lot, or a portion thereof.

1.9 Original Sales Price. That price paid by the first purchaser of the subject Lot to the City of Saco.

1.10 Owner. Shall mean the first purchaser of a Lot and all subsequent successors in title; and shall also mean any mortgagee which succeeds in title to the subject Lot following foreclosure.

1.11 Record-Recorded-Recordation. The terms shall mean, with respect to any document, the recordation of said document in the Registry of Deeds of the County of York, State of Maine.
1.12 **Sign.** Any structure, devise, or contrivance, electric or non-electric, upon or within which any poster, bill; bulletin, printing, lettering, painting, devise, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, posted, otherwise fastened or affixed.

1.13 **Subject Property.** Synonymous with the term "Phillips Spring Business Park", or any Lot therein, and shall mean all of the real property now or hereafter made subject to this Declaration.

1.14 **Substantial Completion.** The date at which the building can be fully utilized for its intended purpose.

**ARTICLE II**

**SUBJECT PROPERTY**

2.1 **General Declaration.** Declarant hereby declares that certain real property located in the City of Saco, County of York, State of Maine, and more particularly described in a subdivision plan as recorded in Plan Book 403, Page 33 at the York County Registry of Deeds is, and shall be, conveyed, leased, occupied, built upon or otherwise used, improved, or transferred in whole or in part, subject to the terms and conditions of this Declaration. All of the covenants, conditions, and restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and lease of said real property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subject property and every part thereof. All of said covenants, conditions, and restrictions shall run with the land and shall be binding upon all of the Lot owners, lessees and occupents of the subject property, and shall inure to the benefit of Declarant and all Occupants, their successors and assigns.

2.2 **Addition of Other Realty By Declarant.** Declarant may, at any time hereafter, expand said Phillips Spring Business Park through the addition of contiguous real property now or hereinafter owned by Declarant. It shall file a notice of addition of real property, containing at least the date of recording and the book and page number where this declaration is recorded, a statement that the provisions of this Declaration, or some specified part thereof, shall apply to such added real property, and any different covenants applying to the additional property.

2.3 **Addition of Land By Other Parties.** Lot owners in said Phillips Spring Business Park may not add abutting contiguous or non-contiguous realty to the subdivision without the express written permission of the Declarant. If any such contiguous realty is proposed for addition by a Lot owner or any other private party, no such land will be incorporated unless and until a recording (see Section 2.2 above) is proffered to the Declarant, approved for recording, and filed in the York County Registry of Deeds.

2.4 **Lot #1.** Declarant has developed Lot #1 prior to the adoption of these covenants as its main point of operations for the Department of Public Works (the "DPW"). Notwithstanding such timing, the City of Saco in its capacity as both Declarant and as Owner of Lot #1 agrees that Lot #1 shall be bound by these Covenants, except that as to Lot #1 the conditions found as to the its use of Lot #1 and as to structures thereon, as of this date, shall be deemed permitted even if not
otherwise in technical compliance with these Covenants as to such matters including but not limited to Section 3.1, Section 3.9 and Section 4.1, 5.3 and 5.11.

2.5 Road Extension. The Declarant anticipates extending Phillips Spring Road through and across part of Lot #4, then across land now or formerly of A. Duie Pyle, to the Industrial Park road. This construction, and the land used for such construction, is not subject to the limitations or conditions of these covenants but must be reviewed and approved by the City’s Public Works Department and the City Council.

ARTICLE III
CONSTRUCTION OF IMPROVEMENTS

3.1 Approval of Plans Required. No exterior improvements shall be erected, placed, altered, maintained, or permitted to remain on any Lot by any Owner or Occupant until final plans and specifications shall have been submitted to and approved in writing by the City of Saco. The City may delegate administrative duties related to the subject property to its Development Director, or other appropriate City Designee such as its Economic Development Commission. Such final plans and specifications shall be submitted in duplicate over the signature of the Owner of the Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the City, but shall in any event include those items listed in A through D of this paragraph:

A. A site development plan or plans showing the nature, grading scheme, shape, composition, and location of all structures (including proposed front, rear, and side setback lines and all stream and wetland buffers), including structures on adjoining Lots, and the number and location of all parking spaces and driveways, landscaping, buildings, lighting and signage accessory buildings, fences, storage areas, trash collection, antennas;
B. A building elevation plan showing all elevations, dimensions, materials, and exterior color scheme and any external mechanical systems;
C. All building plans submitted must be stamped by an architect or engineer before final approval; and
D. All site plans submitted must be stamped by a landscape architect or engineer before final approval.

3.2 Basis for Approval. Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring Lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air-conditioning, or other roof-top installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.
Declarant may not arbitrarily or capriciously withhold its approval of any plans, however, Declarant shall have the absolute right to disapprove any plans and specifications submitted hereunder for the following reasons:

A. Failure to comply with any of the restrictions set forth in this Declaration;
B. Failure to include information in such plans and specifications as may have been reasonably requested by Declarant;
C. Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;
D. Objection on the ground of incompatibility of any proposed structure or use with existing structures or uses upon other Lots, or other property in the vicinity of the subject property;
E. Objection to the locations of any proposed structure with reference to other Lots, or other property in the vicinity;
F. Objection to the grading or landscaping or parking plan for any Lot;
G. Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;
H. Failure to provide adequate financial security;
I. Lack of established technical capacity and/or ability to fully and successfully complete the project.
J. Adverse or unfavorable past history of development within the City;
K. Existing or past uncorrected zoning violations and/or violations of City building and life-safety codes;
L. The not-for-profit, non-profit and/or non-taxable status of any owner, except where such owner is the United States Government or the State of Maine, or one of its agencies or departments;
M. Failure to secure, place and maintain the required Letter of Credit set forth in Article Three; and
N. Any other matter that, in the judgment of the Declarant or the Economic Development Commission would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property or with improvements located upon other Lots or other property in the vicinity.

3.3 Action. Declarant may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions, or it may deny approval. Upon approval or conditional approval by Declarant of any plans and specifications submitted, a copy of such plans and specifications, or the revised plans, together with any conditions, shall be deposited for permanent record with Declarant, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same. If the Declarant fails to act within 45 days the plan is deemed denied. No work shall be permitted until approved and stamped building and site plans are provided to Declarant.

3.4 Appeal. A decision of the Economic Development Commission or other designee of the Declarant can be appealed to the City Council of the City of Saco, except enforcement
action pursuant to Article VIII. The appeal may uphold, reverse, or modify the earlier decision. No construction may be initiated or undertaken during the pendency of any appeal.

3.5 Commencement of Work.

A. Upon receipt of approval from Declarant or its designee, the Owner, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation and construction. In all cases, work must commence within one (1) year from the date of approval. If work is not so commenced, approval shall be deemed revoked unless Declarant, pursuant to written request made and received prior to the expiration of said one (1) year period, extends the period of time within which work must be commenced. No extension may be granted by Declarant unless and until the Letter of Credit required per Section 3.14 below is also extended.

B. Approval by the Declarant or its designee does not eliminate Planning Board review, nor guarantee approval before such body. All building, planning, zoning, land use and life-safety ordinances and regulations of the City are independent of and in addition to the obligations set forth herein.

3.6 Completion of Work. All improvements commenced hereunder must be substantially completed within two (2) years from the date of Owner’s purchase, except for so long as such substantial completion is rendered impossible due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of Owner. Declarant may, upon written request made and received prior to the expiration of the two (2) year period, extend the period of time within which work must be completed. No extension may be granted by Declarant unless and until the Letter of Credit required per Section 3.14 below is also extended.

3.7 Failure to Perform: Failure to comply with Section 3.5 and/or Section 3.6 shall constitute an immediate and material default of these Covenants. Upon such default, the Declarant may use all remedies provided under law, and within these Covenants, including those set forth in Article III, Section 3.10 and Article VIII.

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

A. The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
B. The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; and
C. The development or use of any Lot within the Phillips Spring Business Park; or enforcement or failure by the Declarant to enforce any of the covenants, conditions or restrictions contained herein.

3.9 Construction without Approval. If any improvement or use shall be erected, placed, commenced, undertaken or maintained upon any Lot, other than in accordance with the approval by the Declarant, such action shall be deemed to have been undertaken in violation of this Declaration, and upon written notice from Declarant, any such use, action or improvement made or taken in violation of this Declaration shall be abated, removed, terminated or altered so as to conform to this Declaration, and any such use shall cease or be amended so as to conform to this Declaration. Should such removal, remediation, alteration, cessation, amendment or abatement not be accomplished within thirty (30) days after receipt of such notice, then the party in default of this Declaration shall be subject to the enforcement procedures set forth in Article VII and Article VIII.

3.10 Failure to Commence or Complete Construction. Lots sold in the Phillips Spring Business Park are not intended or permitted to be held for speculation, but rather must be built out upon a schedule with deadlines set forth in Sections 3.5 and 3.6 above. The failure to commence and complete construction as required therein constitutes an immediate and material default of these Covenants. The City may thereupon without further notice call the Letter of Credit and apply said funds as follows:

A. Complete Construction. The City may use said Letter of Credit funds to complete the project and improvements required; and/or

B. Re-Purchase. The City may use some or all of the Letter of Credit funds, as necessary, to clear all liens, mortgages and/or claims against the property and to re-purchase the subject property.

C. Damages. In no event will the City be liable to any Owner in default for any damages in law or equity, including but not limited to: injunctions, claims of unjust enrichment, quasi-contract, off-set, or recoupment ("claims") related to or arising from the City’s exercise of the remedies set forth above. All owners, as a condition of any Lot purchase and of these covenants, specifically waive and release all such claims, and hold the City harmless from its collection, application and use of Letter of Credit funds.

3.11 Right of First Refusal. Any Lot where the Owner is not yet in default as to the requirements of Sections 3.5 and 3.6 above, may be sold to a third party, but no such sales may occur without Owner first noticing the City of the intention to sell, and offering the City sixty (60) days to exercise the option to pay the Owner the original sales price paid to the City of Saco. Original sales price for re-purchase shall mean the price paid by the first Lot purchaser who took title from the City, less those real estate commissions paid by the City of Saco. If the City tenders the original purchase price, Owner must deed the Lot back to the City of Saco free and clear of all liens, mortgages and claims.
3.12 **Subsequent Purchaser.** If the City elects not to re-purchase a Lot per Section 3.11 above, notwithstanding such election, no Owner may sell to a third party buyer unless and until such third party purchaser has themselves provided a Section 3.14 Letter of Credit sufficient to complete all improvements. The subsequent third party purchaser must also, in advance, agree in writing to meet and be bound by all conditions of approval regarding the subject Lot. All subsequent third party purchasers must secure independent project approvals required herein.

3.13 **Easements Reserved to Declarant.**

A. All Lots conveyed herein are transferred subject to a reservation to the Declarant for itself, its successors and assigns, a right of way 25 feet in width along all side lines, rear lines and front lines of all Lots for the installation and maintenance of utilities, drainage ways and structures, communications equipment, and any other reasonably necessary municipal requirements such as trail access. The areas encumbered by these easements are parallel, and interior to and adjacent to all Lot boundaries and this reservation shall include the right of entry by men and machines.

B. Any purchaser of two contiguous Lots, provided such Lots are to be merged, may request the Declarant waive and release any existing interior easements which bisect the proposed merged parcel. The Declarant will not unreasonably withhold such approval.

3.14 **Letter of Credit:**

A. Subject to additional conditions set forth below, and notwithstanding any conditions or requirements of the City of Saco Zoning and Subdivision ordinances, parties purchasing and developing Lots within the Phillips Spring Business Park shall be required to provide cash or a Letter of Credit from a federally chartered and insured banking institution in an amount equal to 150% of the cost of both Lot purchase price and all planned Lot improvements. All Letters of Credit required hereunder must be made expressly subject to these Covenants including Section 3.10. Cash or Letters of Credit will be released upon the issuance of a certificate of occupancy for the entire premises, unless otherwise approved in writing by the City and upon proof of substantial project completion.

B. If, as a condition of approval, the Saco Planning Board requires Cash or a Letter of Credit in an equal or greater amount than required above, that Cash or Letter of Credit may be substituted for this Letter of Credit required herein provided said Cash or Letter of Credit is subject to all the terms and conditions of these Covenants, including Section 3.10. In addition, no such Letter of Credit may be substituted unless it is also from a federally chartered and insured banking institution.
C. If the Saco Planning Board requires a Letter of Credit, but said Letter of Credit is intended only to cover the costs of project development and improvements, then all Parties purchasing and developing Lots shall in addition to any Planning Board requirements, shall post and provide a Letter of Credit equal to 100% of the Lot purchase price.

D. In no event or circumstance shall the Declarant accept a bond as the security called for herein, nor shall it accept a Letter of Credit from a non-federally insured and chartered institution.

ARTICLE IV
DEVELOPMENT STANDARDS

4.1 General Requirements. All improvements shall comply in every respect with all applicable laws, statutes, ordinances and regulations of the United States, the State of Maine, and the City of Saco, including but not limited to environmental standards, zoning restrictions, landscaping, site plan review, design review, building codes and standards, and site development standards.

4.2 Minimum Setback. Notwithstanding any lesser setback requirements under City of Saco zoning ordinances, no improvements of any kind, and no part thereof, shall be placed closer than permitted by Declarant to an interior property line or right-of-way, except as otherwise provided in Section 4.3. No buildings or structures shall be placed within the following set back areas: (Note that front setbacks apply on two sides on corner Lots.)

A. Front set back - 50' for structures; 25' for parking and drives, except entrance drive;
B. Side set back - 25' for structures on any one side and the total set back of both sides must be 70' or greater; 25' for parking and driveways; and
C. Rear set back - 25' for structures; 10' for parking and driveways.

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

A. Walkways;
B. Fences, subject to the requirements set forth in Section 4.6;
C. Landscaping and irrigation systems;
D. Low planters;
E. Business park identification signs, directional and parking signs, and signs identifying the occupant of a Lot, subject to the prior written approval of Declarant, compliance with the City's Saco Zoning Ordinance, and the requirements of Section 4.5 of this document;
F. Lighting facilities, subject to the prior written approval of Declarant; and
G. Underground utility facilities and sewers.

4.4 Structures and Architectural Controls.
A. All buildings and other site improvements shall be attractive, structurally sound and durable, and in conformance with all applicable laws and all fire, electrical, building and other life-safety codes in force at the time of approval.

B. The facade or facades to the street shall incorporate design elements and materials that will create a building with an attractive appearance conforming to the City's goal of creating a high quality Business Park. In order to achieve this effect, when utilitarian materials such as plain block or metal are used, other materials such as glass, brick, ornamental block or stone, shall be used to create visual interest. Facades facing the street should not be blank walls, but shall incorporate windows, entry treatments, variations in plane, variation in roof shape, and other architectural features to create visual interest.

C. Exterior materials shall be permanent type of good quality. The following wall materials are acceptable:

1. Finished concrete.
2. Finished masonry or masonry units, such as stone, veneer, face brick, structural facing tile and ceramic tile.
3. Metal panels, in which case a significant percentage of the building facade be faced with higher quality materials to be approved by the City of Saco.
4. Suitable glass or plastic materials.
5. Wood siding, to include solid wood materials such as clapboards but not including pre manufactured panels such as T-111.
6. Vinyl siding.

4.5 Signage Requirements and Guidelines. No sign shall be permitted on any lot unless approved by Declarant in writing. No sign shall be approved with the exception of business park identification signs, signs identifying the building or the business of the Occupant of a lot, informational and vehicular control signs, temporary signs offering the lot for lease, and temporary development signs. All signs must comply with the Saco Zoning Ordinance and the following guidelines:

A. The design of non-temporary signage should result in attractive, legible signs that complement the individual business type, architecture, and site detailing of business park or lot Occupant, yet be compatible with other signage within the business park.

1. Design. The shape of the sign shall reflect architectural features of adjacent or attached buildings. Freestanding Occupant Identification Signs shall be no more than twelve (12) feet in height above the average grade elevation of the site around the sign; nor shall such signs be supported above the base or ground immediately beneath them by a single post. Signs shall be compatible in color, form, materials, lighting, and other design elements. No neon, intermittent or moveable character signs shall be permitted.
(2) Color. Colors should be limited to no more than four contrasting, yet complimentary colors that are compatible with the building.

(3) Form. Simple, geometric shapes are recommended for all signage.

(4) Materials. Surfaces should be non-reflective or have a matte finish, be limited to three contrasting but complimentary materials, and be compatible with those used on the building.

(5) Lighting: The signs shall be unlit, internally lit through dark, opaque sign facing and translucent lettering or symbols, or externally lit with carefully aimed fixtures that do not cause excess glare or illumination of surrounding area. Use of protective shields to prevent glare and spill is recommended. Top mounted, downward directed fixtures are preferred over upward directed, ground mounted fixtures.

B. Sign should be as simple and direct as possible in content and message for clear, legible identification and information.

C. Signs mounted on the building should be incorporated into the façade and be placed to avoid obscuring architectural detailing. Signage shall not extend above a parapet or eaves line and shall not be erected on more than two walls of any building.

D. Occupant Identification Signage. The main sign should be integrated into the entrance. Siting should respect visibility limitations, existing and proposed surrounding landscaping, stormwater runoff, utilities, lighting, etc. A hierarchy should be used to identify primary and secondary or service entrances.

E. Directory Signage. Directory signage, when utilized, should be sited in a location that does not impede visibility or safe circulation. It should contain legible, basic information to facilitate wayfinding without the reader leaving the vehicle.

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

4.6 Landscaping and Fences. Within ninety (90) days following completion of construction each Lot shall be landscaped in accordance with the plans and specifications except for as long as the completion of the landscaping would impose a hardship upon the Owner or Occupant due to weather or climatic conditions. Declarant may, upon written request made and received prior to the expiration of the ninety (90) day period, extend the period of time within which work must be completed.

A. The area of each Lot between any street and any minimum setback line shall be landscaped with an attractive combination of trees, shrubs, and other ground cover. All other undeveloped portions of a Lot shall be landscaped in a complementary and similar manner.

B. The perimeter of parking areas shall be landscaped with plant material to screen said areas from view and lessen the impact on neighboring sites.

C. Parking lots over 10,000 square feet shall incorporate interior landscape islands to the extent that such parking lots are visible from the public way.

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

E. The Declarant reserves the right to approve the location and design of all fences, and no fence shall be constructed without a letter of approval from the Declarant.

4.7 Parking Areas, Loading Areas, and Driveways. Off street parking adequate to accommodate the parking needs of the Owner or Occupant and the employees and visitors thereof shall be provided by the Owner or Occupant of each Lot. On street parking is strictly prohibited throughout the Phillips Spring Business Park except upon the express written approval of Declarant, and only if the Planning Board has also authorized such parking. If parking requirements increase as a result of a change in the use of a Lot or in the number of persons employed by the Owner or Occupant, additional off street parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

A. Parking areas shall be paved so as to provide dust free, weather surfaces. Each parking space provided shall be designated by lines painted upon the paved surface.

B. Provision shall be made on each site for any necessary vehicle loading, and no on-street vehicle loading shall be permitted. Loading dock areas shall be set back, recessed, or screened to minimize visibility from neighboring properties or streets.

C. No more than 1 entrance or exit driveway per Lot shall be permitted except in extraordinary circumstances approved by the Declarant.

4.8 Storage Areas. The outdoor storage of materials, including but not limited to bulk materials, raw materials used for production, refuse, yard wastes, salt or sand, gravel, loam and wood is prohibited without the express written approval of the Declarant. All storage of such materials shall be completely within a building or other space adequately screened from public view, as approved by the City of Saco. Any fences, walls or plantings used for screening purposes shall be located not less than 25 feet from any property line. Outside storage of materials, supplies, or equipment, including trucks or other motor vehicles, may be permitted if:

A. The material, equipment, or objects stored outside are necessary to the activities regularly conducted on the premises;

B. The area devoted to outside storage is limited and does not dominate the site or appear unattractive from neighboring sites;

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

D. The area is located upon the rear portions of a Lot; and

E. Written approval of Declarant is secured, in advance, as noted above.

4.9 Leases and Subleases.
All Lessees and Sublessees of any parcel in the Phillips Spring Business Park, and any Lessees or Sublessees of any part or portion thereof, no matter the duration of said Lease or Sublease, shall be bound to the terms and conditions of these covenants, and it shall be a material breach of these covenants for any owner or occupant to enter into a lease of any part of these premises which lease does not expressly make said use and occupancy subject and subordinate to these covenants.

ARTICLE V
USES AND OPERATIONS

5.1 Permitted Uses.

A. Lots, and all portions thereof, shall be used for offices, light manufacturing, assembly, research and testing laboratories, professional and other business offices and other acceptable uses, provided that Declarant specifically consents to such use in writing. Lot #1 may continue to be used by the City of Saco Department of Public Works but upon any sale of said Lot, then the future use must meet these covenants.

B. Such approved use shall be performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to other Lots or property, including but not limited to: vibration, sound, electro-mechanical disturbances, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or nontoxic matter (including steam). Customary and routine operations of the Department of Public Works shall not be deemed a violation of these covenants. Certain activities that cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in writing and further provided that such activity is screened so as not to be readily visible. The screening or fencing shall be attractive from neighboring property and streets. All lighting is to be shielded so as not to be directly visible from neighboring property or to cause glare on neighboring streets and properties.

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

A. Junk yards, wrecking yards, or recycling facilities;
B. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
C. Refining of petroleum or of its products;
D. Warehousing uses, however warehousing subordinates to primary manufacturing, assembly, office, or other use more in keeping with the City's economic goals for the park as outlined in Recitals above.
E. Commercial excavation of building or construction materials, as well as on-site loam or top soil, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III;

F. Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse;

G. Uses prohibited by federal, state, or local law, including applicable City of Saco Zoning ordinance provisions and other uses deemed objectionable by the City, its Economic Development Commission or City Council;

H. No use will be made of any Lot or any portion thereof which would allow access to transportation or utility systems, through such Lot to any property not controlled by the City of Saco without approval of the City of Saco; and

I. Non-taxable, not-for-profit and non-profit uses are prohibited unless approved by the Saco City Council because they are generally inconsistent with the goals of Recitals above; and

J. Residential housing of any and all kinds including but not limited to single family homes; apartments; multi-family dwellings; student, school, elder or group homes or housing; and

K. Schools and daycares; and

L. No use may be made of any of the Lots which violate State or Federal Law; and

M. No use of the premises may be used for the growing, cultivating, manufacturing, distribution, or processing of marijuana or any analogous chemical derivative thereof.

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

A. Any use, excluding reasonable construction activity, of the Lot that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other waterway that, in the opinion of Declarant, may adversely affect the health, safety, comfort of, or intended use of property by persons within the area. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the subject property or any part thereof in violation of any regulations of the United States, State of Maine, and/or the City of Saco.

B. The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substance into the atmosphere, which discharge, in the opinion of Declarant, may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area or may be noxious, offensive or harmful to property or vegetation.
C. The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the site or Lot upon which the operation is conducted.

D. Excessive noise. At no point outside of any Lot shall the sound pressure level of any machine, device, or any combination of same, from any individual plant or operation, exceed the standards prescribed in the Saco Zoning Ordinance.

E. Excessive emissions of smoke, steam, or particulate matter. Emission of dust, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation, or property, or which could soil or stain persons or property, at any point beyond the Lot line of the commercial or industrial establishment creating that emission shall be prohibited. All such activities shall also comply with applicable Federal and State regulations.

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

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

5.5 **Maintenance of Grounds.** Each Owner and Occupant shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on the Lot. Such maintenance and repair shall include, without limitation, up to the public travel way including any easements, esplanades, tree protection zone, and joint or shared parking areas:

A. Maintenance of all parking areas, driveways, and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefore as shall, in all respects, be equal thereto in quality, appearance, and durability, the removal of debris and waste material and the washing and sweeping of paved areas, the painting and repainting of striping markers and directional signals as required;
B. Cleaning, maintenance, and re-lamping of any external lighting fixtures; and

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

5.6 Failure to Maintain and Repair. Each Lot Owner and all Occupants shall maintain their premises at all times but if an Owner or Occupant shall fail, after thirty (30) days written notice by City, then the City can declare a default of these Covenants and pursue those remedies described below in Article VIII.

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

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

5.9 Public Utilities. Declarant reserves the exclusive right to approve installation of utility lines across the subject property. Declarant will consult with any Occupant before such installation and shall attempt to accommodate Occupant’s concerns. The construction and operation of public utilities in rights-of-way dedicated to the public must be approved by the appropriate governmental authority.

5.10 Utility Lines and Antennas. No sewer, drainage, or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals, including telephone, television, microwave, or radio signals, shall be constructed without approval by the Declarant. No antenna for the transmission or reception of telephone, television, microwave, or radio signals shall be placed on any Lot within the subject property without the consent of the Declarant. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of buildings on the subject property.

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

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

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

ARTICLE VI
MODIFICATION AND REPEAL

6.1 Modification by Declarant. The Declarant acting alone may modify or amend the provisions of this Declaration; provided, however, that:

   A. Any such modification or amendment must be within the spirit and overall intention of the development as set forth herein;
   B. Prior to any such modification or amendment, Declarant shall obtain the approval of the Economic Development Commission and City Council;
   C. A public hearing on the proposed amendment will be held by the Economic Development Commission and the City Council; and
   D. No such modification or amendment shall be effective until the Occupants have been given thirty (30) days prior written notice of the proposed change and a proper instrument in writing has been executed and recorded.

ARTICLE VII
BREACH OR DEFAULT

7.1 Breach or Default. Any failure or breach of a Covenant herein, that is not abated, removed, remediated and/or corrected, following 30 days written notice of the City of Saco or its designated Agent, shall be deemed a default of these Covenants.

7.2 Deemed to Constitute a Nuisance. Notwithstanding Section 7.1 above, and in addition thereto, a default of any Covenant, condition, or restriction herein is hereby declared to be and shall constitute a nuisance.

7.3 Default of Section 3.5 and Section 3.6. A failure to meet the deadlines set forth in Sections 3.5 and 3.6 shall be treated as an immediate and material default of these Covenants. Upon such default, the City may avail itself, without further notice called for in Section 7.1, of the remedies provided in Section 3.10, or in the alternative, it may pursue those remedies set forth in Article VIII.

7.4 Right of Entry. The Declarant upon reasonable notice (24 hours except in an emergency) to Owner and/or Occupant shall have the absolute and unconditional right to enter onto the Lot to investigate and ascertain if a default of these Covenants has occurred and if after notice, whether Occupant has abated, corrected and/or remediated any such default. No such entry shall constitute or be deemed a trespass.

ARTICLE VIII
REMEDIES UPON DEFAULT
8.1 **Self-Help.** Following a default, and provided a party has not exercised its right to request mediation within thirty (30) days of the declaration of said default, the City of Saco and/or its agents and designees may summarily enter upon the Lot and any improvements thereon for the express purposes of correcting, abating, removing and/or remediating any default of these Covenants. Such entry and any corrective action thereafter shall not be deemed a trespass, and Owner as consideration consents in advance, to such entry and the Self-Help set forth herein.

8.2 **Incurred Fees.** Owner shall reimburse all fees incurred by the City to enforce these Covenants pursuant to Section 8.1 within thirty (30) days of presentation by the City. If Owner fails to pay said fees, such failure shall be deemed a material breach and default of these Covenants enforceable per Section 8.3 herein below.

8.3 **Dispute Resolution:**

A. In the event of a default, the defaulting party may request mediation of the dispute, said mediation to take place in Saco unless otherwise agreed to in writing by all sides. Each side shall choose a mediator, and the two mediators shall select a third mediator. Fees for mediation alone shall be split equally between the parties.

B. If mediation fails, either party may thereupon pursue relief through a civil action in the Maine District or Superior Court, as it deems appropriate.

C. Notwithstanding that these Covenants do not constitute “land use regulations” as used, set forth or defined in 30-A M.R.S.A., Section 4451, et seq., all Purchasers, Owners and Occupants consent that any civil action brought by the City, regardless of whether it is filed in Superior or District Court, may be treated as if it were a land use action, and herein consent to the use and application of the law and rules governing land use actions as set forth in 30-A M.R.S.A., Section 4451, et seq. and Maine Rule of Civil Procedure 80K, or as hereinafter amended, unless the Court holds otherwise, in which case the matter shall proceed as a traditional civil action.

8.4 **Attorney's Fees.** In the event the City initiates any legal or equitable action in District or Superior Court to enforce these Covenants, and it prevails in that action, the City shall be entitled to its reasonable attorney's fees, which Owner and Occupant for itself and its assigns herein agrees to pay. In no event and under no circumstances will City be responsible for Occupant's attorneys fees even if City does not prevail in any land use or other civil action, all claims of which said parties herein waive for themselves and their successors and assigns.

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

8.6 **Special Lien.** Any judgment for costs, damages, fines, and/or attorneys fees arising from a default hereunder, by agreement and consent herein in advance by Owner, shall thereupon become a special lien against the subject Lot or property, and shall be duly recorded by the City Assessor against said Lot or property, and may be foreclosed by process established for real property taxes.
Notwithstanding the preceding, and in addition thereto, said judgment may be enforced as otherwise permitted by law.

ARTICLE IX
 ASSIGNMENT

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

ARTICLE X
 CONSTRUCTIVE NOTICE AND ACCEPTANCE

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

ARTICLE XI
 WAIVER AND FAILURE TO ENFORCE

The City may after public hearing waive one or more of these covenants, conditions and restrictions. Neither Declarant nor its successors or assigns shall be liable to any Occupant of the subject property by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner and Occupant of any Lot in said Phillips Spring Business Park, by acquiring its interest therein, agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of the City’s waiver of any condition herein.

ARTICLE XII
 RUNS WITH LAND

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

ARTICLE XIII
RIGHTS OF MORTGAGEES

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

ARTICLE XIV
CAPTIONS

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

ARTICLE XV
EFFECT OF INVALIDATION

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

WITNESS:

CITY OF Saco:

Signature

Bryan Kaenrath
City Administrator

ANDREW DICKINSON
Print Name

STATE OF MAINE
YORK COUNTY, SS.

October 25, 2021

Then personally appeared before me BYRAN KAENRATH, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of the City of Saco, and of his authority herein to act on its behalf.

Before me,

SEAL

Victoria Gorman
Notary Public/Attorney at law
Notary Public, Maine
My Commission Expires March 17, 2028