



Town of Hampden
Planning and Development Committee
Wednesday January 3, 2018, 6:00 pm
Municipal Building Council Chambers
Agenda

1. Approval of Minutes: Postponed to January 17 meeting
2. Committee Applications: None
3. Updates:
 - A. MRC/Fiberight
 - B. Staff Report
4. Old Business:
 - A. Meeting with Town consultant Noel Musson to review draft of proposed amendments to Hampden Business Park Covenants
5. New Business: None
6. Zoning Considerations/Discussion:
 - A. Status of zoning ordinance amendments and discussion of 2018 priorities.
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn

Project List - Planning

Project Name	Location	What it is	Size ¹	PB Action/Date	Type
Fiberight	off Coldbrook	solid waste processing	153,800 sq ft	Approved	Site Plan
Hannibal Hamlin Place	Main Road N	expansion	2,800 sq ft	Approved	Site Plan
Pine Tree Food Equipment	Nadine's Way	new building/business	3,600 sq ft	Approved	Site Plan
Dennis Paper	Mecaw Rd	expansion	27,237 sq ft	Approved	Site Plan
Colonial Heights	off Constitution	phase 3 of subdivision (final plan)	11 new lots	Approved	Subdivision
Carver	Ballfield Rd	conversion of single family to two family	1 new unit	Approved	Conditional Use
Sky Villa	646 Main Road N	conversion of interior to 10 short term rehab beds	3,172 sq ft	Approved	Conditional Use
Brickle	326 Main Road N	conversion of single family to two family	1 new unit	Approved	Conditional Use
Southstreet Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	Withdrawn	Zoning Map Amendmemt
Hamlin's Marina	Marina Road	new boat storage building	10,000 sq ft	Approved	Site Plan
Fiberight	348 Coldbrook Road	Site Plan Revision	-	Approved	Site Plan
Springer Estates	Deer Hill Lane	Addition of land to existing lot within subdivision	1 Lot	Approved	Minor Revision
Hannaford	Western Ave.	Addition of ~12' x 32' external CLYNK bldg as accessory structure.	384 sq ft	Approved	Site Plan Revision
H.O. Bouchard	Coldbrook Road	Expanded office building & Deck	1,620 sq ft	Approved	Site Plan Revision
Southstreet Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	Approved	Zoning Map Amendment
Good Shepherd	Penobscot Meadow	Addition of 7,550 sq ft impervious area	-	2/14/2017 ²	Site Plan Amendment

1. Size refers to square footage of building (new or addition), number of new building lots, number of new units, or acreage.

2. Applicant has requested this application be held for now, may be heard in March instead.



MEMORANDUM

To: Planning & Development Committee
From: Noel Musson, The Musson Group
RE: Project Update – Business Park Covenant Revisions
Date: December 29, 2017
Cc: Angus Jennings, Karen Cullen

Please find the attached working draft of potential revisions to the Business Park Covenants.

For this draft we have begun to make redline edits showing recommended deletions or edits to the covenants. We made an effort to suggest edits or deletions in areas that we feel are duplicative of the regularity process already provided in by the Land Use Ordinance. We are continuing to review these assumptions.

As we get deeper into possible modifications there are a few overarching policy considerations we would like to discuss at the January 3 P&D meeting.

- *Should all sections of the Covenants be applicable to the entire Business Park.*
This is particularly the case in the standards of Section IV. In the current version they only apply to Phase 1. The revised standards might be more general and therefore universal.
- *To what degree does the Town want to have some say in the Business Park once a lot or all the lots are sold?*
This would be in the form things like reserved rights (see Section 3.10), sign off on any modifications to DEP permits (see Section 3.11) or further lot divisions (see Section 5.1). We have assumed, for this draft, that the Town would want to keep the repurchase option (see Section 3.9) and the ability to modify the covenants (see Section 6.1).
- *What are the overarching development standards that the Town is comfortable with keeping?*
Deed restrictions are a typical supplement to Zoning Ordinance Language and can place more specific and/or long-term restrictions on a property. Keeping some provisions from Sections IV and V might be desirable.

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE HAMPDEN BUSINESS AND COMMERCE PARK**

This Second Amended and Restated Declaration is made this ____ day of ~~September~~February, 2018~~5~~ by the Town of Hampden, a municipality situated in Penobscot County, Maine:

BACKGROUND:

- A. A Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park dated October 7, 2002 was recorded in the Penobscot County Registry of Deeds on December 17, 2002 in Book 8503, Page 78.
- B. By Certificate of Amendments dated January 23, 2008, recorded in the Penobscot County Registry of Deeds on January 28, 2008 in Book 11274, Page 328, the Town of Hampden amended Section 4.2 and Section 4.4 of the original Declaration.
- C. On November 17, 2014, the Hampden Town Council adopted additional amendments to the original Declaration pursuant to Article VI, Section 6.1 of the Declaration.
- ~~D.~~ This Amended and Restated Declaration ~~is~~was issued for the purpose of restating the original Declaration, as amended through November 14, 2014, and ~~shall apply~~applied prospectively from November 14, 2014 until the date of effect of the Second Amended and Restated Declaration.
- ~~D-E.~~ This Second Amended and Restated Declaration is issued for the purpose of restating the Amended and Restated Declaration, as amended through September 17, 2015, and shall apply prospectively from February ____, 2018.

RECITALS:

1. The Town of Hampden is the owner of that certain real property in the Town of Hampden, County of Penobscot, State of Maine, shown on a Final Subdivision Plan entitled Hampden Business and Commerce Park and recorded in the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112 and Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)
2. The Hampden Business and Commerce Park is being developed as a master planned Business and Commerce Park. It is the Town of Hampden's desire and intention to subject the real property in said Business and Commerce Park to certain covenants, conditions, and restrictions which are deemed

to be real covenants which run with the land, for the benefit of the property, the Town of Hampden, and the owners or occupants of lots in the Hampden Business and Commerce Park. It is intended that said covenants, conditions and restrictions shall bind and benefit not only said Town of Hampden, and the owners and/or the occupants, but also their respective successors, heirs, and assigns and that all lots in Hampden Business and Commerce Park shall be owned, held, used, sold, transferred, leased, and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.

It is the intention of the Town of Hampden 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 Hampden Business and Commerce Park, and any other land which the Town might wish to add in the future, and to enhance and protect the value, desirability, and attractiveness of all such lots to their mutual benefit except where otherwise noted. The design review provisions in Article IV are limited to Phase 1 as defined, and do not apply to the East Phase or West Phase of the subdivision. (Amended 11/17/14)

3. It is also the intention of the Town of Hampden to enhance the value of the property, to increase the job base and job diversity in the community, and to increase the Town's tax base by undertaking construction and management of the Business and Commerce Park and through the use of this Declaration. Limitations on use, preference for certain uses over other uses, a limitation on non-taxable uses, construction and appearance standards, and many other standards in this Declaration 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:

Declarant. The Town of Hampden, acting through its Town Council except as otherwise specified, and its successors and assigns.

Declaration. This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hampden Business and Commerce Park as it may from time to time be amended or supplemented.

Design Review Board. (Deleted 11/17/14)

Final Subdivision Plan - Subdivision Plan. The term Final Subdivision Plan or subdivision plan shall mean the Final Subdivision Plan approved by the Hampden Planning Board, on file at the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the: (1) Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, (2) Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112 and (3) Final Subdivision Plan Amendment 3 (Reconfiguration of

Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14).

Hampden Business and Commerce Park. The term "Hampden Business and Commerce Park" shall be synonymous with the term "subject property" and shall mean all of the real property now or hereafter made subject to this declaration, including but not limited to the property shown on the Final Subdivision Plan.

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.

Lot. The term "lot" shall mean any lot or other tract or parcel of land located within the subject property as shown on the Final Subdivision Plan. This definition does not preclude establishing improvements across interior lot lines of lots held in common ownership. (Amended 11/17/14)

Low Impact Outdoor Recreation. The term "low impact outdoor recreation" shall mean outdoor recreation, nature observation and study which is dispersed, traditional non-commercial outdoor activities that do not generally rely on buildings or spectator facilities, and may include hiking, bird watching, picnicking, cross-country skiing, snowmobiling, snow-shoeing, bicycling, horseback riding, primitive non-commercial camping, and outdoor education, including scientific and archeological research and observation.

Master Plan. The Hampden Business and Commerce Park master plan approved by the Town of Hampden Planning Board developed by WBRC Architects- Engineers dated April 27, 2001, a copy of which is on file at the Town Clerk's Office in Hampden, Maine. The plan shall include items identified on the Final Subdivision Plan as amended.

Occupant. A person or entity that is in possession of and is occupying or using any improvements located on a lot. The term includes, but is not limited to, an owner, lessee, optionee, or party in possession.

Owner. A person or entity that holds title to a lot as evidenced by records recorded in the Penobscot County Registry of Deeds.

Phase. This term shall represent certain lots within the Hampden Business and Commerce Park Subdivision and further identified on the Amendment 3 Final Subdivision Plan:

Phase 1. Phase 1 is lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18 within the Hampden Business and Commerce Park Subdivision.

Phase, East. East Phase is lots 33, 34, 35, 36 and 37 within the Hampden Business and Commerce Park Subdivision.

Phase, West. West Phase is lots 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 within the Hampden Business and Commerce Park Subdivision. (Amended 11/17/14)

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 Penobscot, State of Maine.

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.

Street. Any public or private way as shown on the Final Subdivision Plan.

Subject Property. Synonymous with the term "Hampden Business and Commerce Park", or any lot therein, and shall mean all of the real property now or hereafter made subject to this Declaration.

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

Visible from Neighboring Property and/or Street R/O/W. The term "visible from neighboring property and/or Street R/O/W" shall mean, with respect to any object on the lot, that as determined by the Design Review Board Code Enforcement Officer, such object is or would be visible from a point measured six (6) feet above the grade at the property line of any adjacent lot or street right of way, except that objects greater than 35 feet above grade are exempt from this definition.

Other Definitions. Any term not defined herein shall have its customary dictionary definition.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 GENERAL DECLARATION

Declarant hereby declares that all of that real property located in the Town of Hampden, County of Penobscot, State of Maine, as shown on the following plans:

Final Subdivision Plan entitled Hampden Business and Commerce Park recorded in the Penobscot County Registry of Deeds in Map Files No. 2001-70 and 2001-71, as amended by Final Subdivision Plan -Amendment No. 1 recorded in said Registry of Deeds in Map File Nos. 2002-89 and 2002-90;

Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No.2007-112; and

Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)

shall be sold, held, conveyed, encumbered, leased, rented, used, occupied, improved, maintained or transferred in whole or in part, subject to the limitations, restrictions, conditions, covenants, liens and provisions set forth in this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale 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 limitations, restrictions, conditions, covenants, liens and provisions of this Declaration shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest therein or any part thereof.

2.2 ADDITION OF OTHER REALTY

Declarant may, but shall have no obligation to, add at any time or from time to time additional land to the scheme of this Declaration. The addition of additional land to the scheme of this Declaration shall be made and evidenced by filing in the Penobscot County Registry of Deeds a supplementary Declaration with respect to the additional land to be added. Declarant reserves the right to so amend ~~and supplement or repeal~~ this Declaration or any portion thereof pursuant to the procedures in Article VI, without the consent of any party who may have any right, title, or interest to the subject property. Upon addition of additional land to the scheme of this Declaration, said additional land shall be and become subject to this Declaration.

ARTICLE III CONSTRUCTION OF IMPROVEMENTS

3.1 APPROVAL OF PLANS REQUIRED

~~The provisions of the Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park outlined in Section 3.1 through 3.4 shall only apply to Phase 1, and do not apply to East Phase and West Phase as defined. No exterior improvements shall be commenced, erected, placed, altered, maintained, or permitted to remain on any lot, nor shall any addition, change or alteration of any improvements be made, until final plans and specifications shall have been submitted to and approved in writing by the Hampden Planning Board. Such final plans and specifications shall be submitted in accordance with Zoning Ordinance Article 4.1 Site Plan Review, as may be amended or replaced from time to time. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Planning Board or Town Planner, but shall in any event include those items listed in III.1.a and III.1.b of this paragraph. The Planning Board must make a positive finding that the standards contained herein are satisfied in~~

addition to the standards contained in Article 4.1 Site Plan Review, as may be amended or replaced from time to time. (Amended 11/17/14)

A site development plan or plans shall include 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), and all structures within three hundred (300) feet of any property line, and the number and location of all parking spaces and driveways, landscaping, buildings, lighting and signage accessory buildings, fences, storage areas, trash collection, antennas, and:

III.1.a. A plan showing all landscaping elements for the particular lot, including botanical/common name, size, condition, and "hard" landscape elements, and;

III.1.b. Building exterior elevations of each facade showing dimensions, all building windows and doors, materials, and exterior color scheme and any external mechanical systems, and;

III.1.c. (Deleted 11/17/14)

III.1.d. (Deleted 11/17/14)

III.1.e. (Deleted 11/17/14)

3.2 BASIS FOR APPROVAL (Deleted ==/==/2018)

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, and in reasonably close conformance with the approved Hampden Business Park master plan, as amended, and the final subdivision plan.

Plans that provide for metal-clad buildings will be approved only on the condition that such buildings are designed and built in accordance with the requirements of Section 4.4. (Amended 11/17/14)

Plans for plantings and landscape improvements will be approved only on the condition that materials, placement, and form are designed and built in accordance with the Landscaping Plans for the Hampden Business and Commerce Park. (Amended 11/17/14)

Declarant shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, Declarant, by and through the Hampden Planning Board, shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

1. ~~Failure to comply with any of the limitations, restrictions, conditions, and covenants set forth in this Declaration;~~
 2. ~~Failure to include information in such plans and specifications as may have been reasonably requested by the Planning Board;~~
 3. ~~Failure to reasonably comply with the Hampden Business and Commerce Park Master Plan;~~
 4. ~~Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;~~
 5. ~~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;~~
 6. ~~Objection to the locations of any proposed structure with reference to other lots, or other property in the vicinity;~~
 7. ~~Objection to the grading or landscaping or parking plan for any lot;~~
 8. ~~Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;~~
 9. ~~Any other matter that, in the judgment of the Planning Board, 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.~~
- ~~———— (Amended 11/17/14)~~

3.3 ACTION ~~(Deleted ==/==/2018)~~

~~Declarant, by and through the Planning Board, 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 10 business days from the date the plan is deemed complete, the plan is deemed denied. A time extension may be granted in writing by the applicant. (Amended 11/17/14)~~

3.4 APPEAL ~~(Deleted 11/17/14)~~

3.5 PROCEEDING WITH WORK

Upon receipt of approval from ~~Declarant pursuant to Section 3.3~~the Planning Board, the applicant, shall, ~~as soon as practicable~~, satisfy any and all conditions of such approval and shall diligently proceed with the commencement of and shall diligently and continuously pursue the completion of all approved excavation and construction. ~~In all cases, work shall commence within one (1) year from the date of approval, and 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.~~

3.6 COMPLETION OF WORK

Any improvement commenced pursuant hereto shall be substantially completed within two (2) years from the date of ~~Declarant's~~ approval by the Planning Board pursuant to Section 3.3, except that if such substantial completion is rendered ~~impossible~~infeasible, or unless work upon the proposed improvements would impose a great hardship upon the applicant ~~to whom Declarant's approval is given, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of the applicant~~, 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. Failure to comply with this section shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VII. Nothing in this paragraph shall be deemed to extend any construction start or completion date required by the ~~Planning Board~~, Zoning Ordinance or other ordinance or regulation, or condition of permit.

All disturbed areas on any Lot must be revegetated in accordance with good erosion practice methods within three (3) months if disturbed during the growing season and within nine (9) months if disturbed during the non-growing season.

All revegetation must be completely established within one year from the time of disturbance.

If all elements of the approved plans and specifications are not substantially completed in accordance with the terms and conditions of this Declaration or such terms and conditions as may be included in a deed of conveyance, the owner ~~shall~~may be assessed a late penalty of \$100 for each day beyond the completion deadline that the project is not substantially completed. Said late penalty shall be payable to Declarant, and the owner shall also be obligated to pay any of Declarant's reasonable costs incurred to collect the same, including reasonable attorney's fees and expenses.

Within sixty (60) days from substantial completion, the Owner shall submit two (2) copies of final record drawings to the ~~Declarant~~Town Manager, along with a set thereof in such electronic format as may be designated by Declarant.

3.7 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, 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.~~
- ~~c. The development or use of any lot within Hampden Business and Commerce Park, or enforcement or failure by the Declarant to enforce any of the covenants, conditions, or restrictions contained herein.~~

3.8 CONSTRUCTION WITHOUT APPROVAL

If any improvement shall be commenced, erected, placed, or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with ~~the approval by the Declarant pursuant to the provisions of this article~~ article a plan approved by the Planning Board by the Town of Hampden, such improvement shall be deemed to have been undertaken in violation of this Declaration, then upon written notice from Declarant, any such improvement shall be removed or altered so as to conform to the approval ~~by the Declarant~~, and any such use shall cease or be altered so as to conform to the approval ~~by the Declarant~~ within thirty (30) days after receipt of such notice. Thereafter, any party who remains in breach of the approval shall be subject to the enforcement procedures set forth in Article VII.

3.9 STARTING TIME AND REPURCHASE OPTIONS

- a. Lots are conveyed with the intent that the owner will build thereon, and not for purposes of speculation. Conveyance of lots shall be specifically made upon the condition that commencement of construction shall begin within one year from the date of said conveyance and that substantial completion of construction, including paving of access ways, walkways and parking lots and the grading and landscaping of the surrounding grounds, shall be substantially completed within two (2) years from the date of Declarant's regulatory ~~approvals pursuant to Section 3.3~~. In the event owner shall fail to commence construction within one (~~1~~) year from the date of conveyance, the Declarant may at its option and after written notice of 30 days, declare a violation of these covenants and upon tender of the original purchase price for the lot by Declarant to owner, the owner shall, notwithstanding any improvements to the lot, execute and deliver to the Declarant a deed conveying the subject lot to the Declarant. Owner shall have no right, remedy or recourse against the Declarant for the cost or value of any improvements, nor a cause or claim for unjust enrichment, quantum merit, or other similar relief.
- b. In the event any owner of land lying within the Hampden Business and Commerce Park shall desire to sell all or part of the land which at the time is unimproved, then the Declarant shall have the prior right and option to repurchase the unimproved premises proposed to be sold at the same price per acre paid by the Owner for said land when originally acquired from the Declarant.
- c. Prior to any sale of such premises, the owner of such lot, or the owner's successors or assigns, shall notify the Declarant in writing of intention to sell, describing the premises to be sold and

the Declarant shall have sixty (60) days from the date of receipt of such notice to exercise its option, and in the absence of written notification sent by the Declarant of its election to exercise said option, such owner shall be free to sell such premises to any person and at any price deemed desirable by such owner.

- d. In the event of any repurchase by the Declarant under paragraphs a, b, and c hereof, the purchaser upon tender of the repurchase price, shall execute and deliver to the Declarant a Quitclaim Deed with Covenant to said premises conveying thereby marketable title to the same free and clear of all encumbrances, except those encumbrances contained in the original deed from Declarant.

3.10 RIGHTS RESERVED TO DECLARANT

- ~~a. The property subject to this Declaration is also subject to the reservation to the Declarant for itself, its successors and assigns, of easements and rights of way ten (10) feet in width along all front lines of all lots and as may be shown on the final subdivision plan for all purposes relating to the installation and maintenance of utilities and/or for the installation and maintenance of drainage ways and structures. 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. In addition, a 10' pedestrian easement is reserved along all property lines for the purposes of public pedestrian egress.~~
- ~~b. In recognition of the fact that Declarant, or its successors and assigns, will be undertaking the work of constructing the Hampden Business and Commerce Park, nothing in this Declaration shall be understood or construed to prevent the Declarant, or its successors, assigns, employees, agents, contractors or sub-contractors, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Park, and the disposition of lots by sale, lease, or otherwise.~~

3.11 WETLAND DISTURBANCES

No disturbances may occur within any delineated wetlands as shown on the "Site Grading and Erosion Control Plan" (Sheets CGJOI and CGI02), prepared by WBRC Architects/ Engineers, dated March 16, 2001, and recorded in the Penobscot County Registry of Deeds in Map Files 2002-275 and 2002-276, respectively, other than filling as specifically shown on said plan, unless said plan is amended with the written approval of the Declarant, and with the requisite governmental approvals. Any such amendments to said plan must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s).

3.12 BUFFER AREAS AND OPEN SPACE

No disturbances may occur within any delineated stormwater buffer treatment areas or open space areas designated on the final subdivision plan, except for the removal of dead or dying trees or shrubs, and in accordance with the requirements of the Site Location of Development Permit or

Natural Resource Protection Act Permit, as amended, unless said plan is amended with the written approval of the ~~Declarant, the Hampden Planning Board and~~ Maine Department of Environmental Protection (MDEP). Any such amendments for alternative treatment methods or areas must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s). Exceptions to this restriction include the annual maintenance or mowing of non-wooded buffers, low impact outdoor recreation and recreational trail development within open space areas retained by the Declarant, and maintenance or repair of utilities within recorded easements identified on the subdivision plan. In the event that MDEP requires that a Declaration be recorded in the Registry of Deeds, the more strict provisions shall apply.

ARTICLE IV DEVELOPMENT STANDARDS

4.1 GENERAL REQUIREMENTS

All improvements shall comply in every respect with all applicable laws and ordinances of the United States, the State of Maine, and the Town of Hampden, including zoning restrictions, landscaping, and site development standards under applicable Town of Hampden ordinances.

4.2 ~~MINIMUM IMPERVIOUS AREA SETBACK~~ (Amended 10/15/07)

~~Notwithstanding any lesser setback requirements under Town of Hampden 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.~~

~~a. — Front, side and rear setbacks — no buildings shall be placed outside the building area limit for each lot as depicted on the subdivision plan, or within 20' of a property line.~~

~~b. — Building to parking setback — no less than 5' between parking spaces and principal buildings, except no less than 20' for entrance drives.~~

~~c.a. Impervious area setbacks — n~~ No paved areas, parking spaces, loading spaces and associated driveways and access aisles shall be placed outside the impervious area limit for each lot as depicted on the subdivision plan, or within 20' of the front property line or 10' of the side and rear property lines, except for entrance drives. This minimum setback requirement shall not apply to walkways, fences (subject to the requirements set forth in Section 4.7), landscaping, irrigation systems, low planers, signage, lighting, or underground utilities.

4.3 EXCEPTIONS TO SETBACK REQUIREMENTS (Deleted ==/==/2018)

~~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 4.7;~~
- ~~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 Town of Hampden's Zoning Ordinance, and the requirements of Section 4.5 of this Declaration;~~
- ~~f. Lighting facilities, subject to the prior written approval of Declarant; and~~
- ~~g. Underground utility facilities and sewers.~~

4.4 STRUCTURES AND ARCHITECTURAL STANDARDS

The provisions of this section shall only apply to Phase 1 of the Park. (Amended 11/17/14)

- ~~a. All buildings and other site improvements shall be built in conformance with all applicable laws, including any building code adopted by the Town of Hampden or the State of Maine. (Amended 11/17/14)~~
- ~~b.a. Building primary facades (front face of building) visible from Route 202 and the Business & Commerce Park contained in Phase 1 of the final subdivision plan's road network shall incorporate design elements which create visual interest. These primary facing facades shall not be blank walls, but shall incorporate windows, entry treatments, variations in plane, variation in roof shapes, and other architectural features to create visual interest, and to distinguish them from simple industrial structures. **Development of continuous covered porches or arcades serving multiple businesses is encouraged.** Building facades shall be designed and detailed to develop a human scale, present in the appearance of commercial storefront and recognizable entry elements. For the purposes hereof, the term human scale shall mean that the building facade shall use construction products or detailing which refer to modules or scale of the human body. (Amended 11/17/14)~~
- ~~c.b. Color scheme and finish for all metal, including roofs, shall be pre-painted. Trim (window, doors, roof edge, eaves, etc.) shall be articulated by color different than the building's siding color. Generally, colors should relate to the setting (landscape). Bold hues and bright saturated colors shall be discouraged.~~
- ~~d. Buildings less than 10,000 s.f. footprint shall be proportioned such that the roof eave to ridge heights do not exceed the building facade height (ground to eave). Building footprint shall be contained within the building area limits designated on the approved final subdivision plan.~~
- ~~e. Roof slopes shall be 5"/12" minimum for buildings with footprints less than 10,000 s.f., and ½"/12" for others. Provided, however, that roof slopes for metal frame buildings with footprints less than 10,000 s.f. shall be a minimum of 3"/12". Roof eaves shall be projected 6" minimum beyond the exterior of all wall surfaces and trimmed, and 12" beyond for buildings having less than 10,000 s.f. footprint. (Amended 10/15/07).~~
- ~~f.c. Acceptable exterior materials include:

 - 1) Finished concrete.~~

- 2) Finished masonry or masonry units, such as stone, brick, structural facing tile and ceramic tile.
- 3) "Shallow" corrugated or flat metal panels.
- 4) Aluminum/glass curtain wall systems.
- 5) Wood siding, to include solid wood materials such as clapboards but not including pre-manufactured panels such as T1-11.
- 6) Architectural grade vinyl siding.
- 7) Aluminum doors and window systems.
- 8) Exterior insulation finish systems (EIFS).

4.5 SIGNS

~~No sign shall be permitted on any lot unless approved by Declarant in writing.~~

~~No sign shall be approved other than~~ Only signs identifying the building or the business of the occupant of a lot, business park identification signs, informational, and vehicular control signs, signs offering the lot for sale or lease, and temporary development signs are allowed. All signs must comply with the Hampden Zoning Ordinance ~~and the following requirements:~~

~~a. Freestanding Occupancy Identification Signs shall be no more than twelve (12) feet in height above the average grade elevation of the site around the sign; shall be located on the frontage facing the Hampden Business and Commerce Park access road, no more than twenty-five (25) feet nor less than eight (8) feet from the front property line; nor shall such signs be supported above the base or ground immediately beneath them by a single post. They shall be unlit, or indirectly lit by either back lighting through opaque sign facing or by spotlight. No neon, no intermittent or moveable character signs shall be permitted.~~

~~b. Occupant Identification Signage on a Building shall not extend above a parapet or eaves line (or obscure such building line) and shall not be erected on more than two walls of any building.~~

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

4.6 LANDSCAPING

Within ninety (90) days following completion of construction each lot shall be landscaped in accordance with the plans and specifications, except when the completion of the landscaping would impose a great hardship upon the applicant 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 a combination of trees, shrubs, and other ground cover providing a buffer and transition zone from streetscape to site. All other undeveloped portions of a lot shall be landscaped in a complementary and similar manner.

- b. The perimeters of parking areas shall be landscaped with year round plant material or earth berms or a combination of both to screen said areas from view and lessen the impact on neighboring sites.
- ~~c. Within parking areas, parking spaces shall be broken up by landscaped islands such that for every 20 parking spaces there is one landscaped island containing at least 650 square feet, at least one deciduous tree, and planted with low shrubbery.~~
- d. After completion, such landscaping as is herein required shall be maintained in a ~~sightly and~~ well-kept condition. ~~If, in Declarant's reasonable opinion, the required landscaping is not maintained in a slightly and well-kept condition, Declarant shall be entitled to the remedies set forth in Article VII.~~
- ~~e. Minimum planting sizes:~~
 - ~~Deciduous shade trees — 2" Caliper~~
 - ~~Coniferous trees — 5-7' Height~~
 - ~~Deciduous shrubs — 18-24"~~
 - ~~Coniferous shrubs — 18-24"~~
- ~~Planting sizes may be waived at the Declarant's discretion and approval by landscape architect.~~
- f. (Deleted 11/17/14)

The applicant ~~shall~~ may be required, as a condition of Site Plan approval, to provide a suitable performance bond or other form of security to guarantee the performance and completion of all planting required pursuant to this section, which bond or security shall also guarantee plantings for a period of one (1) year after installation.

Landscaping shall be maintained thereafter by the property owner at a level consistent with the site approved plan approval. ~~In determining the amounts of planting to be required, the Declarant shall take into account:~~

- ~~1) Existing trees, shrubs, evergreens and other vegetation to be preserved on the site.~~
- ~~2) Visibility of incompatible or unsightly areas from roads and/or adjoining — properties.~~
- ~~3) Shade trees and landscape strips in relation to existing and planned streets.~~

4.7 FENCES

All fences are subject to the provisions of this section.

- a. A fence six feet high or less may be placed up to but not on a property line so that both sides of the fence can be erected and maintained from the property of the person erecting the fence.
- b. A fence more than six feet high shall be considered a structure subject to normal setback requirements for the zoning district, unless otherwise approved by the Declarant during site plan review.
- c. A fence shall be erected so that its "good side" shall face an abutting property or roadway.
- d. Any fence located adjacent to a publicly owned or maintained sidewalk, bike path or pedestrian way shall not be located closer than two feet to such public facility.

- e. The Declarant reserves the right to approve the location and design of all fences, and no fence shall be constructed without written approval from the Declarant.

4.8 PARKING AREAS, LOADING AREAS, AND DRIVEWAYS

~~Off-street parking adequate to accommodate the parking needs of the development and the employees and visitors thereof shall be provided for each Lot. The intent of this provision is to eliminate the need for any on-street parking. If parking requirements increase as a result of a change in the use of a lot or in the number of persons employed thereon, 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, all weather surfaces.
- ~~b. Each parking space provided shall be designated by lines painted upon the paved surface.~~
- ~~e.b.~~ Provision shall be made on each site for any necessary vehicle loading, and no on-street vehicle loading shall be permitted.
- ~~d.c.~~ Loading dock areas shall be set back, recessed, or screened to minimize visibility from neighboring properties or streets.
- ~~e.d.~~ No more than one (1) entrance or exit driveway per Lot shall be permitted except in extraordinary circumstances approved by the Declarant, acting through its Planning Board during Site Plan Review, or as identified on the master plan.

4.9 STORAGE AREAS

All storage of bulk materials, including but not limited to such things as coal, wood, pulp, raw materials shall be located completely within a building or other space adequately screened from public view, ~~as approved by the Design Review Board~~ as determined by the Code Enforcement Officer. Any fences, walls or plantings used for such screening purposes shall be located not less than twenty (20) feet from any property line. Outside storage of materials, supplies, or equipment, including trucks or other motor vehicles, shall be permitted only if:

- a. The material, equipment, or objects stored outside are necessary and accessory 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, as determined by the Design Review Board.~~
- c. The area is screened on the sides and harmonizes with the architecture, landscaping, design, and appearance of neighboring structures and other surroundings, ~~and in reasonably close conformance to the master plan;~~ and
- d. The area is located upon the rear portions of a lot, unless otherwise approved in writing by Declarant, acting through its Planning Board during Site Plan Review.

4.10 LIGHTING

~~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.~~ Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent ~~residential areas~~ ~~properties~~ and public highways. Lights shall be of a "downshield luminaire" type where the light source is not visible from any public highway or from adjacent properties.

~~Only fixtures, which are shielded, do not expose a light source, and which do not allow light to "flood" the property are permitted to be attached to buildings. All lighting must be approved in writing by Declarant.~~

~~When illumination is required for part or all of a structure, the illuminating device shall be designed, located and adjusted so as to not cast light directly on adjacent properties or roadways.~~

4.11 SPECIAL PROVISIONS

~~In addition to the requirements of Section 4.1-4.8, site plans for development in the Hampden Business and Commerce Park shall be consistent with the requirements of this sub-section. The Hampden Business and Commerce Park is to become a pleasant commercial area in which all visual and functional elements form an integrated design plan. Route 202 connects Hampden and Bangor centers and the site lies in the path of planned recreation trails and alternative transportation links. Site plans for proposed new developments must acknowledge this basic pattern and reinforce it by defining public spaces and walkways, and by providing appropriate landscaping and features.~~
~~Design Requirements~~

- a. New buildings shall be sited to create pleasant outdoor spaces, and to create visual and pedestrian linkages between existing buildings.
- b. Public spaces shall be created to connect to and reinforce the circulation pattern and recreation paths. These public spaces shall be designed at a human scale and furnished with appropriate features such as benches, plantings, public sculptures, bike racks, and pedestrian scaled and styled light fixtures.
- c. Public walkways shall be created and shall be suitably landscaped and furnished with attractive pavement, plantings, pedestrian scaled and styled light fixtures, and other amenities.
- d. The location and design of buildings, public spaces and walkways shall create pleasant and effective termini for views to and from the site.
- e. The southerly views from this area towards the agricultural land and Penobscot River beyond are an important public resource. Prominent public vantage points for these views must be identified and the visual corridors from these vantage points to this resource must be protected and enhanced. Building envelopes have been defined which will prevent these visual corridors from being interrupted by new buildings or landscaping.
- f. The wetlands and waterways shall be utilized as the focal point for the public open space, which shall be designed as a more natural open space rather than developed parks, plazas, or greens.

The open space should be accessed by walkways and bikeways, and should be accessible from the buildings.

ARTICLE V USES AND OPERATIONS

5.1 NO FURTHER SUBDIVISION OF LOTS

~~No lot as shown on the Final Subdivision Plan shall be subdivided without the prior approval of the Declarant and the Hampden Planning Board. No building shall be constructed, erected or placed on any lot other than shown on said Plan, or an amended subdivision plan as approved by the Planning Board and recorded in the Penobscot County Registry of Deeds.~~

5.2 PERMITTED USES

Lots shall be used for light manufacturing, assembly, research and testing laboratories, professional and other business offices, call centers, warehouses and other acceptable uses permitted by the Town of Hampden Zoning Ordinance, ~~provided that Declarant specifically consents to such use in writing.~~ (Amended 11/17/14)

~~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, such as, 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). 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 highly 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.~~

5.3 PROHIBITED USES

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

- a. Junk yards; wrecking yards; automobile graveyards; or automobile recycling business;
- b. Recycling facilities (unless accessory to the primary activities regularly conducted on the premises);
- c. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
- d. Refining of petroleum or of its products;
- e. (Deleted 11/17/14)

- f. Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III;
- g. Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse;
- h. Uses prohibited by federal, state, or local law, including applicable Town of Hampden Zoning Ordinance provisions; (Amended 11/17/14)
- i. No use shall 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 Town of Hampden without approval of the Town of Hampden;
- j. Non-taxable uses are prohibited unless approved by the Hampden Town Council because they are generally inconsistent with the goals of Recital 4 above.

5.4 NUISANCES

No nuisances shall be permitted to exist or operate upon on 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 waterways that, in the opinion of the Declarant, may adversely affect the health, safety, comfort, 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 regulation of the Town of Hampden;
- b. The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substances 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 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, be offensive or detrimental to any adjacent lot or property or to its occupants, ~~as determined by the Design Review Board;~~
- 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 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.
- g. Trash and refuse outdoors if not contained in a proper receptacle in a refuse collection area.
(Amended 11/17/14)

5.5 CONDITION OF PROPERTY

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, ~~as~~ at its own expense, in all respects with all applicable governmental, health, fire, and safety ordinances, regulations, requirements, and directives, and the occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such lot.

5.6 MAINTENANCE OF GROUNDS

Each occupant shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on his/her 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. Each occupant shall be responsible for:

- 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 therefor 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.

5.7 REMEDIES FOR FAILURE TO MAINTAIN AND REPAIR

Each lot owner and occupant thereof shall promptly maintain and repair their premises per Article V but if owner or occupant shall fail to do so after fifteen (15) days written notice by Declarant, then the Declarant may pursue those remedies described in Article VII.

5.8 REFUSE COLLECTION AREAS

All outdoor refuse collection areas shall be screened to minimize visibility from neighboring property or streets and setback at least ten (10) feet from the Street right-of-way. No refuse collection area shall be permitted between a subdivision street and the front of a building.

5.9 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.

5.10 PUBLIC UTILITIES

Declarant reserves the exclusive right to approve installation of utility lines across the subject property. Declarant will consult with any Lot owner before such installation and shall attempt to accommodate Lot owner concerns. The appropriate governmental authority must approve the construction and operation of public utilities in rights-of-way dedicated to the public.

5.11 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. Notwithstanding the requirements of the Hampden Zoning Ordinance, no antenna or tower 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, which shall not be unreasonably withheld. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone power or telephone facilities incidental to the construction or repair of buildings on the subject property.

5.12 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, and shall not be visible from neighboring properties or street rights of way as defined in Article I.

5.13 MINERAL EXPLORATION

No portion of the subject property 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 mineral 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.

5.14 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 Article III of 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~~ AMENDMENT AND REPEAL

6.1 ~~MODIFICATION~~ AMENDMENT OR REPEAL BY DECLARANT

The Declarant, at its sole discretion, may ~~modify or~~ amend or repeal the provisions of this Declaration or any portion thereof, provided, however, that:

- a. Prior to any such ~~modification or~~ amendment or repeal, Declarant shall obtain the approval of any governmental agency to such ~~modification or~~ amendment or repeal where such approval is necessary;
- b. A public hearing on the proposed amendment or repeal will be held by the Town Council;
- c. No such ~~modification or~~ amendment or repeal shall be effective until the owners and occupants have been given thirty (30) days prior written notice of the proposed change, that any revisions from the advertised amendments made within the public hearing fall within the scope of the advertised amendments, and that upon approval by the Town Council a proper instrument in writing has been executed and recorded.

ARTICLE VII

ENFORCEMENT

7.1 ABATEMENT AND SUIT

The Declarant may enforce any breach or violation of the provisions of this Declaration in either the Superior Court of Penobscot County or the U.S. District Court, Bangor, Maine. In the event the Declarant seeks legal redress, the Declarant may pursue, at its option, both the owner and any related or non-related occupant for money damages, specific performance or any other form of legal or equitable relief. Notice of violation or breach of any covenant, condition or restriction or provision of this Declaration shall be provided by the Declarant in writing, and upon a failure to correct or abate said violation after 30 days, Declarant may pursue such legal or equitable action. In addition to the above remedies, if such violation shall continue for more than 30 days, the Declarant may enter upon the lot where said violation or breach exists and summarily correct, abate or

remove, at the expense of owner and/or occupant, any improvements, structure, thing or condition deemed by the Declarant to be in violation of or contrary to the provisions of this Declaration. No such entry by the Declarant or its agents shall be deemed a trespass, nor shall the Declarant or its agents be liable for any actions taken hereunder to remedy or remove a violation. All costs incurred by Declarant shall be levied as an assessment against the owner of the lot(s) in question. If any such assessment is not paid within thirty (30) days of an invoice therefor issued by Declarant, such assessment shall then become delinquent and shall, together with interest thereon at the rate of twelve (12) percent per annum and the cost of collection thereof (including reasonable attorney's fees) become a continuing lien on the lot(s) against which such assessment is made and shall bind such lot(s) in the hands of the owner(s), and the owner's successors and assigns, and shall also be a continuing personal obligation of the owner(s) against whom the assessment is levied. The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a financial institution.

7.2 RIGHT OF ENTRY

During reasonable hours and upon reasonable notice and subject to reasonable security requirements, Declarant, or its agents, shall have the right to enter upon and inspect any lot and the improvements thereon covered by this Declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

7.3 DEEMED TO CONSTITUTE A NUISANCE

The result of every act or omission whereby any covenant, condition, or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an owner or occupant shall be applicable against every such result and may be exercised by Declarant.

7.4 ATTORNEY'S FEES

In the event the Declarant initiates any legal or equitable action to enforce these covenants, and it prevails in that action, the Declarant shall be entitled to its reasonable attorney's fees. In no event and under no circumstances shall Declarant be responsible for owner's or occupant's attorney's fees.

7.5 FAILURE TO ENFORCE IS NO WAIVER

The failure of Declarant to enforce any covenant, condition, restriction, or provision of this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor to the right to enforce any other restriction.

**ARTICLE VIII
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, the assignee 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 made under this article shall be recorded in the Registry of Deeds.

**ARTICLE IX
CONSTRUCTIVE NOTICE AND ACCEPTANCE**

Every person or entity who now or hereafter owns or occupies any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, regardless of whether any reference thereto is made in any document by which that person acquired an interest in the subject property.

**ARTICLE X
WAIVER AND FAILURE TO ENFORCE**

The Declarant may after public hearing, waive one or more of the covenants, conditions, and restrictions contained in this Declaration. Neither Declarant, nor its successors or assigns, shall be liable to any owner or 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. No owner or occupant of property in the Hampden Business and Commerce Park may bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

**ARTICLE XI
RUNS WITH LAND**

All covenants, conditions, restrictions, and provisions contained in this Declaration 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 or occupants of all lots, their heirs, successors, and assigns; and shall, as to the owner or occupant of each lot, their heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other lots, except as herein provided otherwise.

**ARTICLE XII
RIGHTS OF MORTGAGEES**

No breach of any covenant, condition, restriction or provision herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any mortgage now or hereafter granted on the subject property or a portion thereof, provided, however, that if any portion of said property is transferred under a foreclosure of any mortgage or by a deed in lieu of foreclosure, any successors and assigns shall hold any and all property so transferred subject to all of the covenants, conditions, restrictions and provisions contained in this Declaration.

**ARTICLE XIII
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 XIV
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.

**ARTICLE XV
NOTICES**

Any notices required to be sent to any owner or occupant under the provisions of this Declaration shall be deemed to have been properly sent when mailed by U.S. mail, postage prepaid, to the last known address of the person as it appears in the records of the Assessor of the Town of Hampden. Owner and occupant shall notify the Assessor of any change of address.

IN WITNESS WHEREOF, the Town of Hampden has caused this Second Amended and Restated Declaration to be duly executed on its behalf as of this ____ day of September, 2015~~2018~~.

Town of Hampden

Witness

By: _____
Angus G. Jennings
Its Town Manager

STATE OF MAINE
PENOBSCOT, ss.
~~2015~~2018

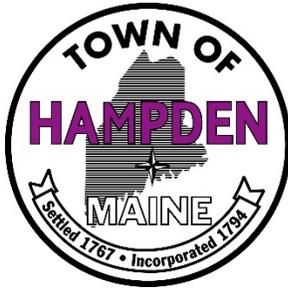
September _____,

Personally appeared the above-named Angus Jennings in his stated capacity and acknowledged the foregoing instrument to be his free act and deed in such capacity and the free act and deed of said Town of Hampden.

Before me,

Notary Public

Printed Name: ~~DENISE R. HODSDON~~



Town of Hampden
Land & Building Services

Memorandum

To: Angus Jennings, Town Manager
 From: Karen M. Cullen, AICP, Town Planner *KMC*
 Date: December 27, 2017
 RE: Update on Amendments to Zoning and Shoreland Zoning Ordinances

This table provides a status update on zoning amendments since January 2017.

Topic	Ord, Section(s)	Status/Comments
Shoreland Zoning	SZO	CEO drafted wholesale revision by starting with State "model" and revising to fit Hampden; first draft under review by staff
Use table	ZO, New section	As of Dec. 2017, PB reviewing with Planner
Dimensional table	ZO, New section	Drafted, undergoing edits; will be reviewed with PB early in 2018
Article 3, Districts	ZO	Drafting in progress, includes numerous amendments to other Articles and includes the Use and Dimensional tables; will be reviewed with PB early in 2018
Retail marijuana phase 1 (prohibit sales & clubs)	ZO, 7.2	Adopted; effective December 20, 2017
Retail marijuana phase 2 (regulate cultivation, testing, and product manufacture)	ZO, Unknown	To be drafted; working with Chief Rogers. On hold pending State action on amendments to the Legalization of Marijuana Act, expect some action (possibly extension of state moratorium) early in 2018
Medical marijuana	ZO, 4.24	Edits to be drafted to make consistent with state law (distance to schools, etc.)
Town center	ZO, Various	To be drafted after policy direction set. Some amendments being done above (Articles 3 & 4) will advance town center redevelopment; public meetings/workshops will be coordinated with that effort.
Filling, Grading, & Stockpiling and Gravel extraction	ZO 4.9, 4.23	Policy intent: repeal 2007 amendments (retain amendments needed for consistency with statute); to be drafted after Article 3 work completed.
Official Zoning Map	ZO, 2.2	Referred to PB; expected to be scheduled in Sept; currently on hold pending issues related to Shoreland Zoning.
Housekeeping edits	ZO, Various	Numerous relatively minor amendments throughout the Zoning Ordinance to address inconsistencies and things that make no sense; e.g. Conditional Lot Dimensions (flag lots). To be drafted after Article 3 work is complete.

Accessory apartments	ZO, New §4.25	Adopted; effective June 14, 2017
Home occupations	ZO, 4.10	Adopted; effective May 18, 2017
Flexibility in parking, buffer, and signage standards	ZO, 4.7, 4.8	Adopted; effective May 31, 2017
Article 1; process to amend the ZO	ZO, article 1	Adopted; effective May 31, 2017
Permits; specifically certificates of compliance and occupancy	ZO, 5.3, 7.2	Adopted; effective Sept. 6, 2017
Definitions; processing, transfer stations	ZO, 7.2	Adopted; effective Sept. 6, 2017
Recodification	All	Decision to not pursue at this time.

In regards to the work on Article 3, the proposed use table has been drafted and is currently under review by the Planning Board with the Town Planner. There are numerous questions that arose when working through the uses currently allowed in the various districts which are being discussed and answered during this review process. In addition, there are many changes proposed to the definitions section (7.2) of the ordinance, both to existing definitions and adding new ones to ensure the uses listed in the table are clearly understood. The current ordinance includes many caveats to permitted uses, which are not uniform among the various districts. To deal with this, the proposed Article 3 includes a section following the use table which addresses specific criteria which a use (by-right or conditional) must meet in certain situations.

Article 3 also includes the dimensional requirements for each zoning district. This information is also being converted to table format, and is currently being drafted. The Planning Board will review this section with the Town Planner following the review of the use table and related language.

Related modifications to other articles are also being drafted, so far these include moving the purpose statements for each district to Article 2, changes to 4.6 regarding cluster housing, and changes to 4.7.4 regarding bufferyards.

It is expected that all of Article 3 and the affected sections of Articles 2, 4, and 7 will be drafted by the end of January, and the Planning Board review should be completed by the end of February. I plan to bring the proposed Article 3 to one of the Planning & Development Committee meetings in March to bring the committee up to speed on the work done to date, and then to begin the formal adoption process with a public hearing before the Planning Board in April. Public educational materials will be produced as well, likely in February and March.