

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
TUSCARAWAS REGIONAL TECHNOLOGY PARK

This Declaration is made as of February 19,2008, by the **Community Improvement Corporation of Tuscarawas County**, an Ohio not-for-profit corporation ("**Declarant**"), under the following circumstances:

A. **Declarant** is the owner of the real property known as the Tuscarawas Regional Technology Park situated in the City of New Philadelphia, Ohio, and more fully described as set forth in the Corrective General Warranty Deed recorded at Volume 1127, Page 1967 of the Official Records of Tuscarawas County, Ohio, and as set forth on the Plats for the Tuscarawas Regional Technology Park recorded at Volume 35, Page 1-3, and Volume 36, Page 14-16, of the Tuscarawas County, Ohio, Plat Records, all of which are incorporated herein by reference.

B. **Declarant** desires to submit the **Property** to the covenants, conditions, restrictions and easements set forth in this Declaration.

NOW, THEREFORE, **Declarant** declares that all of the **Property** shall be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to this Declaration.

Section 1. Definitions

For the purposes of this Declaration, unless the context otherwise requires, the words listed in this Section shall have the following meanings:

1.1 **Additional Property.** Any real property not described as **Property** herein together with all easements benefiting the real property and all appurtenances.

1.2 **Design Guidelines.** The set of standards, rules and regulations which are incorporated herein by reference and may be adopted by the Design Review Board pursuant to Section 3.3 below for the purpose of interpreting and implementing the

provisions of Section 4.

1.3 **Design Review Board.** The individuals designated pursuant to Section 3.1 who shall review and either approve, modify or reject all development, construction, landscaping and site plans involving Improvements for the Property.

1.4 **Association.** The association which may be formed pursuant to Section 7 consisting of all Owners.

1.5 **Covenants and Restrictions.** The covenants, conditions, restrictions and reservations stated in this Declaration as amended from time to time.

1.6 **Declarant.** Community Improvement Corporation of Tuscarawas County, its successors and assigns and the parties described below in Section 16.

1.7 **Declaration.** This Declaration of Covenants and Restrictions for the Tuscarawas Regional Technology Park as amended from time to time.

1.8 **Effective Date.** Date of recording this Declaration in the Tuscarawas County, Ohio Recorder's Office.

1.9 **Improvements.** All buildings, outbuildings and garages; overhead, above ground and underground installations, including, but not limited to, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; pools and fountains; slope alternations; roads, driveways, parking areas and other paved areas; loading docks; storage facilities; fences, trellises, walls, retaining walls and exterior stairs; planted trees, hedges, shrubs and other forms of landscaping; and all other structures of every type.

1.10 **Lot.** Each separately-described lot shown on the final plat for the Tuscarawas Regional Technology Park.

1.11 **Owner.** Any party holding fee simple title of record to any Lot and/or other Property, including any party selling that interest by land contract, but excluding any party holding an interest merely as security for the performance of an obligation.

1.12 **Property.** All of the real property known as the Tuscarawas Regional Technology Park, situated in the City of New Philadelphia, Ohio, and more fully described as set forth in the Corrective General Warranty recorded at Volume 1127, Page 1967 of the Official Records of Tuscarawas County, Ohio, and as set forth on the Plats for the Tuscarawas Regional Technology Park recorded at Volume 35, Page 1-3, and Volume 36, Page 14-16, of the Tuscarawas County, Ohio, Plat Records and incorporated herein by reference, together with all easements benefiting that real property and all appurtenances, and all portions of the **Additional Property** that may be added to the **Property** pursuant to Section 12.

Section 2. Purposes

The covenants and Restrictions are declared to be in furtherance of the following purposes:

- a. The compliance with all zoning and similar governmental regulations.
- b. The promotion of health, safety and welfare of all **Owners** and occupants of the **Property**.
- c. The preservation, beautification and maintenance of the **Property** and all Improvements.
- d. The preservation and promotion of environmental quality.
- e. The establishment of requirements for the development of the **Property** relating to land use, architectural features and site planning and design as set forth in the Design Guidelines.

Section 3. Design Review Board

3.1 Immediately after the Effective Date of this Declaration, **Declarant** shall appoint the Design Review Board (Board) which shall consist of not less than three (3) and not more than five (5) people all of whom shall have architectural and/or building design experience or be a member of the Community Improvement Corporation of Tuscarawas County in accordance with the procedures set forth in the Design Guidelines. Any one or more members of the Board may, but need not be, an **Owner** of or a tenant

on a Lot and/or other Property.

3.2 So long as **Declarant** owns one or more Lots and/or other Property, it shall have the right to appoint all members of the Design Review Board. After **Declarant** no longer owns any Lots and/or other Property, the Association shall have the right to select each member and to remove one or more members of the Board by a simple majority vote of all of its members.

3.3 The Design Review Board may, from time to time, in its sole discretion or as otherwise set forth in the Design Guidelines, adopt, amend and/or repeal by simple majority vote various standards, procedures, rules and/or regulations which shall be known as "Design Guidelines," which are incorporated herein by reference. These Guidelines shall aid in the interpretation and implementation of the provisions of this Declaration and shall provide standards and procedures for Board review of plans and specifications with respect to design, placement of buildings, landscaping, color schemes, exterior materials and other items within the Board's jurisdiction which may be recommended for use in the Tuscarawas Regional Technology Park. All Design Guidelines shall be consistent with the provisions of this Declaration, and if any conflict exists between the provisions of such Guidelines and the provisions of this Declaration, the provisions of this Declaration shall control.

3.4 Neither Declarant, the Design Review Board, the Association nor any member of the Board or the Association, nor any agent of Declarant, the Board or the Association shall be liable to any applicant under Section 4, to any applicant for a variance under either Section 4 or 5, or to any third party for any damage, loss or expense suffered or claimed by such applicant or any third party on account of (a) any defect in plans or specifications submitted, revised, approved or rejected in accordance with the Covenants and Restrictions or for any structural or other defects in any work done according to the plans and specifications; (b) the granting, modification or denial of any application or variance request in accordance with the Covenants and Restrictions; or (c)

the development of any part of the **Property**.

Section 4. Approval of Plans

4.1 Before any work may commence for the construction, erection, placing, installation, or alteration of any Improvement on any Lot, and no later than one (1) year after the purchase of any Lot, the **Owner** of that Lot must first submit to the Design Review Board for review a complete set of building or installation plans and specifications as set forth in the Design Guidelines for the Improvement. All of such plans shall be submitted over the signature of the **Owner** or the **Owner's** proposed or actual lessee who is affected by the proposed Improvements. Any changes in approved plans or specifications which materially affect building or other Improvement size, placement or external appearance must also be submitted for review by the Board before any such changes may be effected.

4.2 The Design Review Board shall approve, reject or modify such plans in a writing sent to the **Owner** and/or lessee in question not more than thirty (30) days after each set of the plans are submitted to the Board. Among the factors which the Board shall consider are the adequacy of the Lot dimensions for the proposed Improvements; the general conformity and harmony of the proposed external design with existing neighboring structures; effect of the location and proposed use of the Improvements upon neighboring Lots, their occupants, and the operations conducted thereon; the topography grade and ground elevation of the Lot for which the Improvements are proposed in relation to the neighboring Lots; proper facing on the main elevation of the proposed Improvements with respect to adjacent streets; the adequacy of screening for mechanical air-conditioning, rooftop and/or other external installations which are proposed as part of the Improvements; and compliance with the Design Guidelines and the provisions of this Declaration. The Board shall not unreasonably withhold approval of any plans which conform in every way with the Design Guidelines, this Declaration and the general character of the development on neighboring Lots within the Property. If the Board fails

to approve, disapprove or modify the plans within the above thirty (30) day period, the Board's approval shall be deemed to have been given, and no further permission shall be needed before the Improvements described in such plans, may be constructed or installed. However, in no event shall any Improvements be constructed or installed which violate any terms of this Declaration, even if the Board has expressly approved such construction or installation in writing, unless the Board has granted a variance in writing for such Improvements pursuant to Section 6.

4.3 No building or other Improvement shall be constructed, erected, placed, installed, permitted to remain on or altered in such a way as to put any part of the same between any setback line shown on the plat of the Tuscarawas Regional Technology Park or as set forth in the Design Guidelines and the boundary line of the Lot on which the building or other Improvement is located.

4.4 All Improvements on any Lot shall be completed not more than one year after the date they are approved under this Section 4 unless extended in writing for good cause by the Design Review Board.

4.5 No temporary structure shall be permitted to remain on any Lot after completion of the construction on that Lot.

4.6 The Design Review Board may establish and require a reasonable filing fee to be submitted with each application for approval of proposed Improvements in order to defray expenses of the Board.

Section 5. Permitted Uses; General Restrictions

5.1 **Permitted Uses.** All Lots shall be used solely for technology related office, commercial processing, assembly, research, servicing, warehousing and distribution purposes and for services related to technology and those uses, will include, but not be limited to software development, nanotechnology, computer engineering, engineering services, computer network management, polymer science development, biotech related businesses, computer animation and health-care related fields and related

similar uses. Said activities shall be permitted provided that they are confined within a building or buildings and do not contribute excessive noise, dust, smoke, fumes, toxic emissions or vibrations to the surrounding environment nor present any significant hazard due to the nature of the products, materials, or processes involved.

5.2 **Prohibited Uses.** The following operations, activities and uses shall not be permitted on any part of the **Property**.

- a. Any residential use or hotels;
- b. Any industrial or manufacturing use, operation or activity, except within the limitations stated in Section 5.1;
- c. Any restaurant of the type commonly known as a fast food restaurant;
- d. Gasoline service stations;
- e. Any retail department store or other retail establishment of similar size and purpose;
- f. Any activity violating any applicable federal, state or local law, ordinance, regulations, standard, order or rule;
- g. Any use that is offensive because of emission or odors, fumes, dust, smoke, gas, any toxic product, or other form of pollution or by reason of noise or vibration;
- h. Any activity that causes danger to any person or property on any other part of the **Property**;
- i. Drive-in theaters;
- j. Automobile repair or painting establishments;
- k. Automobile retail or used sales lots or businesses;
- l. Junkyard;
- m. Concrete or asphalt central mixing plant;
- n. Dumping, disposal, incineration or reduction of garbage, sewage, dead animals or refuse;
- o. Refining of petroleum or its products;
- p. Smelting of iron, tin, zinc or any other ores;
- q. Cemeteries;
- r. Wood and lumber bulk processing, including sawmills, planing mills and woodpreserving treatment facilities or activities;
- s. Any form of penal institution;
- t. Any quarrying or other form of excavation activity;
- u. Any activity involving blasting operations;
- v. Any activity that may cause electro-mechanical or electro-magnetic disturbances;
- w. Any activity involving disturbances to others because of radiation,

air or water pollution; and

- x. Any other activity not specifically authorized or permitted by Section 5.1 of this Section 5 or by a variance granted pursuant to the provisions of this Declaration.

5.3 **Materials/Exterior Surfaces.** The public facade materials shall be as set forth in the Design Guidelines.

5.4 **Building Coverage.** The total building coverage on any Lot shall not exceed the requirements set forth at the Building Siting, Building Scale and Building Placement or other appropriate sections in the Design Guidelines. Solely for purposes of this Section 5.4, parking structures other than multi-car parking garages shall not be calculated as building area provided that those structures are used only for the parking of vehicles owned or leased by one or more **Owners**, their tenants, or the employees, customers, clients or other business or professional invitees of **Owners** or tenants.

5.5 **One Building Per Lot.** No more than one building and one parking structure to be used only as described above in Section 5.4 above shall be constructed, installed or permitted to remain on any one Lot, unless **Declarant** has specifically approved in writing the construction, installation or maintaining of more than one building on a Lot.

5.6 **Signs.** No sign shall be erected or maintained on any Lot, except in conformity with the signage program established by Declarant pursuant to the Design Guidelines. Any sign permitted under this paragraph must also conform to all applicable zoning ordinances and regulations.

5.7 **Parking.** The parking requirements shall be as set forth in the Design Guidelines. No parking shall be permitted on any part of the Property in violation of any applicable local laws or ordinances. In the event of any conflict between the provisions of this Declaration and such ordinances, the more restrictive requirement shall control.

5.8 **Loading and Storage Areas and Equipment.** These shall be as set forth

in the Design Guidelines. In addition thereto, the following shall be applicable:

- a. No vehicles shall be repaired outside of any buildings, and no inoperative vehicles may remain parked on any part of any Lot outside of a building for more than five (5) consecutive days.
- b. No waste materials, supplies, apparatus, finished or semi-finished products shall be stored outside any building unless those items are appropriately screened from view.
- c. All screening permitted under this Section 5.8 must be approved in writing by the Design Review Board before the activity to be screened is initiated and before any such screening is actually constructed or installed.

5.9 **Landscaping.** The landscaping for each individual Lot must be approved by the Design Review Board and must conform to the general provisions of the Design Guidelines.

5.10 **Waste and Refuse.** All waste and refuse shall be handled and stored as set forth in the Design Guidelines.

5.11 **No Lot Split.** No **Owner** shall reduce the size of or subdivide any Lot.

5.12 **Setbacks.** The building setbacks are as set forth in the Design Guidelines.

5.13 **Other.** Such other uses and restrictions as are set forth in the Design Guidelines.

Section 6. Variances

6.1 To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of the Declaration, so long as **Declarant** owns one or more Lots and/or other Property on the **Property**, **Declarant** may grant reasonable variances from the provisions of this Declaration. After **Declarant** no longer owns any Lot or other Property, the Design Review Board shall have the authority to grant reasonable variances from the provisions of Sections 4 and/or 5 hereof as set forth in the Design Guidelines. No variance shall materially injure or materially adversely affect any other part of the **Property** or any other **Owner** or occupant without the written consent of

every party so injured or affected.

6.2 No variance granted pursuant to the authority of this Section 6 shall constitute a waiver of any provision of the Declaration as applied to any other party or any other part of the **Property**, and no variance may be granted to permit anything that is prohibited by applicable law.

6.3 All provisions of the Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the **Property**.

6.4 The Design Review Board shall have the right to approve alternates to or other variations from the Design Guidelines without the necessity of granting a formal variance. Approval of plans and specifications by the Design Review Board containing items that do not conform to the Design Guidelines shall constitute sufficient authority to depart from the Design Guidelines.

Section 7. Property Owner's Association

7.1 During the process of developing the **Property**, **Declarant** may establish that certain land and/or facilities are for the common use and benefit of the Owners. The common facilities may include, for example (but not be limited to), roadways, drainage areas and facilities, signs, landscaping areas, recreational facilities, utility facilities, lakes, ponds, streams and/or open areas. Any such common areas and facilities so designated by **Declarant** are referred to as the "Common Property."

7.2 **Declarant** reserves the right, at any time while this Declaration is in force and **Declarant** is the Owner of a Lot and/or any other Property, to include but not limited to Common Property, to establish the Association to own, operate, maintain, manage, repair and replace the Common Property. **Declarant** may also assign or delegate to the Association any rights and duties of **Declarant** under this Declaration, including, but not limited to, the right to select the members of the Design Review Board.

7.3 The Association, if formed, shall have the power to levy assessments by

which the Owners shall be charged their proportionate share of the costs of maintaining the Common Property and all other expenses of the Association. These assessments, if unpaid, may be secured by filing liens on the Owner's Lots. The method of determining each Owner's share of the assessments shall be determined in a manner **Declarant**, in its judgment, deems reasonable, and may be based upon the relative size (acreage) of the Lots, the square footage of buildings on the Lots, the values of the properties as determined by the taxing authorities, the relative benefits obtained by the Lots, or other methods selected by **Declarant**.

7.4 **Declarant** may also establish a Code of Regulations for the Association governing the conduct of its affairs, the voting rights of the members (which shall not be substantially dissimilar from their proportionate shares for purposes of the Assessments), quorum and minimum voting percentages and similar matters.

7.5 Each Owner, by acceptance of a deed to a Lot, consents to the formation of an Association by **Declarant**, agrees to be a member of the Association, if formed, and agrees that its Lot will be bound by the covenants, conditions, agreements, assessments and liens of the nature described above when and if the Association is formed.

Section 8. Maintenance

All Lots and all Improvements placed thereon, whether occupied or unoccupied, shall at all times be maintained in good condition and repair.

Section 9. Telephone and Electrical Service

Any transformer or terminal equipment above ground shall be screened from view from the adjacent street and any adjacent Lots.

Section 10. Easements Reserved by Declarant

10.1 **Declarant** reserves for the benefit of all Owners and occupants of Lots the easements shown on the recorded plats for the Property for the installation, use, maintenance, repair and replacement of utilities and drainage systems and facilities. No Improvement may be placed on any part of the Property which will materially impede the

free and normal use of such easements.

10.2 **Declarant** reserves the right and easement for itself, its successors and assigns, to enter upon the easement areas shown on the plats of the Property in order to install, maintain, repair, use and/or replace pipes, wires, antennae, cables, towers, conduits and other lines, systems and/or facilities for the purpose of providing water, sanitary sewer, storm sewer, electrical, gas, telephone, television broadband or related services and other utility or quasi-utility services to any part of the Property.

10.3 All easements and rights granted and/or reserved herein are easements appurtenant, running with the land which comprises a part of the Property, perpetually in full force and effect. Such easements shall at all times inure to the benefit of and be binding on **Declarant**, its successors and assigns, and any Owner, occupant, mortgagee or other party now or hereafter having any interest in any part of the Property.

Section 11. Enforcement and Remedies For Breach of Covenants And Restrictions

11.1 **Declarant**, the Design Review Board and/or any Owner shall have the right to enforce the Covenants and Restrictions. Enforcement may be made by prosecuting any proceeding against the party or parties violating or attempting to violate any one or more of the Covenants and Restrictions. This right of enforcement shall include the right to recover damages and/or to seek injunctive relief to prevent the violation.

11.2 In addition to the rights stated in Section 11.1, **Declarant**, so long as it owns one or more Lots or other Property, and/or the Design Review Board, shall have the right to enter upon any part of the Property at any reasonable time to inspect for a possible violation or breach of the Covenants and Restrictions. Where the inspection shows that a violation or breach of the Covenants and Restrictions exists, **Declarant** and/or the Design Review Board shall then have the right to abate and remove any

structure, thing or condition causing such violation at the expense of the Owner of the Lot where the violation exists without any liability to such Owner for trespass or any other claim resulting from such entry.

11.3 The remedies specified in this Section 11 are cumulative and do not preclude resort to any other remedy at law or in equity by any party adversely affected by any violation or breach of the Covenants and Restrictions.

11.4 In any proceeding for the enforcement of any of the provisions of this Declaration or for the restraint of a violation of any such provision, the losing party shall pay all of the attorney's fees and court costs of the prevailing party in such amount as may be fixed by the Court in that proceeding.

11.5 No delay or failure on the part of any aggrieved party to pursue any available remedy with respect to a violation of any of the provisions of this Declaration shall be held to be a waiver by such party of, or an estoppel of that party to assert, any right available to such party upon the recurrence or continuation of such violation or the occurrence of any different violation. No provision of this Declaration shall be construed so as to place upon **Declarant** or any other aggrieved party any duty to take any action to enforce this Declaration.

Section 12. Additions To The Property By Declarant

So long as **Declarant** owns one or more Lots or other Property, **Declarant** may add all or any part of the Additional Property to the Property by recording an amendment to this Declaration containing an accurate and complete description of the real property so added without the necessity of joining any other Owners as parties to such amendment. Upon the recording of any such amendment, (i) all of the provisions of the Declaration shall apply to that part of the Additional Property in the same manner as if such property had been originally covered by the Declaration and (ii) all of the Covenants and Restrictions shall run with such Additional Property and shall be binding upon and inure to the benefit of **Declarant**, all Owners, lessees, occupants and their respective

successors in interest to any part of that land.

Section 13. Amendments To Declaration

13.1 This Declaration may be amended for any purpose other than the purpose described above in Section 12 or extended only by recording the desired amendments or extensions executed by not less than seventy-five percent (75%) of all of the Owners and, if **Declarant** still owns one or more Lots or other Property, executed also by **Declarant**.

13.2 No amendment of this Declaration shall (a) require any change in any preexisting structure or other Improvement which is in compliance with the provisions of Section 4 immediately prior to the effective date of the amendment; or (b) require any change in a use complying with the provisions of Section 5 as of the date immediately preceding the effective date of the amendment, without the written consent of each party so affected or required to make any such change.

Section 14. Duration and Termination

14.1 All of the Covenants and Restrictions contained in this Declaration are declared to be in furtherance of a general plan for the subdivision, improvement, sale and use of the Property. All of the Covenants and Restrictions shall run with the land and shall be binding upon and inure to the benefit of **Declarant**, all owners, lessees, occupants and their respective successors in interest for a period of twenty (20) years from the date this Declaration is recorded, unless amended or terminated prior to that date pursuant to the terms of this Declaration. These Covenants and Restrictions shall be automatically extended for not more than three (3) consecutive terms of ten (10) years each commencing at the end of the original term hereof, unless terminated pursuant to Section 14.2.

14.2 This Declaration may be terminated with respect to all of the Property by recording a written instrument providing for such termination executed by not less than eighty percent (80%) of the Owners and, if **Declarant** then owns one or more Lots or other Property, by **Declarant**.

Section 15. Severability

If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any of the other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.

Section 16. Assignment of Declarant's Rights And Duties

16.1 **Declarant** may assign any and/or all of its rights, powers and reservations contained herein to any other party who will assume the duties of **Declarant** pertaining to the rights, powers and/or reservations assigned. Such assignment of rights, powers and/or reservations and the assumption of related duties by the assignee shall be set forth in writing, and such written instrument shall be recorded.

16.2 The term "Declarant" as used in this Declaration shall include any such assignee and such assignee's successors and assigns with respect to the rights, powers and/or reservations expressly assigned and the duties and obligations expressly assumed.

Section 17. Gender and Number

Whenever the masculine gender is used in this Declaration, it shall be deemed to include the feminine and neuter. Whenever the singular is used in this Declaration, it shall be deemed, where appropriate in the context used, to include the plural, and vice versa.

Section 18. Conformity To Governmental Regulations

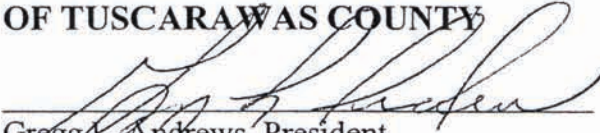
18.1 If any provision of this Declaration is also the subject of any law or regulation established by any federal, state or local government, the stricter of the two standards shall prevail.

18.2 No provision of this Declaration shall be construed so as to violate any applicable zoning laws, regulations or ordinances.

Signed this 19th day of FEBRUARY, 2008.

**COMMUNITY IMPROVEMENT CORPORATION
OF TUSCARAWAS COUNTY**

By


Gregg L. Andrews, President

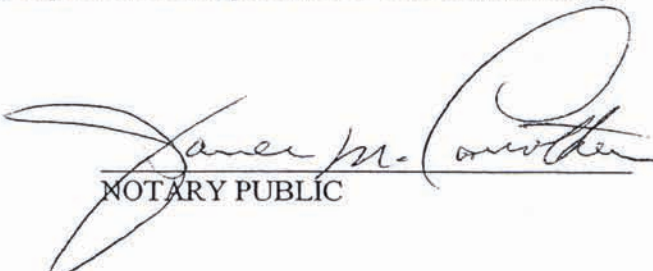
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STEPHENSON STEPHENSON
PICKUP

STATE OF OHIO
COUNTY OF TUSCARAWAS

Sworn to before me a notary public, this 19th day of FEBRUARY, 2008, by Gregg L. Andrews, President of the Community Improvement Corporation of Tuscarawas County.



**JAMES M.
CARROTHERS**
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission
Has No Exp. Date
Section 147.03 O.R.C.


NOTARY PUBLIC

This instrument prepared by Stephenson, Stephenson, Carrothers & Ong, Attorneys at Law, 206 West High Avenue, P.O. Box 992, New Philadelphia, Ohio, 44663.