

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
BW BUSINESS PARK

THIS DECLARATION of Covenants, Conditions and Restrictions for BW Business Park (as hereinafter defined, this "Declaration") is made as of June __, 2000, by James H. Kidder and Barbara K. Kidder (herein together referred to as "Grantor"), whose address is 750 Old County Road 553, Gwinn, Michigan 49841.

ARTICLE 1. RECITALS.

1.1 Grantor is the record title holder and owner of that certain real property located in Saint Joseph County, Indiana that is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "BW Business Park").

1.2 By this Declaration, Grantor submits and subjects BW Business Park to the covenants, conditions, restrictions, terms and reservations set forth in this Declaration, and Grantor, for itself and its successors and assigns, hereby declares that BW Business Park shall, at all times while this Declaration is in effect, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions, restrictions and terms contained herein. This Declaration is intended to insure proper use and appropriate development and improvement of BW Business Park so as to:

- (a) protect the "Owners" and "Tenants" of "Building Sites" (as such terms are hereinafter defined) against improper development and use of surrounding Building Sites;
- (b) promote the erection and maintenance in BW Business Park of structures constructed of proper and suitable materials and with proper and suitable quality methods of construction;
- (c) promote adequate, consistent and reasonable development of BW Business Park as a high-quality business environment;
- (d) promote the erection of attractively designed permanent improvements appropriately located within BW Business Park in order to achieve harmonious appearance and function; and
- (e) establish maintenance standards to promote a uniform, neat and clean appearance throughout BW Business Park.

ARTICLE 2. DEFINITIONS

2.1 "Articles" shall mean the Articles of Incorporation of the Owners Association.

2.2 "Building" shall mean a fully or partially enclosed structure located on a Building Site including, without limitation, a parking structure.

2.3 "Building Site" shall mean any legal plot of land within BW Business Park which is intended to be used as the site of construction of one or more Buildings and which is more particularly described on a subdivision plat of a phase of BW Business Park, excluding any land dedicated to the public and excluding any portion of the Common Area. The size and dimensions of a Building Site shall be established by the legal description in the original conveyance from Grantor or Declarant to the first Owner of such Building Site. A Building Site may also be established by Declarant in any instrument in writing, executed and acknowledged and recorded by Declarant, which designates a plot of land as a Building Site for the purpose of this Declaration.

2.4 "Bylaws" shall mean the Bylaws of the Owners Association.

2.5 "Committee" shall mean the BW Architectural and Development Control Committee, the members of which shall be appointed by Declarant pursuant to the provisions of Article 5 hereof.

2.6 "Common Area" shall mean those portions of BW Business Park previously or hereafter conveyed by Declarant to the Owners Association and which are intended to be devoted to the common benefit, use and enjoyment of the Owners of all of the Building Sites, including but not in any way limited to, parks, plazas, retention ponds, drainage ways, medians, private streets, signs, landscaped areas, and other common facilities or structures.

2.7 "Common Expenses" shall mean all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws and all other expenses, which the Owners Association is entitled to incur pursuant to the provisions of this Declaration or the Bylaws.

2.8 "Declarant" shall mean BW Business Park LLC, an Indiana limited liability company, and any party that is designated as a successor or assignee of Declarant pursuant to the provisions of this Declaration; provided, however, that in the event that the Real Estate Purchase Contract by and between Grantor, as Seller, and The Tire Rack, Inc., as Buyer, dated as of April 17, 2000, as assigned by The Tire Rack, Inc. to BW Business Park, LLC by instrument dated April 24, 2000, terminates for any reason other than the closing of the transaction contemplated by such contract, then Grantor shall file a notice to that effect in the office of the Recorder, St. Joseph County, Indiana, and upon such filing, Grantor shall become and thereafter be the Declarant for all purposes under this Declaration.

2.9 "Declaration" shall mean this instrument and all amendments or supplements hereto hereafter recorded in the real property records of Saint Joseph County, Indiana.

2.10 "Guest" shall mean any customer, agent, guest, employee, visitor or invitee of an Owner or Tenant.

2.11 "Improvements" shall mean, but shall not be limited to, buildings, parking structures, mechanical equipment, window coverings, walls, screens, poles, antennae, exterior lighting, parking areas, roads, driveways, ramps, loading areas, signs, utilities, fences, lawns, landscaping, berming, hedges, trees, plantings, grading changes, plazas, walkways, drainage structures, holding ponds, and any other physical structures or changes of any type or kind made to or upon any land within BW Business Park.

2.12 "Owner" shall mean the party or parties who or which holds or hold fee simple title to any Building Site or who or which is or are the tenant under a ground lease of a Building Site with an initial term of 45 years or more, all as shown by the real property records of Saint Joseph County, Indiana. Declarant shall not be considered to be an Owner, but Declarant shall be subject to the obligations of an Owner so long as Declarant owns any portion of BW Business Park.

2.13 "Owners Association" shall mean BW Business Park Association, Inc., an Indiana non-profit corporation.

2.14 "Plans" shall mean the items to be submitted to the Committee as described in Section 5.3.

2.15 "Tenant" shall mean any party or parties who or which lease any interest in a Building Site (other than a party or parties who or which may be an Owner by definition under Section 2.12) or any space within a Building located on a Building Site or who or which occupy or use a Building Site or any portion thereof pursuant to a license, concession agreement or other arrangement with an Owner.

ARTICLE 3. USES AND STANDARDS.

3.1 Uses. Building Sites shall be utilized only for engineering, research facilities, laboratories, training facilities, light industrial uses, offices, warehousing, distribution and such other commercial uses as the Committee shall permit in its sole discretion. Notwithstanding the foregoing, all uses shall be subject to the prior approval of the Committee in each particular case and the Committee shall review each particular case.

3.2 Performance Standards. No noxious, illegal, hazardous, dangerous or offensive trade, services or activities shall be conducted on any Building Site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owners, Tenants or Guests of other Building Sites within the BW Business Park by reason of unsightliness or the excessive emission of fumes, odors, glare, heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or noise.

3.3 Resubdivision. No Building Site shall be resubdivided into smaller tracts or lots nor shall any Building Site be combined with any other Building Site without the approval

of the Committee; provided, however, that this restriction shall not apply to Declarant to the extent Declarant exercises any of the rights reserved to Declarant pursuant to Section 12.6.

ARTICLE 4. RESTRICTIONS.

4.1 Plan Approval. No improvements shall be constructed, erected, placed, altered, maintained or permitted on any portion of a Building Site until the Plans therefor have been approved by the Committee, as more fully set forth hereafter in Article 5 of this Declaration.

4.2 Variances. The Committee or Declarant shall have the right to grant written waivers or variances, both temporary and permanent, from the covenants and restrictions set forth in this Declaration, if, in their reasonable discretion, such waiver or variance is warranted in a particular instance, provided that no waiver or variance shall be granted where the result of such waiver or variance would be contrary to or inconsistent with any applicable zoning ordinance, annexation or zoning agreement, planned unit development plan, or other governmental law, ordinance, rule or regulation, unless the prior consent thereto is granted by the appropriate governmental body or official.

4.3 Setbacks. No Building shall at any time be erected on a Building Site within any of the following areas:

- (a) An average of fifty (50) feet (and in no event closer than twenty five (25) feet) from the boundary line of any public street or right of way;
- (b) Fifty (50) feet from the intersection or any two streets, or right of way and street;
- (c) An average of twenty-five (25) feet (and in no event closer than fifteen (15) feet) from any greenbelt Common Area;
- (d) An average of twenty-five (25) feet (and in no event closer than fifteen (15) feet) from the side boundary line of any Building Site; or
- (e) An average of twenty-five (25) feet (and in no event closer than fifteen (15) feet) from the rear boundary line or any Building Site.

4.4 Height Restrictions. No Building constructed in BW Business Park shall be of a height that would be contrary to or inconsistent with any applicable zoning ordinance, annexation or zoning agreement, planned unit development plan, or other governmental law, ordinance, rule or regulation, unless the prior consent thereto is granted by the appropriate governmental body or official and by the Committee or Declarant.

4.5 Off-Street Parking. No parking shall be permitted on any street or road or at any place other than on the Building Site paved parking areas provided for and described

below. Each Owner and Tenant shall be responsible for compliance with the foregoing by its Guests. Each Owner and Tenant shall provide adequate off-street parking for its Guests. All off-street parking, access drives and loading areas shall be paved and properly graded to assure proper drainage. Such pavements shall be constructed exclusively of properly designed concrete or bituminous concrete. Visual screening by appropriate landscaping must be provided between any parking lot and any street. Access shall be limited to one curb cut per off-street parking lot unless special conditions merit more curb cuts. Where possible, curb cuts on opposite sides of a street shall be aligned directly across from each other. Also, where possible, curb cuts shall be provided at the common property line of two adjoining Building Sites for joint access. Each Building Site's parking plan shall provide for at least the following:

- (a) visitor drop-off zones and parking shall be provided near visitor entrances;
- (b) all-day employee parking shall be separated from visitor and front entrance traffic;
- (c) adequate landscaped islands within parking lots must be provided;
- (d) parking areas shall be divided into sections not containing more than 200 cars each;
- (e) all parking spaces must be designated by painted lines or other methods approved by the Committee; and
- (f) parking areas shall be located no closer than twenty (20) feet from the boundary line of any public street or right of way.

4.6 Loading Areas. Adequate off-street loading and maneuvering areas shall be provided for each Building located on a Building Site, and all loading and servicing docks and bays shall be designed as an integral part of the Building architecture. Proper visual screening must be provided between any truck loading, receiving, service or similar area and any street.

4.7 Outside Storage. No materials, pallets, racks, tanks, supplies, goods, articles, equipment, finished or semi-finished products or articles of any nature shall be stored or permitted to remain outside of any Building without the prior written consent of the Committee. All such outside storage areas permitted and all waste and rubbish storage facilities shall be within an enclosed area, properly screened, and shall have an all-weather surface. No materials or wastes shall be deposited upon any Building Site in such a form or manner that same may be moved by natural causes or forces. Further, toxic, corrosive, inflammable or explosive liquids, gases or solids may only be stored in bulk above ground in accordance with, and any such items shall be kept and maintained upon a Building Site only upon, the prior written consent of the Committee and in strict

compliance with the most current adopted Fire Code and Building Code of the State of Indiana and any other applicable governmental law, ordinance, rule or regulation.

4.8 Excavations. No excavations or excavating work shall be permitted on any Building Site except excavations for the purpose of constructing Improvements on such Building Site immediately prior to and during the construction of such Improvements. No soil, sand, gravel, minerals, aggregate or earth materials shall be removed from any Building Site except as a part of such excavations made for the purpose of constructing Improvements on such Building Site.

4.9 Vehicle Storage Restrictions. No Building Site, including driveways and parking areas, shall be used as a storage, display or accommodation area for any type of vehicle, house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, commercial truck, recreational vehicle, or any type of commercial van except for temporary loading, delivery, emergency, and similar purposes. Notwithstanding the foregoing, vehicles used in the normal course of business by any Tenant or Guest of the Building Site may be parked on such Building Site but they shall be parked in specifically designated areas only and, if such vehicles are to be parked for more than 48 hours, they shall be parked in an area screened from adjacent Building Sites, parking areas, streets and walkways.

4.10 Landscaping.

- (a) All Building Sites shall be landscaped only in accordance with a landscape plan prepared by a qualified and experienced landscape architect. Such plan must be submitted to and approved in writing by the Committee prior to any development of the Building Site. Such landscape plan shall include Information regarding the type of sodding, type of seeding, type of trees, hedges and shrubs and information regarding other customary landscape treatment for the entire Building Site, including fences, walls, mounds and screening.
- (b) All landscaping shall be completed prior to occupancy of a Building except where prohibited by seasonal limitations, in which case the landscaping must be installed within sixty (60) days following the onset of seasonal conditions allowing planting. Undeveloped portions of Building Sites shall be seeded, as a minimum, with drought resistant turf to hold down weed growth and to minimize wind and water erosion. All required setback areas and public rights-of-way contiguous to a Building Site must be landscaped within two (2) years of the conveyance of a Building Site to an Owner, whether or not all phases of development are complete. All landscaping shall be undertaken and completed in accordance with such approved landscape plan and such plan may not be altered, amended or revised without submitting the revised landscape plan for the prior written approval of the Committee.

- (c) If any Owner fails to undertake and complete the landscaping within the time limits set forth above, the Owners Association may, at its option, after giving the Owner thirty (30) days' prior written notice forwarded to such Owner (unless within such thirty (30) day period the Owner of the Building Site shall proceed and thereafter pursue with diligence the completion of such landscaping) undertake and complete the landscaping of the Building Site in accordance with the approved landscape plan. If the Owners Association undertakes and completes such landscaping because of the failure of an Owner to complete the same, the costs of such landscaping shall be assessed against the Owner, and if such assessment is not paid within thirty (30) days after written notice of such assessment from the Owners Association, such assessment will constitute a lien on the Building Site and may be enforced as set forth in Article 9 hereof.

4.11 Lighting. Lighting shall be of a type and installation such that no direct glare may be seen from any other Building Site, or portion of the Common Area or streets or any adjoining properties outside of BW Business Park. Site lighting shall use only architectural grade metal poles and cutoff type fixtures of a style and lamp type consistent with the other approved lighting in BW Business Park.

4.12 Exterior Materials. To maintain a high standard of construction and appearance, the exterior walls of each Building are to be predominantly constructed of durable, permanent materials such as glass, glass block, brick, colored decorative concrete masonry units, architectural finish tilt-up or precast concrete panels or architectural composite metal panels without exposed fasteners.

4.13 Signs. No billboards or other signs of any type or purpose shall be permitted anywhere within BW Business Park without the prior written approval of the Committee and Declarant. All signs shall conform with applicable laws, codes, ordinances, rules and regulations of the City of South Bend, Indiana, and all other applicable laws and governmental regulations. Identification signs shall be restricted to advertising only the persons or companies located on the Building Site. Identification signs shall be in the standardized design and construction of signage adopted by the Committee and shall include the property address. No signs shall be devised or constructed so as to rotate, gyrate, blink or move in any animated fashion. On Building Sites of five acres or less, one temporary sign per Building Site is permitted at any one time. On Building Sites of more than five acres but less than ten acres, two temporary signs, and on Building Sites of ten acres or more, three temporary signs shall be permitted. Temporary signs may be used for construction and design team information or future Tenant identification. No sales or leasing signs shall be permitted unless specifically approved in writing by the Committee.

4.14 Fences. Screening fences and walls, if permitted, shall be of a height at least equal to that of the materials or equipment being screened. Permanent chain link fencing shall not be permitted in areas visible from any other Building Sites, or any portion of the

Common Area or streets, provided that temporary chain link construction fencing may be used if approved by the Committee. No fence or wall shall be located within twenty-five (25) feet of the front property line of a Building Site or of any street right-of-way line.

4.15 Mechanical Equipment. No heating, air conditioning, electrical or other equipment shall be installed on the roof of any Building or hung on any exterior walls unless the same are screened, covered or not visible from other Building Sites, the Common Area, or any street and are installed in a manner which shall first have been approved in writing by the Committee. Antennae, satellite dishes, collectors and towers shall also be reviewed and approved by the Committee in each instance.

4.16 Utility Connections. All utility connections, including all electrical and telephone connections and installations of wires to Buildings, and all pipes, conduits, cables and lines shall be made underground from the nearest available source, except that during the construction of a Building, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole, but the same shall be placed (i) below the surface of the ground, (ii) on the surface, in which case it shall be adequately screened or (iii) mounted on the outside of the Building at a maximum projection height of eight (8) feet, in which case it shall be adequately screened and oriented away from the public entrances of any Building. Declarant hereby reserves and shall have the right, at any time, to grant on any Building Site easements for utilities or drainage within the setbacks of any Building Sites to other Owners of Building Sites or to the suppliers of utility services. Each Owner and Tenant shall cooperate in the planning, granting, executing, acknowledging and recording of all such easements and any instruments establishing such easements. No cesspools, septic tanks or sewage treatment facilities shall be maintained on any Building Site.

4.17 On-Site Drainage. Each Owner shall be required to provide adequate drainage facilities, including on-site ponds, if necessary, as required, from time to time, by the City of South Bend, Indiana or any other applicable governmental entity and as otherwise approved by the Committee. An engineer's report comparing the before and after conditions and recommending methods of detention and adequate methods of drainage shall be submitted by Owner to the Committee for approval at the same time as submission of the Plans. Detention may be accomplished by providing pending storage of storm water in parking areas, in the landscaped areas, in graded drainage swales and by such other methods as may be approved by the Committee.

4.18 Open Space. Building, parking lot and roadway paving coverage shall be limited so as to provide a minimum of ten percent (10%) unobstructed landscaped space on each Building Site. Landscaped space may include wet bottom detention areas maintained as an architectural water feature.

ARTICLE 5. ARCHITECTURAL COMMITTEE

5.1 Creation of the Committee. There is hereby established and created a BW Architectural and Development Control Committee which shall consist of three (3) members, all of whom shall be appointed by, and serve at the will of, Declarant. Members of the Committee may be removed and replaced by Declarant, at any time, with or without cause. The vote of a majority of the members of the Committee shall constitute the action of the Committee on any matter being considered.

5.2 Approval of Plans. No Improvement shall be commenced, constructed, placed, erected or maintained upon any Building Site, nor shall any exterior addition to or change or alteration thereof be made, unless and until complete plans and specifications therefor, as more fully described hereafter, shall have been first submitted to and approved in writing by the Committee. The Committee shall exercise its reasonable discretion to see that all improvements conform and harmonize with all other existing or proposed improvements with respect to external design, color scheme, shape, height, type of materials, quality of workmanship, location of Building Sites, building envelopes, topography, finish grade elevation, preservation of views, natural resource conservation, circulation patterns, vehicular access, pedestrian circulation, parking and storage areas, landscaping and easements, so as to assure that BW Business Park will consist of an attractive, integrated development wherein all Improvements are designed to conform to and complement natural topography and existing and proposed improvements. All improvements shall be in strict accordance with any and all federal, state and local laws, codes, ordinances, rules and regulations, including but not limited to, any applicable zoning, subdivision and building codes. In the event of any conflict between the provisions hereof and the provisions of any law, ordinance or regulation, the more restrictive criterion shall control.

5.3 Plans. Plans to be submitted to the Committee by an Owner, at such Owner's expense, shall include the following, and shall be submitted in writing signed by such Owner or his authorized agent:

- (a) Architectural plans and specifications, including building elevations, type of materials, exterior colors, exterior lot lighting, brief description of mechanical systems, structural systems, floor plans, typical wall sections, and roof construction and appurtenances;
- (b) Site plan showing the location and design of all improvements (including all Buildings proposed to be constructed on the Building Site at a future time), fences, streets, roadways, parking areas, storage areas, lighting plan, number, size and layout of parking spaces, setbacks, loading areas, trash areas, pedestrian circulation patterns, sidewalks, fire hydrant locations, retaining walls, landscaped areas, grading and drainage, easements, utilities, driveways, sidewalks and curb cuts;

- (c) Drainage engineering studies;
- (d) Complete grading and drainage plans, showing all relevant elevations of drainage and retention areas, point flows, storm water detention and provisions for erosion control;
- (e) Proposed development schedule, covering each phase of development of the Building Site;
- (f) Description of proposed operations or uses, including an estimated maximum number of employees;
- (g) If the Building Site is to be used for manufacturing or industrial purposes, characteristics of the manufacturing or industrial process, with particular emphasis on measures that will be taken to mitigate adverse characteristics such as water, noise, air, surface and subsurface pollution;
- (h) Anticipated water and sewer needs and the location of utilities and easements;
- (i) Material transportation requirements;
- (j) Complete landscape plan, showing location, size and species of trees and shrubs, turf mixtures, irrigation plan, and planting specifications;
- (k) Signage plan, showing size, height, design, location, color, materials, construction and lighting plans relating to each intended sign; and
- (l) Such other information as the Committee may deem pertinent in the evaluation of the proposed improvements, or may be required by the Committee in order to perform its function hereunder.

5.4 Procedures. The Committee shall approve or disapprove all Plans within thirty (30) days after its receipt of five (5) complete sets of the items described in Section 5.3 and the payment of the non-refundable review fee described in Section 5.5. In the event the Committee fails to approve or disapprove such Plans within thirty (30) days of the submittal thereof, then the Owner submitting the Plans shall submit to the Committee a notice of nonaction. In the event the Committee fails to approve or disapprove such Plans within ten (10) days after its receipt of a notice of nonaction, then such approval shall not be required, provided that no Improvement which violates any of the covenants or restrictions contained herein shall be erected or be allowed to remain on any Building Site. The issuance of a building permit or certificate of occupancy, which may be in contravention of this Declaration, shall not prevent the Committee from enforcing these provisions. Further, notwithstanding any approval by the Committee, it is the sole responsibility of each Owner to obtain any and all required approvals and permits from the

City of South Bend, Indiana and any other governmental entity, prior to the commencement of the construction of any Improvement, and neither Declarant nor the Committee shall have any obligation or responsibility to secure any such approval or permit.

5.5 Review Fee. Each submittal to the Committee by an Owner for the approval of the Plans for the construction of an Improvement shall be accompanied by the payment by such Owner to Declarant of a review fee in an amount equal to the greater of five hundred dollars (\$500) or one-tenth of one percent (.1%) of the estimated total cost of the construction of the proposed Improvement for which the Plans are being submitted, accompanied by an architect's certification of such cost estimate. No Plans shall be reviewed or considered by the Committee unless and until such review fee has been paid. In the event that the Plans are not approved by the Committee, the review fee will not be refunded to the applicant.

5.6 Disclaimer of Liability. Neither Declarant, the Committee, or their respective members, successors or assigns, shall be liable in damages to anyone submitting Plans for approval, to any Owner, or to any third party, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such Plans. Every person who submits Plans for approval agrees, by the submission of such Plans, and every Owner of any Building Site covenants and agrees, by acquiring title thereto or an interest therein, that such person or Owner will not bring any action or suit against Declarant or the Committee, or their respective members, successors or assigns, to recover any such damages.

5.7 Right to Disapprove Similar Plans. Declarant hereby acknowledges that the Committee, in the exercise of the reasonable judgment of the members thereof, may from time to time approve Plans for an Improvement, which, after completion, produces an effect and/or gives an appearance, which, in retrospect, is determined to be inconsistent with the intention of Section 1.2 hereof. Therefore, the construction of an Improvement pursuant to Plans approved by the Committee shall not be deemed to create any right whatsoever on the part of any party to demand or require, either by legal proceedings or otherwise, that the Committee approve Plans that are either identical to or substantially the same as Plans previously approved by the Committee for other Improvements. The Declarant and the Committee hereby reserves the right to disapprove subsequently presented Plans similar or identical to those previously approved.

ARTICLE 6. MAINTENANCE AND ENFORCEMENT

6.1 Construction Period. The Owner is required to promptly commence and to diligently prosecute to completion the construction of all approved Improvements in accordance with the approved construction schedule and to secure additional approval for any delay. During construction, a Building Site shall be cleaned up on a reasonable periodic basis, and all trash, rubbish, and debris shall be promptly removed therefrom after such construction or work is completed. All construction storage and equipment

yards shall be located on a Building Site in a manner that minimizes the impact on adjacent Building Sites and streets.

6.2 Site and Building Maintenance. Each Owner shall keep such Owner's Building Site and improvements in a safe, clean, and neat condition; shall remove, replace, or restore all such items not in such condition; and shall comply in all respects with all government, safety, health and police requirements. Each Owner or Tenant shall remove at his own expense any rubbish or trash of any character which may accumulate on such Owner's or Tenant's Building Site and shall keep unlandscaped areas mowed. Rubbish, trash, garbage or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed on any Building Site except as necessary during the construction period. Rubbish and trash shall not be disposed of at BW Business Park by burning in open fires or incinerators.

6.3 Landscape and Grounds Maintenance. The landscaped areas of a Building Site shall be maintained in a neat and adequate manner which shall include lawns mowed, hedges trimmed, adequate watering, replacement of dead, diseased or unsightly landscaping, removal of weeds from planted areas and appropriate pruning of plant materials.

6.4 Owner's Failure to Maintain. In the event an Owner fails to maintain his Building Site or the Improvements located thereon, including, but not limited to, the landscaping thereon, as required herein, then the Owners Association shall have the right and powers hereinafter stated in this Section 6.4. Upon the Owners Association's determination of such failure by an Owner to adequately maintain such Owner's Building Site or Improvements, the Owners Association shall so notify such Owner in writing. If such Owner has not (a) commenced such maintenance and either completed or is diligently pursuing completion, or (b) notified the Owners Association of a firm date on which such maintenance shall be commenced and pursued with diligence, such date to be acceptable to the Owners Association in its sole discretion, within ten (10) days after such Owner's receipt of the aforesaid notice of failure to maintain, then the Owners Association may undertake and complete such maintenance. In the event the Owners Association undertakes and completes such maintenance, the cost of such maintenance shall be assessed against such Owner, and, if such assessment is not paid within thirty (30) days after such Owner's receipt of written notice of such assessment, such assessment, together with interest, costs and reasonable attorney's fees, shall constitute a lien on the Building Site and may be enforced as set forth in Article 9 hereof.

6.5 Enforcement and Remedies. This Declaration shall be enforceable by the Owners Association; provided, however, if the Owners Association fails to act within thirty (30) days after receipt of a written request from Declarant to enforce this Declaration, this Declaration shall also be enforceable by Declarant. This Declaration may be enforced by a suit in law or equity against the party or parties violating or intending to violate any provision of this Declaration to enjoin such party or parties from so doing, to cause any

such violation to be remedied, to seek specific performance or to recover damages resulting from such violation. All costs incurred by the Owners Association in enforcing this Declaration shall be a Common Expense. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.6 Deemed to Constitute a Nuisance. Every violation of this Declaration or any part hereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner or Tenant shall be applicable against every such violation and may be exercised by the Owners Association or, if the Owners Association fails to act within thirty (30) days after receipt of a written request from Declarant to remedy such violation, by Declarant.

6.7 Attorneys' Fees. In any legal or equitable proceeding for the enforcement hereof or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the Court in such proceedings. In the event that attorneys' fees or any other fees, costs, or expenses of the Committee to be paid by an Owner pursuant to any provisions of this Declaration are not paid by such Owner, they shall constitute a lien of the Owners Association on the real property subject thereto pursuant to Section 9.6 hereof.

6.8 Non-Waiver. The failure of the Owners Association or Declarant to enforce any provision of this Declaration shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other provision of this Declaration, and neither of such parties shall be liable therefor.

6.9 Noncompliance. Anything herein to the contrary notwithstanding, if any Improvement is erected or constructed on any Building Site or changed, modified or altered without the prior compliance with the provisions of this Declaration or other than in accordance with approvals with respect thereto previously granted by the Committee, then, and in any of such events, the Owners Association or Declarant may enforce the provisions of the Declaration including those set forth in this Article 6. If any Improvement is changed, modified or altered without the prior approval of the Committee, then the Owners Association or Declarant shall require the Owner to cause the Improvements to be restored to comply with the Plans originally approved by the Committee and the Owner shall bear all costs and expenses of such restoration, including the costs and reasonable attorneys' fees of the Committee.

ARTICLE 7. OWNERS ASSOCIATION RIGHTS AND OBLIGATIONS.

7.1 Title to Property. The Owners Association shall be authorized to hold title to real and personal property and shall accept legal title to any Common Area that may be deeded to it for the use and benefit of the Owners Association.

7.2 Maintenance, Utilities and Taxes. The Owners Association shall provide for the care, maintenance, repair and replacement necessary to maintain the Common Area in a

clean, safe, attractive and slightly condition and in good repair. Such obligation shall include, but is not limited to, maintenance and repair of all signs included in the Common Area; maintenance and care of all ponds, waterways, pedestrian walkways, open space and unimproved areas of the Common Area and of plants, trees, and shrubs in such areas, including the removal of all trash and dead plants, trees and shrubs; maintenance of lighting provided for paved areas and other portions of the Common Area; and maintenance of the paved areas of the Common Area. The Owners Association shall pay the following:

- (a) All charges incurred in connection with the provision of utility services to the Common Area;
- (b) All charges imposed on the Owners Association for street lighting; and
- (c) All ad valorem real estate taxes, special improvements assessments and other assessments (ordinary and extraordinary), and all other taxes, duties, charges, fees and payments made by any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with the use, ownership, or possession of the Common Areas. The costs of maintenance, utilities and taxes described in this Section shall be a Common Expense.

7.3 Insurance. The Owners Association shall provide and keep in force, for the protection of the Owners Association and its members, the Committee and its members and all Owners, as their interests may appear, general public liability insurance in such limits as the Owners Association shall deem appropriate. Each such insurance policy shall provide that in case of violation of any provision thereof by one or more (but fewer than all) of the Owners, the coverage of such insurance policy shall be suspended or invalidated only as to the interest of the Owner or Owners committing the violation and not as to the interest of any other Owner. The Owners Association may also purchase and maintain insurance, in such amounts as the Owners Association may deem appropriate, against any insurable hazard or liability that the Owners Association wishes to insure against. The costs of carrying any of the insurance described in this Section shall be a Common Expense.

7.4 Right to Make Rules and Regulations. The Owners Association shall be authorized to and shall have the power from time to time as it deems necessary and appropriate to adopt, amend and enforce rules and regulations applicable within BW Business Park in order to implement the provisions of this Declaration, including but not limited to, rules and regulations to promote the general health and welfare of persons within BW Business Park, and to protect and preserve property. All rules and regulations adopted by the Owners Association shall be reasonable. The Owners Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, which shall be collectable by the Owners Association as set forth in Article 9 hereof. Each Owner, Tenant and Guest shall be

obligated to and shall comply with and abide by such rules and regulations and pay such fines or penalties upon failure to comply with or abide by such rules and regulations. The Owners Association shall not be responsible to any Owner, Tenant or Guest for the non-observance by any other Owner or Tenant or Guest of any such rules and regulations.

7.5 Implied Rights of the Owners Association. The Owners Association shall have and may exercise any right or privilege given to it expressly in this Declaration or the Articles and Bylaws and shall have and may exercise every other right or privilege or power and authority which the Owners Association deems necessary or desirable to fulfill its obligations under this Declaration or the Articles and Bylaws, including the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; to employ personnel necessary to manage affairs of the Owners Association; to obtain and pay for legal, accounting and other professional services as may be necessary or desirable; or to perform any obligations under this Declaration by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be desirable.

ARTICLE 8 OWNERS' RIGHTS AND OBLIGATIONS

8.1 Rights and Obligations Appurtenant. All rights and obligations of an Owner under this Declaration are hereby declared to be and shall be appurtenant to the title to such Owner's Building Site and may not be transferred, conveyed, devised, bequeathed or otherwise disposed of separate or apart from title to such Owner's Building Site. Every transfer, conveyance, grant, devise, bequest or other disposition of a Building Site shall be deemed to constitute a transfer, conveyance, grant, devise, bequest or other disposition of such Owner's rights and obligations hereunder.

8.2 Compliance with Law. Owners, Tenants and Guests shall, at all times, promptly comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of any governmental authority having jurisdiction over BW Business Park and of all their departments, bureaus, or officials, whether such requirements may relate to:

- (a) structural or other alterations, changes, additions, improvements;
- (b) repairs, inside or outside, extraordinary or ordinary;
- (c) the manner in which the Building Site or the improvements may be used or occupied; or
- (d) any other matter affecting the Building Site or the Improvements whether like or unlike the foregoing.

8.3 Owner's Tenants and Guests. Each Owner shall be responsible for the compliance of such Owner's Tenants and Guests with the provisions of this Declaration, including without limitation all rules and regulations adopted by the Owners Association,

and shall not be relieved of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period of ownership.

8.4 Owner's Obligations for Assessments and Charges. The amount of any assessments and charges payable with respect to an Owner or such Owner's Building Site pursuant to the provisions of Article 9 shall be a personal obligation of the Owner of such Building Site and such Owner's heirs, personal representatives, successors and assigns and, if there are multiple Owners of one Building Site, such obligation shall be a joint and several obligation of each Owner of such Building Site.

ARTICLE 9. ORGANIZATION OF OWNERS ASSOCIATION AND ASSESSMENTS.

9.1 Membership. Any individual, corporation, partnership, association, trust or other legal entity or combination of entities (including Declarant) owning an undivided fee simple interest in a Building Site shall automatically be a member of the Owners Association. Such membership shall be continuous throughout the period that such ownership continues. A membership shall terminate automatically without any action by the Owners Association whenever such individual, organization or group ceases to own a Building Site. Termination of membership shall not relieve or release any former member from any liability or obligation incurred by virtue of or in any way connected with ownership of a Building Site or impair any rights or remedies which the Owners Association or others may have against such former member arising out of or in any way connected with such ownership or membership.

9.2 Voting Rights. Whenever any action to be taken under this Declaration requires the vote of the Owners or is to be determined by reference to the votes of the Owners, the voting rights of each Owner shall be determined in accordance with the provisions of this Section 9.2. Declarant shall have the number of votes equal to the number of acres of land contained within BW Business Park that has not been conveyed to an Owner (excluding, however, any land dedicated to the public and any portion of the Common Area) at the time in question. The Owner or Owners of each Building Site shall have the number of votes equal to the number of acres contained within such Building Site at the time. Fractional acreage shall entitle Declarant and Owners, respectively, to the corresponding fractional votes. If title to a Building Site is held in the name of multiple Owners, each such Owner shall be entitled to the number of votes determined by allocating the total number of votes allocated to such Building Site based upon such Owner's percentage interest in such Building Site expressed in the instrument conveying such Building Site, or if the percentage interests of the multiple Owners are not expressed in such instrument, by dividing such votes by the number of Owners of such Building Site.

9.3 Annual Assessment for Common Expenses. The Owners Association may establish with respect to any calendar year an annual assessment for the purpose of paying or creating a reserve for Common Expenses of BW Business Park. The amount of the annual assessment shall be based upon an annual budget for Common Expenses to be adopted by the Owners Association; provided, however, that the annual assessment with respect to any Building Site shall not exceed one percent of the assessed valuation of

such Building Site, including all Improvements located thereon, as shown by the Assessor's Office of Saint Joseph County, Indiana. Such budget shall be based upon a good faith estimate of the Common Expenses for the year covered by the budget and shall take into account the cumulative difference, if any, between collected annual assessments and actual Common Expenses with respect to prior years. The Owners Association may adjust the amount of the annual assessment from time to time, as the Owners Association may in its discretion deem necessary or advisable. At the option of the Owners Association, the annual assessments may be payable in a lump sum or in quarterly installments. Declarant and each Owner shall be liable for Declarant's and such Owner's "Proportionate Share" (as such term is hereinafter defined) of the total annual assessment on the date the assessment is established by the Owners Association. As used in this Declaration, the term "Proportionate Share" shall mean the ratio of the votes in the Owners Association allocated to Declarant or an Owner to the total of all votes in the Owners Association with such ratio expressed as a percentage.

9.4 Special Assessments. In addition to the annual assessments authorized above, the Owners Association may establish at any time a special assessment for the purpose of paying or creating a reserve for, in whole or in part, the cost of any expense which the Owners Association is entitled to incur pursuant to the provisions of this Declaration or the Bylaws and which is not scheduled to be paid in a budget adopted by the Owners Association. Declarant and each Owner shall be liable for Declarant's and such Owner's Proportionate Share of the total special assessment on the date that the Owners Association establishes the assessment.

9.5 Payment of Assessment. Declarant and all Owners shall, within thirty (30) days after the date on which a notice of assessment from the Owners Association is mailed or delivered, remit the amount of such assessment to the Owners Association. Any assessment not paid within the aforesaid thirty (30) day period from the date of such notice shall bear interest after said thirty (30) day period until paid at a per annum rate equal to the lower of the prime rate as reported in the *Wall Street Journal* on the date of assessment plus three (3%) percent or the maximum legal rate.

9.6 Lien for Assessments and Charges.

- (a) All assessments and charges not paid by an Owner as set forth herein, plus accrued interest, shall constitute a lien on the real property subject thereto, superior and prior to all other liens and encumbrances except the lien for real estate taxes and special assessments, and except the lien of any first mortgage or first deed of trust of record held by a mortgagee that is not an affiliate, insider, or other related party of the Owner. To evidence such lien, the Owners Association shall prepare a written notice (the "Notice") setting forth the amount of such unpaid assessment, the name of the Owner being assessed and a legal description of the property on which the lien is filed. The Notice shall be signed by an officer of the Owners Association and mailed to the Owner in default. Thirty (30) days

subsequent to such mailing, if the assessment plus interest remains unpaid, an officer of the Owners Association shall record the Notice with the Recorder, Saint Joseph County, Indiana and any other office deemed advisable.

- (b) Any such lien may be enforced by the foreclosure of the real property, including Improvements, with respect to which the assessment has not been paid in like manner as a mortgage on real property is foreclosed under the laws of the State of Indiana. In any such foreclosure, the delinquent Owner shall be required to pay the costs, expenses and reasonable attorneys' fees in connection with the preparation and filing of the Notice as provided herein and all costs and reasonable attorneys' fees incurred in connection with the foreclosure.
- (c) The Owners Association shall have the power to bid on the real property, including Improvements, being foreclosed upon. The Owners Association shall notify any holder of an obligation secured by a first mortgage or first deed of trust secured by such real property, including Improvements, being foreclosed, if such holder has furnished its address in writing to the Owners Association. Any such holder may, but shall not be required to, pay any unpaid assessment and, upon such payment, such holder shall have a lien on the real property, including Improvements, for the amount paid, of the same rank as the lien of the Owners Association.
- (d) The amount of the assessment assessed against each Owner shall also be the personal and individual debt of such Owner at the time the assessment is made and suit to recover money judgment (together with reasonable attorneys' fees and costs as aforesaid) for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same.

9.7 Bylaws. The Bylaws shall govern the conduct of the affairs of the Owners Association. Decisions of the Owners Association shall be by majority of votes cast at any meeting, except as otherwise provided in the Articles, Bylaws or this Declaration. Notwithstanding anything to the contrary contained herein, until the date Declarant has sold and conveyed all of the property owned by Declarant in BW Business Park or December 31, 2010, whichever first occurs, the members of the Board of Directors of the Owners Association shall be appointed by Declarant.

ARTICLE 10. DURATION, AMENDMENT AND ASSIGNMENT OF COVENANTS AND PROVISIONS.

10.1 Duration. This Declaration shall continue and remain in full force and effect for a period of twenty-five (25) years from the date of recordation hereof and shall

thereafter automatically be renewed from year to year unless this Declaration is terminated in accordance with the provisions of this Section. This Declaration may be terminated at any time by the recording of an instrument directing termination signed by (i) the Owners who or which are, at the time in question, entitled to vote at least three-fourths (3/4) of the total votes of Owners and (ii) Declarant, if Declarant is then entitled to appoint the Board of Directors of the Owners Association.

10.2 Amendment. Any provision contained in this Declaration may be amended or repealed by the recording of a written instrument or instruments specifying the amendment or the repeal signed by (i) the Owners who or which are, at the time in question, entitled to vote at least two-thirds (2/3) of the total votes of Owners and (ii) Declarant, if Declarant is then entitled to appoint the Board of Directors of the Owners Association.

10.3 Effect of Provisions of Declaration. Each provision of this Declaration and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration shall be deemed a covenant running with the land as a burden with and upon the title to each parcel of real property within BW Business Park for the benefit of any other real property within BW Business Park.

10.4 Limited Liability. Neither Declarant, the Owners Association, nor the Committee, their respective members, successors or assigns, nor any director, partner, officer, member, agent or employee of any of them, shall be liable to any party for any action or failure to act with respect to any matter concerning this Declaration if the action involved was undertaken in good faith.

10.5 Assignment. All or any part of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant, in whole or in part, to any person, corporation or association, including, without limitation, the Owners Association, which will assume any or all of the duties of Declarant hereunder. Upon executing a writing evidencing its acceptance of such assignment, such assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, 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 such assignment shall be recorded in the office of the Recorder, Saint Joseph County, Indiana. Upon any such assignment and to the extent thereof, the assignor shall be relieved from all liabilities, obligations and duties so assigned and assumed. If at any time the then Declarant ceases to exist and has not made such an assignment, a successor Declarant may be appointed by the Owners who or which are, at the time in question, entitled to vote at least fifty-one percent (51%) of the total votes of Owners.

ARTICLE 11. ANNEXATION OF ADDITIONAL PROPERTY

11.1 Extension of Declaration. Declarant may at any time, without the consent of any other Owner, make subject to this Declaration other properties now or hereafter owned by Declarant, by executing an instrument in writing making this Declaration

applicable to such other properties and by recording the same in the office of the Recorder of Saint Joseph County, Indiana. Upon such recordation: (a) this Declaration shall run with the property already subject hereto and with such additional property as if this Declaration had always applied to all of such property from the date of the initial recording hereof; and (b) whenever thereafter in construing this Declaration reference is made to "BW Business Park", such term shall mean and refer to not only the property described in Exhibit A hereto, but also such additional properties. Such additional properties may, but need not be contiguous to other properties owned by Declarant and made subject to this Declaration.

ARTICLE 12. MISCELLANEOUS

12.1 Notice and Acceptance. Every person or entity which now or hereafter owns or acquires any right, title or interest in or to any portion of BW Business Park is and shall be conclusively deemed to have consented to every covenant, condition, reservation or restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest.

12.2 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

12.3 Singular and Plural. When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender, and the singular the plural and vice versa.

12.4 Certificate of Compliance. Upon payment of a reasonable fee set from time to time by Declarant or the Owners Association, and upon the written request of any Owner, the Owners Association shall issue within fifteen (15) days from receipt of the request a certificate in recordable form stating whether or not the Building Site of such Owner is in known violation of this Declaration as of the date of the request. Such written statement shall be conclusive upon the Declarant and the Owners Association in favor of the persons who rely thereon in good faith. If the Owners Association fails to furnish such statement within fifteen (15) days, it shall be conclusively presumed that the Building Site is in conformance with this Declaration.

12.5 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant and each Owner and their respective heirs, personal representatives, successors and assigns.

12.6 Reservations by Declarant. Declarant reserves all rights to BW Business Park not herein granted, including without limitation, the rights to change the zoning classification, resubdivide, subject to a condominium regime or subject to additional

covenants or restrictions any portion of BW Business Park prior to the conveyance of such portion to an Owner.

12.7 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

IN WITNESS WHEREOF, Grantor and Declarant have executed this Declaration as of the day and year first above written.

Attest:

[Grantor]

James H. Kidder

Barbara K. Kidder

Attest:

BW Business Park LLC [Declarant]

By: _____

By: _____

Name: _____

Title: _____

[Notarization]