



**Declaration of Covenants, Conditions and Restrictions**  
for development at the  
**Manhattan Corporate Technology Park**  
Manhattan, Kansas

BOOK **772** PAGE **540**

This Declaration of Covenants, Conditions and Restrictions (CCRs) for the Manhattan Corporate Technology Park (the "Park") is hereby made this 14<sup>th</sup> day of January, 2000, by the City of Manhattan, Kansas, a municipal corporation, and hereinafter sometimes referred to as the "City", or the "Declarant"; SSF Development, LLC, a Kansas Limited Liability Company, hereinafter sometimes referred to as "SSF"; and Western Wireless Corporation, a Washington Corporation authorized to do business in Kansas, hereinafter sometimes referred to as "Western Wireless". These Covenants, Conditions and Restrictions shall establish terms and conditions for the development and use of property within the Park. These Covenants, Conditions and Restrictions run with the land and are legally binding on all property owners. These CCRs are intended to protect the value, desirability and attractiveness of all lots within the Park.

**WITNESSETH:**

- A. **WHEREAS**, the City, SSF and Western Wireless are all of the owners of certain real property in Riley County, Kansas. Such property is described as: Lots 4-5, Unit 2; Lots 6-9 and 11-29, Unit 3; and Lot 10, Unit 4, all in Manhattan Corporate Technology Park, an addition to the City of Manhattan, Riley County, Kansas. The above mentioned Lots are all of the real property subject to this Declaration. The above mentioned Lots, along with Lots 1-3, Unit 1 of Manhattan Corporate Technology Park, are together commonly known as Manhattan Corporate Technology Park (the "Park"); however, Lots 1-3 of Unit 1 are **not** subject to this Declaration, nor are such Lots entitled to enforce, or enjoy, any of its provisions. For the Purposes of this Declaration only, the term "Park", when used herein shall **not** include Lots 1-3 of Unit 1. The City previously owned the entirety of the Park, as well as Lots 1-3 of Unit 1; however, Lots 1-3 of Unit 1 were transferred to Sykes Realty, Inc., a Florida Corporation ("Sykes"); Lot 5 in Unit 2 has been transferred to SSF and Lot 28, Unit 3 has been transferred to Western Wireless. At the time of such transfer to SSF and Western Wireless, the parties understood and agreed that their Lots would be subject to these CCRs, to the same extent as the remainder of the Park and that such is a benefit to said owners, and therefore, said owners join in the execution hereof; however, no such understanding existed at the time of transfer to Sykes, and although Sykes has been given the opportunity to join in this declaration, they have declined; and,
- B. **WHEREAS**, the Park is being developed as a planned business park. It is the desire and intention of the City of Manhattan to subject the Park to certain covenants, conditions and restrictions for the benefit of the Park, the City of Manhattan, and the purchasers of lots in Park. It is intended that such covenants, conditions and restrictions bind and benefit not only said purchasers and the City of Manhattan, but also their respective successors, heirs,

executors administrators and assigns, and that all lots in the Park should be held, used, leased, sold and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration; and,

- C. **WHEREAS**, it is the intention of the City of Manhattan 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 Park and to enhance and protect the value, desirability and attractiveness of all such lots to their mutual benefit; and,
- D. **WHEREAS**, the City may, pursuant to the provisions set forth herein, cause to be incorporated under the laws of the State of Kansas, as a non-profit corporation, an Association known as "Manhattan Corporate Technology Park Owner's Association", hereinafter the "Association", for the purpose of preserving the values and amenities of the Park by owning, maintaining, and administering certain common areas and facilities located on and off the described property and enforcing covenants, conditions, and restrictions and collecting and disbursing the assessments as herein provided:

**NOW THEREFORE**, the City, SSF and Western Wireless hereby declare that all of the property described above (the Park) shall be held, sold, conveyed, occupied, developed, and redeveloped subject to the following easements, restrictions, covenants, and conditions, as well as the Articles of Incorporation and Bylaws of the Association, which are all for the purpose of complying with all requirements of the foregoing municipality and protecting the value and desirability of, and which shall run with, the real property (the Park) and shall be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, executors administrators and assigns, and shall inure to the benefit of each Owner thereof and the City of Manhattan.

**ARTICLES**

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## ARTICLE 1. DEFINITIONS

The following words and phrases shall have the meaning as indicated herein.

*Area 1.* Lot 4, Manhattan Corporate Technology Park, Unit 2; Lots 27, 28 & 29, Manhattan Corporate Technology Park, Unit 3; and Lot 10, Manhattan Corporate Technology Park, Unit 4.

*Area 2.* Lot 5, Manhattan Corporate Technology Park, Unit 2; and Lots 6 - 9 and Lots 11- 26, Manhattan Corporate Technology Park, Unit 3.

*Beneficiary.* A mortgagee under a mortgage, as well as a beneficiary under a deed of trust.

*Declarant.* The City of Manhattan.

*Declaration.* This Declaration of Covenants, Conditions and Restrictions for the Manhattan Corporate Technology Park, as it may from time to time be amended or supplemented.

*Deed of Trust.* A mortgage as well as a deed of trust.

*Front Facade.* The exterior walls of a building, which face a public street.

*Improvement(s).* Buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, 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, construction, installations, and landscaping of every type and kind, whether above or below the land surface.

*Lot.* A fractional part of the subject property as subdivided and recorded from time to time in the Office of the Recorder of Riley County, Kansas.

*Mortgage.* A deed of trust as well as a mortgage.

*Mortgagee.* A beneficiary under, or holder of, a deed of trust, as well as a mortgagee under a mortgage.

*Net Acreage.* The total number of square feet of land of the subject property, less any square feet of land included in dedicated streets, roadways, parks, or natural open space.

*Occupant.* A lessee or licensee of an owner, or any other person or entity other than an owner in lawful possession of a lot with the permission of the owner.

*Owner.* (i) the person, or persons, or entity holding record fee title to any portion of the property, or (ii) the lessee or lessees entitled to occupy all of a parcel under a lease for a fixed term of thirty years or longer (in which case the fee owner of the parcel demised by such lease shall not be deemed to be the owner of such parcel for purposes of this declaration during the term of said lease). In the event that the ownership of the land, whether by lease or by deed, is different, or separate, from the ownership of the improvements thereon, only the owner of the improvements shall be deemed an owner hereunder and shall be entitled to act on behalf of the owner of the land for all purposes hereunder.

*Property Line.* The boundary of every lot.

*Record--Recorded--Recordation.* With respect to any document, the recordation of said document in the office of the Recorder of Riley County, Kansas.

*Sign.* Any structure, device, or contrivance, electric or nonelectric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted, or otherwise fastened or affixed.

*Street or Streets.* Any street, highway, road, or thoroughfare within or adjacent to the subject property and shown on any recorded subdivision or parcel map, or record or survey, whether designated thereon as street, boulevard, place, drive, road, court, terrace, way, lane, circle, or otherwise.

*Subject Property.* Manhattan Corporate Technology Park and each lot therein, and shall mean all of the real property now or hereafter made subject to this declaration.

*Visible from Neighboring Property.* With respect to any given object on a lot, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent lot or other property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 2. SUBJECT PROPERTY

Declarant hereby declares that the Park, and all portions thereof, is, and shall be conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved, or transferred in whole or in part, subject to this declaration. All of the covenants, conditions, and restrictions set forth herein are declared and agreed to be in furtherance of a 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 covenants, conditions, and restrictions shall run with all of the subject property for all purposes and shall be binding upon and inure to the benefit of Declarant and all owners, occupants, and their successors in interest as set forth in this declaration.

## ARTICLE 3. REGULATION OF OPERATIONS AND USES

### 3.1 Permitted Uses

The development of the Park is divided into two separate land use Areas. The two Areas have been defined herein as "Area 1" and "Area 2". Each such area has specific permitted uses, as more fully set forth below. Such approved uses 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, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or nontoxic matter (including steam), nor create a potential for explosion or other hazard. Certain activities, such as storage of large or bulky material, which cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in writing, and further provided such activity is screened so as not to be visible from neighboring property and streets. All lighting is to be shielded so as not to produce glare visible from neighboring property.

### 3.2 Uses Permitted in Area 1

Area 1 is designated for certain light-industrial uses, research and development uses, industrial support and service uses, and business and professional office uses. The Declarant may amend this Section 3.2 from time to time to allow other and different uses. The following operations and uses are permitted within Area 1:

- 3.2.1 Art and handicraft fabrication or processing
- 3.2.2 Assembly of electronics, household appliances or equipment
- 3.2.3 Bookbinding and publishing
- 3.2.4 Business and professional offices
- 3.2.5 Corporate headquarters
- 3.2.6 Manufacturing of pharmaceutical products
- 3.2.7 Garment or apparel production
- 3.2.8 Government buildings
- 3.2.9 Instrument fabrication or processing
- 3.2.10 Mail order houses
- 3.2.11 Optical goods fabrication or processing
- 3.2.12 Research facilities
- 3.2.13 Stationary and paper products
- 3.2.14 Banks and financial institutions
- 3.2.15 Health, fitness and service clubs
- 3.2.16 Hotels
- 3.2.17 Child Care facilities
- 3.2.18 Public Utilities
- 3.2.19 Convention centers, exhibit halls and meeting rooms
- 3.2.20 Any use specifically authorized by action of the Declarant pursuant to Section 3.5.

### 3.3 Uses Permitted in Area 2

Area 2 is designated for certain light- and medium-industrial uses, research and development uses, and industrial support and service uses. The Declarant may amend this Section 3.3 from time to time to allow other and different uses. The following operations and uses are permitted within Area 2:

- 3.3.1 Warehousing and Wholesale Distribution
- 3.3.2 Welding Shops
- 3.3.3 Machine Shops
- 3.3.4 Tool and Die Shops
- 3.3.5 Tool and Appliance Repair
- 3.3.6 Electric Motor Repair
- 3.3.7 Electrical, Heating, Plumbing or General Contractors
- 3.3.8 Printing and Publishing
- 3.3.9 Manufacturing, fabrication, processing, treatment, packaging or assembly of semi-finished materials into final products including any of the following:
  - (a) electronics
  - (b) instruments
  - (c) appliances
  - (d) equipment
  - (e) machinery
  - (f) vehicles
  - (g) aircraft or aircraft components
  - (h) food products
  - (i) clay products
  - (j) glass products
  - (k) leather products
  - (l) rubber products
  - (m) wood products
  - (n) metal products
  - (o) signs
  - (p) textiles and apparel
  - (q) pharmaceutical products
- 3.3.10 Government Buildings
- 3.3.11 Public Utilities
- 3.3.12 Research Facilities
- 3.3.13 Any use specifically authorized by action of the Declarant pursuant to Section 3.5.

#### 3.4 Prohibited Uses

The following operations and uses are prohibited, as either a principal use or accessory use, within the Park:

- 3.4.1 Residential use of any type, except quarters for a night watchman
- 3.4.2 Trailer courts or recreational vehicle campgrounds
- 3.4.3 Junkyards or recycling facilities
- 3.4.4 Drilling for and removing oil, gas, or other hydrocarbon substances
- 3.4.5 Refining of petroleum or any of its products

- 3.4.6 Commercial petroleum storage yards
- 3.4.7 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 3
- 3.4.8 Distillation of bones
- 3.4.9 Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse
- 3.4.10 Fat rendering
- 3.4.11 Stockyard or slaughter of animals
- 3.4.12 Smelting of iron, tin, zinc, or any other ore or ores
- 3.4.13 Cemeteries
- 3.4.14 Jail or honor farms
- 3.4.15 Labor or migrant worker camps
- 3.4.16 Humane societies or any kennels for animals
- 3.4.17 Salvage yards
- 3.4.18 Underground storage of any type of hazardous material including, but not limited to, petroleum or any of its products, or any liquid, solid or gas that would be potentially hazardous or harmful if leaked into the groundwater system
- 3.4.19 Hospitals
- 3.4.20 Radio and television broadcasting stations
- 3.4.21 Automobile rental service
- 3.4.22 Car washes
- 3.4.23 Fuel storage and wholesale distribution
- 3.4.24 Large truck and equipment repair
- 3.4.25 Building maintenance services
- 3.4.26 Laundry, dry cleaning and carpet cleaning
- 3.4.27 Motor vehicle and tire repair
- 3.4.28 Freestanding towers
- 3.4.29 Any use not authorized as a permitted use shall not be allowed, except as provided in Section 3.5.

### 3.5 Other Operations and Uses

Operations and uses which are of a similar nature to those permitted in either Section 3.2 or 3.3, but are neither specifically prohibited nor specifically permitted by this declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by Declarant. Such similar operations and uses shall only be permitted in the same Area as the uses to which they bear similarity. Approval or disapproval of such operations and uses shall also be based upon the effect of such operations or uses on other property subject to this declaration or upon the occupants thereof, and shall be in the sole discretion of Declarant. Declarant may establish the procedure to be followed in obtaining approval hereunder, including granting authority to the City Manager or his/her designee to provide such approval.

### 3.6 Non-Conformities

Any use which was established in conformity with Sections 3.2, 3.3 or 3.5 of this declaration shall not be affected by the subsequent amendment of those Sections as long as such use continues.

### 3.7 Nuisances

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

- 3.7.1 Any use, excluding reasonable construction activity, of the lot which emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any waterway, and which, in the opinion of Declarant, may adversely affect the health, safety, comfort of, or intended use of their property by persons within the area;
- 3.7.2 The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substance into the atmosphere in which the 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 which may be harmful to property or vegetation;
- 3.7.3 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;
- 3.7.4 Any vibration, noise, sound, or disturbance which, in the opinion of Declarant, is objectionable due to intermittence, beat, frequency, strength, shrillness, or volume.

### 3.8 Use Limitations with Respect to Manhattan Regional Airport

Notwithstanding any other provision of these Covenants, Conditions and Restrictions, no use may be made, or conditions allowed to exist, on the subject property in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft; make it difficult for pilots to distinguish between airport lights and other lights; result in glare in the eyes of pilots using the airport; create bird strike hazards; impair visibility in the vicinity of the airport; or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. In addition, the following restrictions shall be followed with respect to preventing interference with the Very High Frequency Omnidirectional Range (TVOR) antenna: structures should be at least 1,000 feet from the TVOR; metal structures beyond 1,000 feet should not penetrate a 1.2 degree angle measured from the antenna base (elevation 1055); nonmetal structures beyond 1,000 feet should not penetrate a 2.5 degree angle measured from the antenna base; metal fences and overhead power lines should be 500 feet from the antenna; and telephone lines should be at least 1,200 feet from the antenna.

### 3.9 Condition of Property

The owner and/or occupant of any lot shall at all times keep it and the buildings, improvements, and appurtenances thereon in a safe, clean, and wholesome condition and comply at its own expense, in all respects, with all applicable governmental, health, fire, and safety ordinances, regulations, requirements, and directives; and the owner and/or occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever which may accumulate upon such lot.

### 3.10 Maintenance and Repairs

Each lot and all improvements thereon, including all concrete terrace drains, shall at all times be constructed, kept, and maintained by the owner or occupant of the lot in first-class condition, repair, and appearance similar to that maintained by other owners of high-class properties of similar class and construction in the City of Manhattan. All repairs, alterations, replacements, or additions to improvements shall be at least equal to the original work in class and quality. The necessity and adequacy of such repairs shall be measured by the same standard as set forth above for the original construction and maintenance, and shall be in compliance with the Design Guidelines contained in Section 6.

### 3.11 Refuse Collection Areas

All outdoor refuse collection areas shall be completely enclosed and screened by a constructed wall of durable material not less than six (6) feet in height. All such areas shall have concrete floors and shall be sufficient in size to contain all refuse generated on each lot, but in no event smaller than six (6) feet by eight (8) feet. No refuse collection areas shall be permitted between a street and the front of a building.

### 3.12 Public Utilities

Declarant reserves the sole right to grant consents for the construction and operation of public utilities including, but not limited to, storm sirens, poles or lines for electricity, telephone or other communications or data transfer facilities, above- or below-ground conduits, and gas pipes in and upon any and all streets, or public easements, now existing or hereafter established upon the subject property, or upon which any portion of the subject property may now or hereafter front or abut. Notwithstanding the provisions of Section 5.2, Declarant reserves the exclusive right to approve above-ground utility lines across the subject property or any portion thereof on a temporary basis for the purpose of construction, and such lines shall be permitted when required by a government agency.

### 3.13 Utility Lines

No water, sanitary sewer, or utility lines or wires or other devices for the transmission of electric current or power, shall be constructed, placed, or maintained anywhere in or upon any portion of the subject property other than within buildings or structures, unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under buildings or other structures. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of buildings on the subject property.

### 3.14 Antennas and Other Communication Devices

No antenna for the transmission or reception of telephone, television, electronic data, microwave or radio signals shall be placed on any building, or other improvement, or lot within the Park unless:

- (i) Such antenna shall be so located that it is screened from view at street-level on the street-fronting side(s) of the property in question. (The Architectural Review Committee reserves the right to withhold this provision if the antenna would cause objectionable views to neighboring parcels or districts near the building); or,
- (ii) If the Architectural Review Committee determines that its placement and/or screening is such that it would have an insignificant visual impact on other occupants of the Park and neighboring parcels.

3.14.1 Up to two (2) satellite dish antennas of less than one meter in diameter or similarly sized receive-only antennas may be installed on buildings without limitations. Three (3) or more satellite dish antennas and/or receive-only antennas may be installed on buildings, or the ground, if screened from view on a year-round basis, as approved by the Architectural Review Committee.

3.14.2 Screening and/or stealth technology may be used to mitigate objectionable views of antennas. Said screening shall be made of acceptable building or landscape materials, as approved by the Architectural Review Committee.

3.14.3 Antennas shall not exceed the 40 foot building height limitation.

### 3.15 Excavation

No excavation of the subject property or any lot therein shall be made except in connection with construction of an improvement, and upon completion, exposed openings shall be back-filled and disturbed ground shall be graded, leveled, and restored to its original condition.

### 3.16 Noise-Sensitive Uses

The easterly property line of the Park is contiguous to an operating airport (the Manhattan Regional Airport) which produces noise and vibrations. Sound-sensitive or vibration sensitive industries should consider this fact when deciding to locate within the Park, and Declarant recommends that sound attenuation measures be incorporated into all buildings constructed within the fifty-five (55) day-night noise level (DNL) contour. All owners are hereby placed on notice of the likelihood of noise and vibration emanating from the airport and by accepting title to property within the Park said owners are hereby deemed to agree to the waiver of any claim against the City of Manhattan, its agents, employees, successors and assigns, for damage or injury to persons or property by reason of noise or vibration so emanating.

## ARTICLE 4. ARCHITECTURAL REVIEW COMMITTEE

### 4.1 Formation of Committee

Declarant hereby establishes an Architectural Review Committee (the "Committee"), consisting of three individuals, for the purpose of reviewing construction and alteration of improvements within the subject property as set forth in this Article and for the purpose of performing such other functions as are required pursuant to this Declaration.

### 4.2 Selection of Committee Members

- 4.2.1 Any adult natural person shall be eligible to be a member of the Committee. Members of the Committee shall be appointed for three (3) year terms, with the original committee being appointed for one (1), two (2) and three (3) year terms respectively, so that one member's term expires each year. Each member shall serve until his replacement has been duly appointed. Any Committee member, while appointed for a term for the convenience of Declarant and the owners, serves at the pleasure of the appointing body, and may be removed by that body, at any time, with, or without, cause. Members of the Committee may be compensated in such manner as Declarant deems necessary and advisable.
- 4.2.2 Until more than fifty percent (50%) of the subject property, exclusive of public streets and rights-of-way, has been conveyed or sold by Declarant to others, Declarant shall appoint all members of the committee. So long as Declarant owns at least twenty-five percent (25%) but less than fifty percent (50%) of the subject property, exclusive of public streets and rights-of-way, two members of the committee shall be named by Declarant. At such time as Declarant owns less than twenty-five percent (25%) of the subject property, exclusive of public streets and rights-of-way, Declarant shall name one member of the committee. At such time as an Owner's Association has been lawfully incorporated pursuant to these CCRs, and Declarant owns none of the subject property, exclusive of public streets and rights-of-way, the Association shall appoint all of such members.
- 4.2.3 Those members not named by Declarant, or the Association, shall be named by a vote of all of the owners. Selection of committee members to be named by the owners shall occur at an annual meeting of the owners which shall be called by the prior year's committee upon not less than sixty days' and no more than ninety days' written notice to all owners. Such notice shall set forth the time, place, and purpose of the meeting. The place of the meeting shall be at a location within Riley County to be designated by the committee. A quorum at the meeting shall be representatives of the owners of at least fifty percent (50%) of the subject property, based upon the number of square feet owned as compared to the net acreage subject to this declaration, all exclusive of public streets and rights-of-way, such fifty percent (50%) to be present at the meeting in person or by proxy. All actions taken at the meeting shall require a majority vote of the owners present at the meeting, in person or by proxy. The owner(s) of each lot shall have one vote for each lot owned by the owner(s) in all matters brought before the meeting. Declarant shall also be entitled to one vote for each proposed lot shown on any preliminary plat.

- 4.2.4 Upon the death or resignation of any committee member who has been appointed by Declarant, Declarant shall appoint a successor committee member, to serve the balance of such term. Upon the death or resignation of any committee member not selected by Declarant, the remaining committee members shall select a successor member who shall serve the balance of such term.

### **4.3 Rules of Procedure**

The committee may adopt rules and regulations from time to time governing its activities not inconsistent herewith. The committee shall meet at the convenience of the members thereof as often as necessary to transact its business, acting on the concurrence of two out of the three members.

## **ARTICLE 5. CONSTRUCTION OF IMPROVEMENTS**

### **5.1 Approval of Plans Required**

Except for improvements located thereon prior to the filing of these CCRs, no improvements shall be erected, placed, altered, maintained, or permitted to remain on any lot by any owner or occupant until final plans and specifications shall have been submitted to Declarant, and approved in writing by the architectural review committee. Upon receipt of such plans and specifications by Declarant, they shall forthwith be submitted to the Committee for review. Such final plans and specifications shall be submitted in duplicate over the authorized signature of the owner or occupant, or both, of the lot, or the authorized agent thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by Declarant or the committee, but shall in any event include the following:

- 5.1.1 A site development plan of the lot showing the nature, grading scheme, kind, shape, composition, and location of all structures with respect to the particular lot (including proposed front, rear, and side setback lines), and with respect to structures on adjoining lots, and the number and location of all parking spaces and driveways on the lot;
- 5.1.2 A landscaping plan for the particular lot;
- 5.1.3 A plan for the location of signs and lighting; and
- 5.1.4 A building elevation plan showing dimensions and materials, in no less detail than required by the appropriate governmental authority for the issuance of a building permit, and including the proposed exterior color scheme. Material changes in approved plans must be similarly submitted to and approved by the committee.

### **5.2 Basis for Approval**

Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning, or other rooftop installations, and conformity of the plans and specifications to the purpose and intent of this declaration. No plans will be approved which do not provide for the underground installation of power, electrical, telephone, and other utility lines from the property line to buildings, and the complete visual screening of all transformer and

terminal equipment. Except as otherwise provided in this declaration, the Committee shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

- 5.2.1 Failure to comply with any of the restrictions set forth in this declaration;
- 5.2.2 Failure to include information in such plans and specifications as may have been reasonably requested by the committee;
- 5.2.3 Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;
- 5.2.4 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;
- 5.2.5 Objection to the location of any proposed structure with reference to other lots or other property in the vicinity;
- 5.2.6 Objection to the grading or landscaping plan for any lot;
- 5.2.7 Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;
- 5.2.8 Objection to the design of parking areas;
- 5.2.9 Any other matter which, in the judgment of the committee, would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property, or the design guidelines contained in Article 6, or with improvements located upon other lots or other property in the vicinity.

### **5.3 Result of Inaction**

If the committee fails either to approve or disapprove plans and specifications submitted to it for approval within forty-five (45) days after the same have been submitted, it shall be conclusively presumed that the committee has approved said plans and specifications; provided, however, that if, within the forty-five (45)-day period, the committee gives written notice of the fact that more time is required for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice.

### **5.4 Approval**

The Committee 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. Upon approval or conditional approval by the Committee of any plans and specifications submitted, a copy of such plans and specifications, together with any conditions, shall be deposited for permanent record with the 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.

### **5.5 Proceeding with Work**

Upon receipt of approval from the Committee pursuant to Section 5.4, and issuance of a building permit from the Declarant, the owner or occupant, or both, to whom the approval is given, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing and alterations. In all

cases, work shall commence within one (1) year from the date of such approval, and if work is not so commenced, approval shall be deemed revoked, unless the Committee, 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.

### **5.6 Completion of Work**

Any improvement commenced pursuant hereto shall be completed within two (2) years from the date of the Committee's approval of the plans and specifications therefore, except for so long as such completion is rendered impossible, or unless work upon the proposed improvements would impose a great hardship upon the owner or occupant to whom the Committee's approval is given, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of owner or occupant. The Committee 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 5.6 shall constitute a breach of this declaration and subject the party in breach to the enforcement procedures set forth in Article 11.

### **5.7 Declarant and Architectural Review Committee Not Liable**

Neither the Declarant, the Architectural Review Committee nor their agents, employees, officers, or members shall be liable for any damage, loss, or injury suffered or claimed by any person on account of:

- 5.7.1 The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
- 5.7.2 The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or
- 5.7.3 The development of any lot within the Park, whether or not such development is in compliance with these CCRs.

### **5.8 Construction without Approval**

If any improvement shall be erected, placed, or maintained upon any lot, or the exterior design thereof, or any new use commenced upon any lot, other than in accordance with the approval by the Committee pursuant to the provisions of this Article 5, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this declaration; upon written notice from the Declarant, any such improvement so altered, erected, placed, maintained, or used upon any lot in violation of this declaration shall cease or be amended so as to conform to this declaration. Should such removal or alteration or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this declaration shall be subject to the enforcement procedures set forth in Article 11.

## ARTICLE 6. DESIGN GUIDELINES

### 6.1 Purpose and intent

The purpose of these Design Guidelines is to preserve and protect the character of the Park. These guidelines are intended to ensure that new construction is consistent with the architectural style, scale and mass of existing buildings in the vicinity.

### 6.2 Minimum Setback

Except as otherwise provided in this Section 6.2, no improvements of any kind, and no part thereof, shall be placed within 20 feet of any streetside property line adjacent to an arterial or collector street or within 10 feet of any streetside property line adjacent to any local street. The following improvements, or parts of improvements, are specifically excluded from the setback requirements:

- 6.2.1 Steps and walkways;
- 6.2.2 Paving associated with a driveway entrance to a lot or a sidewalk;
- 6.2.3 Landscaping and irrigation systems; and
- 6.2.4 Underground utility facilities and sewers.

### 6.3 Driveways and Walkways

Driveways and walkways shall conform to the standards in this Section 6.3 as follows:

- 6.3.1 Driveways. Driveways shall be set back at least four feet from the side lot line. Any driveway located within ten feet of a driveway on an adjoining lot shall be at an elevation not exceeding one foot in vertical rise for every three feet of horizontal distance from the adjacent driveway. Driveways and parking pads shall consist of only stabilized surfaces such as brick, asphalt or concrete.
- 6.3.2 Walkways. All walkways shall consist of stone, brick or concrete. Asphalt walkways are expressly prohibited.

### 6.4 Landscaping

Within ninety (90) days following completion of construction, or by the date each improvement is occupied, whichever first occurs, each lot shall be landscaped in accordance with the approved plans and specifications and in conformity with the landscaping requirements set forth in Article 7.

After completion, the landscaping shall be maintained in a sightly and well-kept condition. If, in the Declarant's or the Architectural Review Committee's reasonable opinion, the required landscaping is not maintained in a sightly and well-kept condition, Declarant or the Committee shall be entitled to the remedies set forth in Article 11.

- 6.4.1 Grass Required. All unpaved areas of a lot shall be covered with grass, or other approved plant materials, as per an approved landscape plan. No slopes shall be permitted in excess

of 3:1. Grass shall be required on all storm water runoff areas, except for concrete conveyances or erosion control materials, as may be required by the City.

- 6.4.2 Landscaped Berms. Landscaped berms shall be provided within the required rear yard for all lots in the business park that abut residentially-zoned properties. Such berms shall be at least three feet in height and bushes and trees shall be provided on top of the berm. At least fifty (50) percent of the landscape material shall be evergreen trees or bushes to provide substantial screening year-round.

## 6.5 Signs

No sign shall be permitted on any lot unless approved by the committee in writing. All signs must comply with the following design guidelines:

- 6.5.1 Signs identifying a building, use or tenant shall be limited to low ground signs and wall signs. Pole signs, window signs and roof signs are specifically prohibited.
- 6.5.2 Low ground signs shall be placed within thirty (30) feet of the street, shall not exceed six feet in height and shall have a sign face not exceeding thirty-two (32) square feet in area. A larger sign face may be approved by the Architectural Review Committee for lots that are very large, have considerable frontage on a street or which have some other hardship involved in placing a sign.
- 6.5.3 Wall signs shall be limited in area to one hundred (100) square feet and shall not exceed ten (10) percent of the area of the wall on which they are located. The Architectural Review Committee may approve a wall sign larger than 100 square feet, provided that no such sign exceeds ten (10) percent of the area of the wall on which it is located, and the building is set back further than the minimum required front yard setback.
- 6.5.4 In addition to the low ground and wall signs allowed for identification, each lot shall be permitted small signs for controlling traffic circulation and parking. These signs shall be limited to driveway signs and parking signs.
- 6.5.5 Driveway signs shall be limited to one per driveway. Such signs shall be limited to four feet in height and shall be limited to a sign face area of five square feet.
- 6.5.6 Parking signs shall be limited to five square feet in sign face area.
- 6.5.7 All low ground signs shall be externally illuminated. Lighting fixtures should be configured to avoid shining into or producing glare to pedestrians and vehicles. Lighting fixtures shall be located within the required landscape planting area (as described in Article 7). The lighting should not flood the surrounding area and all necessary electrical conduit shall be concealed.

## 6.6 Parking Areas

Off-street parking adequate to accommodate the parking needs of the owner or occupant, and the employees and visitors thereof, shall be provided by the owner or occupant of each lot. 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 by the owner or occupant, additional off-street parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

- 6.6.1 Required off-street parking shall be provided on the lot, or on a contiguous lot.
- 6.6.2 Parking areas shall be paved so as to provide dust-free, all-weather surfaces, by use of concrete, asphalt, or approved parking pavers. Each parking space provided shall be designated by lines painted upon the paved surface and shall be adequate in area. All parking areas shall provide, in addition to parking spaces, adequate driveways and space for the movement of vehicles.
- 6.6.3 No parking spaces shall be located on or permitted within setback areas adjacent to a street, as set forth in Section 6.2.

### 6.7 Storage and Loading Areas

All storage, maintenance, and loading areas must be constructed and used in accordance with plans approved by the committee. All storage, maintenance, and loading areas must be kept clean and in good condition and repair. No outdoor storage area shall be allowed in any streetside yard. Outdoor storage areas shall be surrounded by an appropriate sight-proof fence, wall or berm as approved by the committee, to ensure that the major portion of such storage areas are not visible to surrounding properties.

- 6.7.1 No loading area may be located on any side of a structure that faces a street in Area 1.

### 6.8 Design Standards - Area 1

The following design standards shall be adhered to in the design and construction of new buildings in the Manhattan Corporate Technology Park contained within Area 1.

- 6.8.1 *Permissible Building Materials.* The front facade of every building shall be of brick, stucco, textured masonite, stone masonry, split-face concrete block, architectural concrete panels, architectural metal, wood or glass. Glass block may be used as an accent material. Building materials that are neither specifically permitted under this paragraph (1) nor prohibited under paragraph (2) below may be allowed by the Architectural Review Committee if they are deemed similar to a permitted building material.
- 6.8.2 *Prohibited Building Materials.* The following building materials are forbidden on the front facade and discouraged on other areas of any new building or any remodeled, enlarged or diminished building: prefabricated metal siding, smooth masonite, concrete cinder block, or vinyl.
- 6.8.3 *Sprinklered Buildings.* Every building within Area 1 shall provide fire sprinklers.
- 6.8.4 *Building Colors.* Building colors, except for trim colors, shall be subdued earth tones, white or similar suitable colors. Earth tone colors include, but are not limited to, red, beige, taupe brown, granite gray, gray blue, greenish blue and dark brown. The Architectural Review committee may reject proposals for buildings with symbolic design or color schemes for reasons of advertising.
- 6.8.5 *Trim Colors/Window Colors.* Trim colors and the colors of window frames shall be earth tones, white or a color that clearly complements the main color of the building.

- 6.8.6 *Foundations.* Concrete foundations shall be covered with a permissible building material so that no more than twelve (12) inches in height of the concrete of any building shall be visible.
- 6.8.7 *Mechanical Equipment.* All mechanical equipment on buildings (such as air conditioning units) shall be screened from view. All roof mounted equipment on buildings shall be architecturally designed to be hidden from the front and the sides of the building. Ground-mounted equipment shall be concealed by walls constructed of a permissible building material or by a combination of such walls and evergreen plant material.
- 6.8.8 *Maximum Building Coverage.* The maximum building coverage shall not exceed thirty (30) percent of the lot area.
- 6.8.9 *Maximum Site Coverage.* The total impervious surface including the principal building, accessory structures, parking and other impermeable surfaces shall not exceed sixty (60) percent of the lot area.
- 6.8.10 *Required Front Yard.* Every front yard shall be at least fifty (50) feet in depth.
- 6.8.11 *Required Side Yard.* Every side yard shall be at least twenty-five (25) feet in width. The required side yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.8.12 *Required Rear Yard.* Every rear yard shall be at least twenty-five (25) feet in depth. The required rear yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.8.13 *Maximum Building Height.* No building or structure shall exceed forty (40) feet in height. More excessive limitations to height may be applicable subject to the Airport Overlay District Zoning Regulations and Federal Aviation Regulation Part 77 Surfaces.

## 6.9 Design Standards - Area 2

The following design standards shall be adhered to in the design and construction of new buildings in the Manhattan Corporate Technology Park contained within Area 2.

- 6.9.1 *Permissible Building Materials.* The front facade of every building shall be of brick, stucco, textured masonite, stone masonry, split-face concrete block, architectural concrete panels, tilt-up concrete, smooth masonite, permastone, painted steel siding, wood, or glass. Glass block may be used as an accent material. Building materials that are neither specifically permitted under this paragraph (1) nor prohibited under paragraph (2) below may be allowed by the Architectural Review Committee if they are deemed similar to a permitted building material.
- 6.9.2 *Prohibited Building Materials.* The following building materials are forbidden on the front facade and discouraged on other areas of any new building or any remodeled, enlarged or diminished building: metal (except painted steel siding), concrete cinder block, or vinyl.
- 6.9.3 *Sprinklered Buildings.* Every building within Area 2 shall provide fire sprinklers.
- 6.9.4 *Building Colors.* Building colors should be tasteful in appearance. The Architectural Review committee may reject proposals for building with symbolic design or color schemes for reasons of advertising.
- 6.9.5 *Foundations.* Concrete foundations along the front facade of every building shall be covered with a permissible building material so that no more than twelve (12) inches in

- height of the concrete of any building shall be visible. This requirement may be waived by the Architectural Review Committee for good cause.
- 6.9.6 *Mechanical Equipment.* Efforts shall be made to screen mechanical equipment on buildings (such as air conditioning units). All roof mounted equipment on buildings shall be architecturally designed to be hidden from the front of the building.
- 6.9.7 *Maximum Building Coverage.* The maximum building coverage shall not exceed forty-five (45) percent of the lot area.
- 6.9.8 *Maximum Site Coverage.* The total impervious surface including the principal building, accessory structures, parking and other impermeable surfaces shall not exceed seventy-five (75) percent of the lot area.
- 6.9.9 *Required Front Yard.* Every front yard shall be at least forty (40) feet in depth.
- 6.9.10 *Required Side Yard.* Every side yard shall be at least twenty (20) feet in width. The required side yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.9.11 *Required Rear Yard.* Every rear yard shall be at least twenty (20) feet in depth. The required rear yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.8.12 *Maximum Building Height.* No building or structure shall exceed forty (40) feet in height. More excessive limitations to height may be applicable subject to the Airport Overlay District, Zoning Regulations and Federal Aviation Regulation Part 77 Surfaces.

## ARTICLE 7. LANDSCAPING

### 7.1 Landscape Responsibility

Each owner and occupant within the Park shall be responsible for the construction, installation and maintenance of functional and aesthetically suitable landscaping on their building lot. Such landscaping shall be subject to the following requirements and shall be installed only after plans have been submitted to and approved by the Architectural Review Committee. All deciduous trees shall be of a low residue, or seedless and fruitless variety. Plantings shall be selected from the lists provided herein, including those plantings set forth on Exhibit A attached hereto. Species should be selected based on appropriateness for their intended function within the overall landscape plan, giving consideration to hierarchy, placement, mass and exposure.

### 7.2 Foundation Plantings - Area 1

A hierarchy of plant types and heights should be used to frame and enhance buildings. A year round interest should be created by providing adequate deciduous and evergreen plant materials. The layout of planting beds should allow mower access to all lawn areas which are adjacent to building walls.

- 7.2.1 Planting beds should parallel building walls. The minimum width of such areas shall be 25' for large trees, 8' for small trees, 5' for shrubs and 2' for ground cover. Formal building areas should receive foundation planting beds within 15'-0" of building walls along a minimum of 30% of the perimeter of primary buildings.

### 7.3 Foundation Plantings - Area 2

A hierarchy of plant types and heights should be used to frame and enhance buildings. A year round interest should be created by providing adequate deciduous and evergreen plant materials.

- 7.3.1 Planting beds should parallel building walls. The minimum width of such areas shall be 25' for large trees, 8' for small trees, 5' for shrubs and 2' for ground cover. Formal building areas should receive foundation planting beds within 15'-0" of building walls along the street facing facade as a minimum.

#### 7.4 Plant Materials for Foundation Plantings

- 7.4.1 Small trees for foundation / plaza areas:
- (a) Redbud (*Cercis canadensis*)
  - (b) Pagoda Dogwood (*Cornus alternifolia*)
  - (c) Cockspur Hawthorne (*Crataegus crus x galli 'inermis'*)
  - (d) Saucer Magnolia (*Magnolia soulangiana*)
- 7.4.2 Large shrubs for foundation / plaza areas:
- (a) Dwarf Burning Bush (*Euonymus alatus 'Compacta'*)
  - (b) Sea Green Juniper (*Juniperus chinensis 'Sea Green'*)
  - (c) Privet (*Ligustrum sp.*)
  - (d) Burkwood Viburnum (*Viburnum burkwoodii*)
  - (e) Arrowwood Viburnum (*Viburnum dentatum*)
- 7.4.3 Small shrubs for foundation / plaza areas:
- (a) Japanese Barberry (*Berberis thunbergii var. atropurpurea 'Crimson Pygmy'*)
  - (b) Korean Boxwood (*Buxus microphylla var. koreana*)
  - (c) Sargent Juniper (*Juniperus chinensis var. sargentii*)
  - (d) Compact Mugo Pine (*Pinus mugo 'Compacta'*)
  - (e) Dense Japanese Yew (*Taxus cuspidata 'Densa'*)
- 7.4.4 Groundcover for foundation / plaza areas:
- (a) Purpleleaf Wintercreeper (*Euonymus fortunei var. coloratus*)
  - (b) English Ivy (*Hedera helix*)
  - (c) Blue Sargent Juniper (*Juniperus chinensis var. Sargentii 'Glauca'*)
  - (d) Periwinkle (*Vinca minor*)

#### 7.5 Entry Plazas

Building plazas and courtyards should be located in response to both user and building requirements. Building plazas should be responsive to the building and roadway, as well as direct pedestrians to their destination. Plant materials should be used at building entrances to define spaces, modify climactic conditions and aesthetically enhance the area.

#### 7.6 Sidewalks

All collector and local roads shall have a sidewalk on both sides to separate pedestrians from vehicular traffic and accommodate street tree plantings.

- 7.6.1 All sidewalks shall be a minimum of five (5) feet in width. Sidewalks that parallel a roadway shall have a maximum cross slope of two (2) percent.
- 7.6.2 All sidewalks shall be designed in accordance with Americans with Disabilities Act standards.
- 7.6.3 All sidewalks shall be constructed of concrete with a broom finish and a minimum depth of four (4) inches. Sidewalks on individual parcels, related to individual buildings, may be constructed of other suitable materials, subject to review and approval by the Architectural Review Committee.

## 7.7 Parking Lots

Parking lots should be located and designed for convenience and safety by providing for through-circulation and should avoid dead-end aisles. Conflicts with street intersections should be minimized by limiting access points. A minimum setback of 20 feet between parking and buildings is recommended to accommodate plantings, pedestrian circulation and loading areas. A fifty-foot setback is recommended along buildings over two stories.

Parking lots should be laid out with ninety (90) degree stalls and two-way circulation for ease of circulation and economy of space. Ninety degree stalls are recommended in locations where users remain through the work day. Angled parking (45 or 60 degree) may be used where high turnover (one hour or less) are anticipated, and where site limitations prohibit the use of 90 degree stalls. The entrance to every parking lot shall be at least 24 feet wide, unless two (2) one-way drives, each a minimum 20 feet wide, are provided. The alignment of access ways shall intersect the abutting street lines approximately at right angles whenever possible. Variations are not to exceed twenty degrees and no access way shall be permitted within 75 feet of any corner formed by the intersection of two or more streets.

Parking lot aisles should be oriented perpendicular to building entrances. When this is not possible or feasible, internal walkways along islands should be incorporated. Each double-loaded parking aisle shall be at least 62 feet in width and shall allow 19 feet for the length of parking stalls. Each parking stall shall be a minimum of 9 feet in width, with handicapped stalls provided at not less than 8 feet in width with a minimum 5' access aisle designated adjacent to the parking stall.

The number of handicapped stalls shall be provided as stipulated in the Americans With Disabilities Act Guidelines. One in every eight handicapped accessible spaces, but not less than one, shall be served by an access aisle 96" wide as required in Americans With Disabilities Act Guidelines. A maximum slope of 5% shall be allowed within each parking lot with a minimum recommended gradient of 1%.

- 7.7.1 Landscaped end islands should be provided at the end of all parking rows. End islands shall be a minimum of ten (10) feet in width by thirty-eight (38) feet in length and have a continuous poured-in-place concrete curb.
- 7.7.2 Each island shall contain not less than two 2" caliper size deciduous shade trees.
- 7.7.3 Where parking aisles exceed 15 stalls in Area 1, intermediate islands, a minimum of ten (10) feet in width, shall be provided.
- 7.7.4 Where more than three parking aisles exist on one parcel in Area 1, a ten (10) foot wide landscape median with a 6" barrier curb shall be required. One median is required for every

four parking aisles. All interior medians are to be seeded and planted with trees not less than 2" caliper size at a rate of not less than one tree per five parking spaces.

- 7.7.5 A minimum setback of thirty (30) feet from the edge of roadways and twenty (20) feet from existing buildings shall be observed for perimeter plantings.
- 7.7.6 Perimeter plantings shall be required in all parking lots larger than thirty (30) cars. These perimeter plantings will require a minimum of ten (10) deciduous or evergreen trees for every one hundred (100) linear feet of parking area to be screened. This requirement may be satisfied by Section 7.7.7.
- 7.7.7 All parking areas in Area 1 are required to be screened from a collector or local roadway by a hedge or berm of not less than two (2) feet in height.

## 7.8 Plant Materials for Parking Lots

- 7.8.1 Large Trees for Parking Lots
  - (a) White Ash (*Fraxinus americana*)
  - (b) Urbanite Seedless Green Ash (*Fraxinus pennsylvanica* 'Marshall Seedless')
  - (c) Thornless Honeylocust (*Gleditsia triacanthos* var. 'inermis')
- 7.8.2 Small Trees for Parking Lots
  - (a) Redbud (*Cercis canadensis*)
  - (b) Lavalley Hawthorne (*Crataegus lavalley*)
  - (c) Amur Maple (*Acer ginnala*)
- 7.8.3 Large Shrubs for Parking Lots
  - (a) Arrowwood Viburnum (*Viburnum dentatum*)
  - (b) Dwarf Burning Bush (*Euonymus alatus* 'Compacta')
  - (c) Sea Green Juniper (*Juniperus chinensis* 'Sea Green')
- 7.8.4 Small Shrubs for Parking Lots
  - (a) Japanese Barberry (*Berberis thunbergii* var. *atropurpurea* 'Crimson Pygmy')
  - (b) Sargent Juniper (*Juniperus chinensis* var. *horizontalis*)
- 7.8.5 Groundcover for Parking Lots
  - (a) Purpleleaf Wintercreeper (*Euonymus coloratus*)
  - (b) Wilton's Juniper (*Juniperus horizontalis* 'Wiltoni')
  - (c) Blue Sargent Juniper (*Juniperus chin.*)

## 7.9 Screening and Fencing

- 7.9.1 **Building Equipment.** Building equipment such as electrical transformers, air conditioning condensers, dumpster sites, and on-grade mechanical units shall be screened from view so as not to be visible from surrounding properties. A landscape screen, sight-proof fence or wall may be used to screen these areas.
- 7.9.2 **Loading and Service Areas.** Loading and service areas shall be screened from view so as not to be visible from surrounding properties. A landscape screen, sight-proof fence or wall may be used to screen these areas.

- 7.9.3 *Storage Areas.* Outdoor storage areas shall be screened from view so as not to be visible from surrounding properties. Screening may be accomplished using a year-round landscape screen, sight-proof fence or wall.
- 7.9.4 *Refuse Collection Areas.* All outdoor refuse collection areas shall be completely enclosed and screened by a constructed wall of durable material not less than six (6) feet in height. All such areas shall have concrete floors and shall be sufficient in size to contain all refuse generated on each lot, but in no event smaller than six (6) feet by eight (8) feet. No refuse collection areas shall be permitted between a street and the front of a building.
- 7.9.5 Plantings used to provide visual screens should be upright and dense plant material placed close together. Evergreen trees are typically used; however, mass plantings of shrubs can be used to screen views below eye level. Deciduous trees should be planted in the foreground to provide seasonal interest. Landscape screens should consist of 70% evergreen and 30% deciduous plant materials. For every 100 linear feet of area to be screened, a minimum of 10 evergreen trees should be planted in staggered rows. Place trees eight to ten feet on center, and arrange to maximize screening potential. Deciduous trees should be a minimum caliper of two inches, and conifer trees should be a minimum of 10 feet tall. Place shrub plantings at no more than three feet on center. Unsheared plant material will create a solid mass and eliminate added maintenance. In no case are shrubs to appear as individual plants. Provide no more than two species of shrubs in any one mass planting. Shrubs should not be less than 30 inches in height at the time of planting. Mulch planting beds with three inches of shredded hardwood bark.

## 7.10 Plant Materials for Screens and Buffers

### 7.10.1 Large Trees for Screens / Buffer Areas

- (a) Red Maple (*Acer rubrum*)
- (b) Tuliptree (*Liriodendron tulipifera*)
- (c) Eastern White Pine (*Pinus strobus*)
- (d) Bloodgood Planetree (*Platanus x acerifolia* 'Bloodgood')
- (e) White Oak (*Quercus alba*)
- (f) Swamp White Oak (*Quercus bicolor*)
- (g) Baldcypress (*Taxodium distichum*)
- (h) Norway Spruce (*Picea abies*)
- (i) Scotch Pine (*Pinus sylvestris*)
- (j) Ponderosa Pine (*Pinus nigra*)
- (a) White Pine (*Pinus strobus*)

### 7.10.2 Small Trees for Screens / Buffer Areas

- (a) Serviceberry (*Amelanchier arborea*)
- (b) Redbud (*Cercis canadensis*)
- (c) Amur Maple (*Acer ginnala*)

### 7.10.3 Large Shrubs for Screens / Buffer Areas

- (a) Redosier Dogwood (*Cornus sericea*)
- (b) Karl Sax Forsythia (*Forsythia x intermedia* 'Karl Sax')
- (c) Staghorn Sumac (*Rhus typhina*)
- (d) Burkwood Viburnum (*Viburnum burkwoodii*)
- (e) Leatherleaf Viburnum (*Viburnum rhytidophyllum*)

- (f) Mohican Viburnum (*Viburnum lantana* 'Mohican')
- 7.10.4 Small Shrubs for Screens / Buffer Areas
- (a) Arnold Dwarf Forsythia (*Forsythia x intermedia* 'Arnold Dwarf')
  - (b) Bronx Forsythia (*Forsythia x intermedia* 'Bronx')
  - (c) Compact Inkberry (*Ilex glabra* 'Compact')
  - (d) Fragrant Sumac (*Rhus aromatica*)

## 7.11 Open Space Plantings

Open space and large lawn areas within the Manhattan Corporate Technology Park are those not specifically connected to buildings or parking lots, and falling outside the guidelines for streets, parking lots, or foundation plantings.

Open space plantings are intended to tie the various areas of the development together by providing scale and spatial enclosure. These plantings are also useful in modifying the microclimate around adjacent facilities, reducing glare, and providing shade during summer months. For every one acre of open space a minimum of 10 trees should be planted. Trees should be asymmetrically spaced and arranged to contain and define lawn areas. Spacing of large trees may vary from 30 to 60 feet on center. Small trees may be spaced between 10 and 30 feet on center. Groupings should be made up of a mix of plant materials with 60% being large deciduous trees, 25% evergreen trees, and 15% flowering trees. Open space areas should provide a naturalized appearance. Provide masses of flowering trees as accent plantings. Utilize evergreens as a visual backdrop to these accent plantings.

## 7.12 Plant Materials for Open Spaces

### 7.12.1 Large Trees

- (a) River Birch (*Betula nigra*)
- (b) Tulip Tree (*Liriodendron tulipifera*)
- (c) Sweetgum (*Liquidambar styraciflua*)
- (d) Eastern White Pine (*Pinus strobus*)
- (e) Bloodgood Planetree (*Platanus x acerifolia* 'Bloodgood')
- (f) Red Oak (*Quercus rubra*)
- (g) Baldcypress (*Taxodium distichum*)

### 7.12.2 Small Trees

- (a) Serviceberry (*Amelanchier arborea*)
- (b) Redbud (*Cercis canadensis*)
- (c) Crabapple (*Malus spp.*)

### 7.12.3 Large Shrubs

- (a) Redosier Dogwood (*Cornus sericea*)
- (b) Fragrant Sumac (*Rhus aromatica*)
- (c) Leatherleaf Viburnum (*Viburnum rhytidophyllum*)

### 7.12.4 Small Shrubs (see Exhibit B)

## 7.13 Street Trees

The site's overall roadway organization can be reinforced by the consistent use of street tree plantings. Different levels of street tree development shall be used for each type of roadway to define street hierarchy and help orient and direct vehicular traffic. Street trees shall always be set back a minimum of forty (40) feet from intersections to prevent conflicts with vehicular sight-lines.

7.13.1 Collector Roadways. A single row of street trees is recommended along both sides of all collector streets. Street trees planted along collector roads should be spaced 30 to 50 feet on center with a setback of at least three feet from the back of curb. Collector streets should have a minimum caliper size of two and one-half inches and a clear trunk of five feet. For any given length of street, between intersections, not more than three tree species should be planted.

7.13.2 Trees for collector roadways should be selected from the following plant list:

- (a) Ginkgo (*Ginkgo biloba*)
- (b) Greenspire Linden (*Tilia cordata* 'Greenspire')
- (c) Red Oak (*Quercus rubra*)
- (d) Sugar Maple (*Acer saccharum*, *Acer* 'Legacy', 'Cado')
- (e) Red Maple (*Acer rubrum*)

7.13.3 Local Roadways. A single row of street trees planted on 30 to 50 foot centers is recommended along both sides of all local roadways. Groupings shall consist of not more than two species. Maintain a three foot setback from back of curb along local streets. Specify two inch minimum caliper tree size with a clear trunk of five feet. Not more than three species of trees should be used along any section of street, between intersections.

7.13.4 Local street trees should be selected from the following list:

- (a) White Ash (*Fraxinus americana*)
- (b) Thornless Honeylocust (*Gleditsia triacanthos* var. 'inermis')
- (c) Japanese Zelkova (*Zelkova serrata*)
- (d) Northern Red Oak (*Quercus rubra*)
- (e) Amur Maple (*Acer ginnala*)
- (f) Spring Snow Crabapple (*Malus x hybrids* 'Spring Snow')

## 7.14 Signs

A landscape planting area shall be provided around the perimeter of low ground signs identifying the building's primary use or business. The size of this planting area should be a minimum of two times the square footage of sign face. The planting area shall provide low (15"-18") evergreen shrubs adjacent to base, and lower flowering perennials or annuals in remaining area. The entire landscape planting area should be treated with hardwood bark mulch.

## ARTICLE 8. MAINTENANCE OF COMMON AREAS AND FACILITIES

### 8.1 Declarant's Ownership and Maintenance Responsibility

Until such time as Declarant shall form the Association, Declarant shall own, maintain and repair all common areas and facilities located within the Park, as established and identified by Declarant. Such maintenance and repair shall include such matters as determined by Declarant at the time the common areas are established.

## **8.2 Owner's Maintenance Responsibility**

Each owner of a lot shall be responsible for the maintenance of its lot and the improvements constructed thereon, including the maintenance or repair of any utility lines which service said owner's lot and/or improvements.

## **8.3 Maintenance by Association**

At such time as Declarant no longer owns any lot, portion of, or interest in the subject property, exclusive of public streets and rights-of-ways, or at any other time as determined by Declarant, and when the Association has been legally formed and incorporated, Declarant may assign and delegate the aforesaid maintenance obligation and ownership to the Association.

# **ARTICLE 9. ALLOCATION OF COSTS AND PROPERTY TAXES**

## **9.1 Allocation of Costs and taxes**

All costs incurred by Declarant in fulfilling its responsibilities hereunder, including, but not limited to, the cost of maintaining the common areas and facilities shall be allocated pro rata among all of the lots within the subject property. Each lot shall bear its pro rata share of all such costs. The pro rata share shall be determined by comparing the square footage of each lot to the total square footage of the subject property, exclusive of public streets and rights-of-way.

## **9.2 Computation of Costs**

All of the costs incurred by Declarant to perform its obligations hereunder, including those set forth in Section 8.1 hereof, shall include all of the Declarant's actual out-of-pocket expenses to perform such services; the cost of administration thereof, including the cost of accounting for the computation and collection of maintenance costs and real property taxes; a reasonable reserve for delinquent accounts; plus any costs incurred to provide security to the subject property, if necessary; all of such costs to be determined in accordance with generally accepted accounting principles consistently applied.

## **9.3 Assessment of Costs**

All estimated costs and expenses of maintenance except those attributable to real property taxes shall be assessed in advance by Declarant or any subsequent maintenance operator and billed to each owner not less frequently than once each calendar quarter. Such assessments shall be paid by each owner promptly upon receipt thereof. The amount, if any, by which any assessments received in advance from any owner exceed such owner's actual share of maintenance expenses for a billing period shall be credited against the estimated costs and expenses for the ensuing billing period. Real property taxes attributable to the common areas shall be billed to each owner as soon as reasonably possible after receipt of the tax bills from the taxing agency. Each owner shall remit one-half of his pro rata share of such taxes prior to December 1 of each year, and the balance prior to April 1 of the following year.

#### 9.4 Creation and Enforcement of Maintenance and Tax Assessment Lien

- 9.4.1 Declarant, in its capacity as owner of the subject property hereby covenants and agrees to pay, and each subsequent owner of a lot, by acceptance of title thereto, whether or not it shall be so expressed in any conveyance of said lot, is deemed to covenant and agree to pay all assessments for costs and real property taxes as set forth in the preceding section, such assessments to be fixed, established, and collected from time to time as provided in this declaration. Such assessments, together with interest thereon as hereafter set forth and together with the cost of collection thereof, shall be a charge on the land and shall be a continuing lien upon each lot against which each such assessment is made.
- 9.4.2 In the event that any owner shall fail to pay such owner's assessment within 10 days after such costs, expenses, and taxes have been assessed to such owner, Declarant may at any time within two years from the date such assessment becomes due, file for record in the Office of the Register of Deeds of Riley County, Kansas, a claim of lien signed by Declarant together with interest thereon, which claim shall contain: (1) a statement of the amount unpaid, the amount of such advance, and the interest accrued thereon; (2) a legal description of the lot owned by such delinquent owner; and (3) the name of the delinquent owner. Such claim of lien shall be effective to establish a lien against the interest of the delinquent owner and his lot, together with interest on the amount of such assessment from the date thereof, at a rate equal to the greater of 10% per annum or 1% greater than the Bank of America prime rate then in effect, plus recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof, and court costs and reasonable attorneys' fees which may be incurred in the enforcement of such a lien.
- 9.4.3 Such a lien, when so established against the lot described in said claim, shall be prior or superior to any right, title, interest, lien, or claim which may be or may have been acquired in or attached to the real property interests subject to the lien subsequent to the time of filing such claim for record, other than (1) the lien for real property taxes and assessments, or (2) the lien of any deed of trust given to serve a note, the proceeds of which were used to improve and develop the lot subject to the lien. Such lien shall be for the benefit of Declarant and may be enforced and foreclosed in a suit or action brought by Declarant in any court of competent jurisdiction, if brought within one year of the filing of such claim.
- 9.4.4 Any such sale provided for herein is to be conducted in accordance with the provisions of the appropriate Sections of the Code of Civil Procedure of the State of Kansas applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. Declarant or any owner, through their duly authorized agents, shall have the power to bid on the lien property at any foreclosure sale, and to acquire, lease, mortgage, and convey the same.
- 9.4.5 Upon the timely curing of any default for which a notice of claim of lien was filed, Declarant or the owner claiming such lien is hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the lien claimant, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest, or fees as shall have been incurred. The assessment lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies which any party may have hereunder and by law, including a suit to cover a money judgment for unpaid assessments.

- 9.4.6 In the event that the Association or any other person or entity shall assume the responsibility for maintenance of the common areas and facilities, pursuant to Section 8.3 hereof, such person or entity shall be entitled to determine the amounts and make the assessments provided for in this Article 9 and to enforce the lien rights established in this Section 9.4.

## **ARTICLE 10. MODIFICATION BY DECLARANT**

### **10.1 Procedure**

Except as otherwise provided in Section 10.2 and 10.3, this declaration or any provision hereof, or any covenant, condition, or restriction contained herein, may be terminated, extended, modified, or otherwise amended, as to the whole of the subject property or any portion thereof, with the written consent of the owners of fifty-one percent (51%) of the area of the property subject to these covenants, conditions, and restrictions, exclusive of public streets and rights-of-ways; however, no such termination, extension, modification, or other amendment shall be effective without the written approval of Declarant. The subsequent assignment of Declarant's rights and responsibilities to the Association shall not affect the requirement to obtain Declarant's consent to any such termination, extension, modification, or other amendment. No such termination, extension, modification, or other amendment shall be effective until a proper instrument in writing has been executed, acknowledged, and recorded.

### **10.2 Modification by Declarant**

For so long as Declarant owns any interest (excepting a leasehold interest) in the subject property or any part thereof, exclusive of public streets and rights-of-ways, or for a period of twenty-five (25) years from the effective date hereof, whichever period is shorter, Declarant acting alone may modify or amend the provisions of Articles 3, 5 and 6; provided, however, that (i) any such modification or amendment must be within the spirit and overall intention of the development as set forth herein; (ii) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (iii) any modification or amendment shall not provide for any type of improvements or use not presently permitted by this declaration. No such modification or amendment shall be effective until a proper instrument in writing has been executed, acknowledged, and recorded.

### **10.3 Governmental Regulation**

All valid governmental enactments, ordinances, and regulations are deemed to be a part of this declaration, and to the extent that they conflict with any provision, covenant, condition, or restriction hereof, the stricter provision shall prevail. All of the ordinances and codes of the City of Manhattan, Kansas, dealing with the building or maintenance of improvements, such as the Building Code, the Electrical Code, the Plumbing Code, the Zoning Regulations, and the licensing provisions of contractors and tradesmen, shall apply and be applicable to the subject property regardless of whether or not the subject property has been annexed into the corporate limits of said City.

## ARTICLE 11. ENFORCEMENT

### 11.1 Default and Remedies

In the event of any breach, violation, or failure to perform or satisfy any covenant, condition, or restriction which has not been cured within 30 days after written notice to do so, Declarant at its sole option and discretion may rely upon any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. All remedies provided herein or by law or equity shall be cumulative and not mutually exclusive.

- 11.1.1 *Damages/Declaratory Relief.* Declarant may bring suit for damages for any compensable breach of, or noncompliance with, any of the covenants, conditions, or restrictions, or for declaratory relief to determine the enforceability of any of these covenants, conditions, or restrictions.
- 11.1.2 *Equity.* It is recognized that a violation by an owner of one or more of the foregoing covenants, conditions, or restrictions may cause Declarant to suffer material injury or damage not compensable in money, and that Declarant shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these covenants, conditions, and restrictions or an injunction to enjoin the continuance of any such breach or violation thereof.
- 11.1.3 *Abatement and Lien Rights.* Any such breach or violation of these covenants, conditions, and restrictions or any provision hereof is hereby declared to be a nuisance, and Declarant shall be entitled to enter the site or portion of the subject property as to which the breach or violation exists and summarily abate and remove, without further legal process, to the maximum extent permitted by law, any structure, thing, or condition that may exist in violation of any of these restrictions; or take those actions which are required of any person or entity which is subject to this declaration; or to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of these restrictions--all at the sole cost and expense of the owner or any person having possession under the owner. Any costs or expenses paid or incurred by Declarant in abating such nuisance or prosecuting any such remedy (including all reasonable attorneys' fees and costs of collection), together with interest thereon at the rate of 10% per annum shall be a charge against the site or portion of the property as to which the breach or violation exists, and shall also be the personal obligation of that person who was the owner when such charges became due or who committed such breach or violation. In addition to any other rights or remedies hereunder, Declarant may deliver to the owner and record with the Riley County Register of Deeds a certificate or notice of claim of lien (which, among other things, may, but need not, recite the nature of the violation, the legal description of the site or portion of the property affected by such violation, the record or reputed owner thereof, Declarant's name and address, and the remedies being pursued by Declarant or the amount of any such lien claim has not been charged) to Declarant's satisfaction, and if any recited amounts so charged have not been paid within 30 days thereafter, Declarant or its authorized representatives may foreclose such lien by a sale conducted pursuant to the appropriate Sections of the Kansas Code of Civil Procedure, as amended from time to time, or other statutes applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law. Declarant, through

its authorized representatives, may bid on and acquire any property subject to such lien at any such foreclosure sale. If the violations recited in such lien claim are timely cured and any recited amounts timely paid as provided above, Declarant shall forthwith record an appropriate release of such lien at owner's sole expense.

### **11.2 Waiver**

No waiver by Declarant of a breach of any of these restrictions, and no delay or failure to enforce any of these restrictions, shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of these covenants, conditions, and restrictions. No waiver by Declarant of any breach or default hereunder shall be implied from any omission by Declarant to take any action on account of such breach or default if such breach or default persists or is repeated, and no express waiver shall affect a breach or default other than as specified in said waiver. The consent or approval by Declarant to or of any act by an owner requiring Declarant's consent or approval shall not be deemed to waive or render unnecessary Declarant's consent or approval to or of any similar acts by owner.

### **11.3 Costs of Enforcement**

In the event any legal or equitable action or proceeding shall be instituted to enforce any provision of these restrictions, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorney's fees; however, no such costs shall be recoverable against the City, when acting as Declarant hereunder, if the City proceeds in good faith in such action.

### **11.4 Non-Exclusive Rights of Enforcement**

The rights of enforcement granted to Declarant are non-exclusive and shall be exercisable by Declarant for so long as Declarant owns any interest in the subject property. Concurrently, each owner and the Association, its successors, and assigns, are hereby granted all of the rights of enforcement and the remedies provided to Declarant by this Article 10. Any such owner or the Association may seek enforcement of all remedies in accordance with the provisions of this Article independently of Declarant.

## **ARTICLE 12. ASSIGNMENT**

### **12.1**

Any and all of the rights, powers, and reservations of Declarant herein contained may be assigned to the Association, once it has been legally formed and incorporated. Upon such assignment, the Association will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned, and to the extent of such assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. If at any time Declarant ceases to exist and has not made such assignment, a successor Declarant may be appointed only with the written consent of the owners of sixty-five percent (65%) of the area of the subject property, based on the number

of square feet of land owned as compared to the net acreage, subject to these covenants, conditions, and restrictions.

#### **ARTICLE 13. CONSTRUCTIVE NOTICE AND ACCEPTANCE**

##### **13.1**

Every person or entity who now or hereafter owns, occupies, or acquires any right, title, or interest in or to any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this declaration is contained in the instrument by which such person acquired an interest in the subject property.

#### **ARTICLE 14. WAIVER**

##### **14.1**

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. Every owner or occupant of any of said property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

#### **ARTICLE 15. RUNS WITH LAND**

##### **15.1**

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

#### **ARTICLE 16. RIGHTS OF MORTGAGEES**

##### **16.1**

No breach or violation of these covenants, conditions, and restrictions shall defeat or render invalid the lien of any mortgage, deed of trust, or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing of any lot or portion thereof; provided that all of these restrictions shall be binding upon and effective against any subsequent owner of the property or any

portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise pursuant to such lien rights.

**ARTICLE 17. CAPTIONS**

**17.1**

The captions of article and section 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 18. EFFECT OF INVALIDATION**

**18.1**

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.

**(The balance of this page is blank intentionally)**

This Declaration is hereby executed by the authorized representative of SSF Development, LLC, on this 2 day of June, 1999.

**SSF DEVELOPMENT, LLC**  
a Kansas Limited Liability Company

By: Roger K. Schultz  
**ROGER K. SCHULTZ**  
Member

**ACKNOWLEDGEMENT**

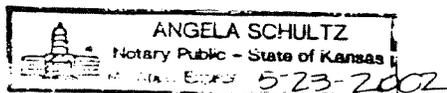
STATE OF KANSAS, COUNTY OF RILEY, SS:

**BE IT REMEMBERED** that on this 2 day of June, 1999, before me the undersigned, a notary public in and for the state and county aforesaid, came Roger K. Schultz, Member of SSF Development, LLC, a Kansas Limited Liability Company, and who is personally known to me to be the same person who executed the foregoing Agreement and such person duly acknowledged the execution of the same on behalf of said Limited Liability Company.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Angela Schultz  
NOTARY PUBLIC

My appointment expires:



This Declaration is hereby executed by the authorized representatives of the City of Manhattan, Kansas, on this 14 day of JANUARY, 2000.

ATTEST:

CITY OF MANHATTAN

By: *Richard L. Doan*  
RICHARD L. DOAN, CMC  
City Clerk

By: *Roger P. Reitz*  
ROGER P. REITZ, M.D.  
Mayor

ACKNOWLEDGEMENT

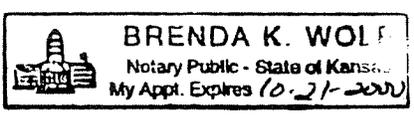
STATE OF KANSAS, COUNTY OF RILEY, SS:

BE IT REMEMBERED that on this 14<sup>th</sup> day of January, 2000 before me the undersigned, a notary public in and for the state and county aforesaid, came Richard L. Doan and Roger P. Reitz, M.D., City Clerk and Mayor, respectively, and who are personally known to me to be the same persons who executed the foregoing Agreement and such persons duly acknowledged the execution of the same on behalf of the City of Manhattan, Kansas.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

*Brenda K. Wolf*  
NOTARY PUBLIC

My appointment expires:



This Declaration is hereby executed by the authorized representatives of Western Wireless Corporation on this 14<sup>th</sup> day of January, 1999. 2000

ATTEST:

WESTERN WIRELESS CORPORATION,  
a Washington Corporation

By: Shawn A. Libford

By: [Signature]  
President

ACKNOWLEDGEMENT

STATE OF Washington, COUNTY OF King, SS:

BE IT REMEMBERED that on this 14 day of January, 2000, 1999, before me the undersigned, a notary public in and for the state and county aforesaid, came Murali Triveni and [Signature], authorized representatives, with the titles set forth above, of Western Wireless Corporation, and who are personally known to me to be the same persons who executed the foregoing Agreement and such persons duly acknowledged the execution of the same on behalf of said corporation.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

ANNA KATHLEEN DAHLSTROM  
STATE OF WASHINGTON  
NOTARY --- PUBLIC  
MY COMMISSION EXPIRES 5-06-03

[Signature]  
NOTARY PUBLIC

My appointment expires:

**EXHIBIT A**  
**Manhattan Corporate Technology Park**  
**Plantings List**

COMMON NAME	GENUS	SPECIES	H E I G H T	W I D T H	E X P O S U R E T Y P E	S U M M E R F O L I A G E	F A L L F O L I A G E	T E X T U R E	B L O O M S E A S O N	B L O O M C O L O R	F R U I T S E A S O N	F R U I T C O L O R	REMARKS
<b>DECIDUOUS TREES</b>													
<b>LARGE DECIDUOUS TREES</b>													
Columnar Maple	Acer	platanoides 'Columnar'	60	20	dec	gm	yel	med					
Red Maple	Acer	rubrum											dark gm, strat
Superform Maple	Acer	platanoides 'Superform'	60	45	dec	gm	gm	med					
Purpleblow Maple	Acer	truncatum											hardy, native tree, fall
Sugar Maple	Acer	saccharum	70	70	dec	gm	om	med					
Chinese Chestnut	Castanea	mollissima	50	50	dec	gm	yel	med					bronze fall color,
Urbanite Green Ash	Fraxinus	pennsylvanica	50	40	dec	gm	bro	med					unique foliage
Ginkgo	Ginkgo	biloba	60	40	dec	gm	yel	med					has pods, astate tree
Kentucky Coffee Tree	Gymnocadisa	dioicus	60	50	dec	gm	yel	cor					
Sweetgum	Liquidambar	styraciflua	65	50	dec	gm	yel	med					
American Planetree	Platanus	occidentalis	100	100	dec	gm	tan	cor					bark, shade tree
White Oak	Quercus	alba											wet soil
Swamp White Oak	Quercus	bicolor	55	55	dec	gm	red	med					fast grower, native
Eastern Cottonwood	Populus	deltoides	75	45	dec	gm	yel	cor					
Chinkapin Oak	Quercus	muelenbergii											
Shumard Oak	Quercus	shumardii											
Willow Oak	Quercus	phellos											
Shingle Oak	Quercus	imbricaria	55	60	dec	gm		med					
Bur Oak	Quercus	macrocarpa	65	75	dec	gm		cor					drought tolerant
English Oak	Quercus	robur	50	20	dec	gm		med					holds leaves
Red Oak	Quercus	rubra	65	50	dec	gm	red	med					brilliant fall color
Common Baldcypress	Taxodium	distichum	60	30	dec	gm	om	fin					likes wet soils, stately
<b>MEDIUM DECIDUOUS TREES</b>													
Shademaster Honeylocust	Gleditsia	trifacantha 'Shademaster'	45	40	dec	gm	yel	fin					hardy, seedless
Black Tupelo or Sour Gum	Nyssa	sylvatica	40	25	dec	gm	yel	med					great fall color
Bradford Pear	Pyrus	calleryana 'Bradford'	40	25	dec	gm	pur	med					fall color, pyramidal
Little Leaf Linden	Tilia	cordata	40	30	dec	gm	yel	med					dense, compact
<b>SMALL DECIDUOUS TREES</b>													
Hedge Maple	Acer	campestre	30	30	dec	gm	yel	med					

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**EXHIBIT A**  
**Manhattan Corporate Technology Park**  
**Plantings List**

Eastern Redbud	Cercis	canadensis	25	30		dec	gm		med	spr	pnk				hardy, brt. spring color
Spring Snow Crabapple	Malus	x hybrids 'Spring Snow'	15	15		dec	gm		med	spr	wht				wht flower masses
<b>DECIDUOUS SHRUBS</b>															
<b>LARGE DECIDUOUS SHRUBS</b>															
Red Chokecherry	Aronia	arbutifolia	9	8	s/p	dec	gm		med	spr	wht	fal	red		outstanding fruit color
Redoiser Dogwood	Comus	sericea	8	9	s/p	dec	gm	red	cor	sum	wht	fal	wht		red twigs for winter
Compact Burning Bush	Euonymus	alatus 'Compactus'	8	5	s	dec	gm	red	med						brilliant fall color
Showy Border (Spectabilis) Forsythia	Forsythia	intermedia 'Spectabilis'	10	10	s	dec	gm	gm	med	spr	yel				bright yel. flowers
Meadowlark Forsythia	Forsythia	species 'Meadowlark'	8	8	s	dec	gm		med	spr	yel				flower buds hardy
Rose of Sharon	Hibiscus	syriacus	12	12	s	dec	gm		med	sum	mul				multiple flower colors
Fragrant Honeysuckle	Lonicera	fragrantissima	7	7	s	dec	gm		cor	spr	wht				fragrant, spring color
Arnolds Red Honeysuckle	Lonicera	tatarica 'Arnolds Red'	10	10	s/p	dec	gm		med	spr	wht	fal	red		flowers and berries
Purple Leaf Sandcherry	Prunus	cistena	7	6	s	dec	gm	pur	med	spr	pnk				hardy, purple accent
Tall Hedge	Rhamnus	frangula 'Columnaris'	10	4	s	dec	gm	gm	med						good screening pl.
Fragrant Sumac	Rhus	aromatica	7	7	s	dec	gm	om	med			sum	om		droughty, fall color
Staghorn Sumac	Rhus	typhina	8	8	s	dec	gm	om	med			sum	om		brilliant large fall color
Korean Spice Bush	Viburnum	carlesii	8	8	s/p	dec	gm	gm	med	spr	pnk	sum	red		glossy, spicy fragran
Wayfaringtree Viburnum	Viburnum	lantana	14	12	s/p	dec	gm	om	cor	spr	wht	fal	blk		large, dark green
Mohican Viburnum	Viburnum	lantana 'Mohican'	9	9	s/p	dec	gm	pur	med	spr	wht	sum	red		compact, Lrg flowers
Shasta Viburnum	Viburnum	plicatum 'Tomentosum'	8	8	s/p	dec	gm	om	med	spr	wht	sum	red		Lrg wht flowers, stems
Blackhaw Viburnum	Viburnum	prunifolium 'Blackhaw'	15	15	s	dec	gm	red	med	spr	wht	sum	blk		white flowers, upright
<b>MEDIUM DECIDUOUS SHRUBS</b>															
Rosy Glow Barbary	Berberis	thunbergii 'Rosy Glow'	4	3	s	dec	gm		med						accent plant
Isanti Dogwood	Comus	sericea 'Isanti'	5	5	s/p	dec	gm		med	spr	wht	fal	wht		very dense
Kelsey Dogwood	Comus	sericea 'Kelsey'	3	3	s/p	dec	gm		cor	sum	wht	fal	wht		attractive, compact
Bush Honeysuckle	Diravilla	trifida	4	5	s/p	dec	gm	red	med	spr	yel				very hardy
Early Sunrise Forsythia	Forsythia	x Ovata	4	4	s	dec	gm	gm	med	spr	yel				compact, hardy flower
Early Sunrise Forsythia	Forsythia	x Ovata	4	4	s	dec	gm		med	sum	yel				yel summer flowers
Kalm Hypericum	Hypericum	kalmianum	4	4	s	dec	gm		med	spr	yel				hardy, dense
Emerald Mound Honeysuckle	Lonicera	xylosteum 'Nanum'	3	4	s	dec	gm		med	spr	yel				hardy, dense
Dwarf Snowflake Mockorange	Philadelphus	virginalis 'Dwarf Snowflake'	3	3	s/p	dec	gm		med	spr	wht				fragrant, bloomer
Cutleaf Buckthorn	Rhamnus	species 'Cutleaf'	5	4	s	dec	gm	gm	fin			sum	om		fine textured accent
Gro Low Sumac	Rhus	aromatica 'Gro Low'	3	4	s	dec	gm	om	med			sum	om		fall color, compact
Shirobana Spirea	Spirea	bumalda 'Shirobana'	3	3	s/p	dec	gm	om	med	spr	mul				pnk wht & red blooms
Gold Flame Spirea	Spirea	bumalda 'Gold Flame'	3	3	s	dec	om	om	med	spr	pnk				om. copper color
Snowmound Nippon Spirea	Spirea	nipponica 'Snowmound'	4	4	s/p	dec	gm	red	med	spr	wht				dense, white bloomer
Anthony Waterer Spirea	Spirea	x bumalda 'Anthony Waterer'	3	4	s/p	dec	gm	gm	med	spr	pnk				extended bloom time
Anthony Waterer Spirea	Spirea	x bumalda 'Anthony Waterer'	3	4	s/p	dec	gm	gm	med	spr	pnk				fragrant, dense
Dwarf Korean Lilac	Syringa	meyerii	5	6	s	dec	gm	gm	med	spr	pur				compact, dark green
Miss Kim Lilac	Syringa	patula 'Miss Kim'	4	5	s	dec	gm	red	med	spr	pur				compact, dark green
Compact European Cranberrybush	Viburnum	opulus 'Compactum'	5	5	s/p	dec	gm	om	med	spr	wht	sum	red		dense, red berries
Alfredo American Cranberrybush Vib.	Viburnum	trilobum	5	6	s	dec	gm	red	med	spr	wht	sum	red		compact, fall color
Red Prince Weigela	Weigela	florida 'Red Prince'	5	5	s	dec	gm	gm	med	spr	red				red flowers, late apr
Variegated Dwarf old-fashioned Weigela	Weigela	florida 'Variegated Nana'	5	5	s	dec	gm	gm	med	spr	pnk				gm-wht attractive
<b>SMALL DECIDUOUS SHRUBS</b>															
Crimson Pygmy Barbary	Berberis	thunbergii 'Crimson Pygmy'	2	3	s	dec	red	red	fin						thorns, border plant
Kobold Barbary	Berberis	thunbergii 'Kobold'	1.5	2	s	dec	gm	om	fin						hardy green low grow
Dwarf Arnold Forsythia	Forsythia	x intermedia 'Arnold Dwarf'	2	5	s	dec	gm		med	spr	yel				slopes, ground-cover
Bronx Forsythia	Forsythia	x intermedia 'Bronx'	2	2	s	dec	gm		med	spr	yel				hardy, compact
Starburst Hypericum	Hypericum	frondosum 'Starburst'	2	2	s	dec	gm	big	med	sum	yel				grt. yellow sum. color
Alpine Spirea	Spirea	japonica 'Alpina'	1	2	s/p	dec	gm	gm	fin	spr	pnk				delicate, compact

**EXHIBIT A**  
**Manhattan Corporate Technology Park**  
**Plantings List**

Nanum Vibumum	Vibumum	opulus 'Nanum'	2	2	s/p	dec	gm	om	med	spr	wht	sum	red	compact, attractive
<b>EVERGREEN TREES</b>														
<b>LARGE EVERGREEN TREES</b>														
White Fir	Abies	concolor	40	25		ev	blu	blu	med					
Austrian Pine	Pinus	nigra	80	35		ev	gm	gm	fin					herdy, dark-gm
Scotch Pine	Pinus	sylvestris	50	25		ev	blu	blu	med					hardy blu-gm needles
Douglas Fir	Pseudotsuga	menziesii	60	20		ev	gm	gm	med					
<b>MEDIUM EVERGREEN TREES</b>														
Eastern Red Cedar	Juniperus	virginiana	25	12		ev	gm	gm	fin					blu-green berries
<b>EVERGREEN SHRUBS</b>														
<b>LARGE EVERGREEN SHRUBS</b>														
Compact Mugo Pine	Pinus	mugo	10	10	s	ev	gm	gm	med					rugged, rounded
Pragnese Vibumum	Vibumum	pragense	10	10	s	ev	gm	gm	med	spr	wht			white flowers
<b>MEDIUM EVERGREEN SHRUBS</b>														
Maney Juniper	Juniperus	chinensis 'Maney'	8	8	s	ev	gm	gm	med					lacy gm foliage
Mint Julep Juniper	Juniperus	chinensis 'Mint Julep'	5	8	s	ev	gm	gm	fin					
<b>SMALL EVERGREEN SHRUBS</b>														
Wintergem Boxwood	Buxus	asiatic 'Wintergem'	2	2	p	ev	gm	gm	fin					great compact hedge
Winter Creeper Euonymus	Euonymus	fortunei 'Emerald Gaiety'	2	2	s/p	ev	var	yel	med					gm-yel, gm-wht foliag
Emerald Euonymus	Euonymus	fortunei 'Emerald Gold'	2	2	s/p	ev	var	yel	med					dense, mounding
Broadmoor Juniper	Juniperus	sabina 'Broadmoor'	1	8	s	ev	gm	gm	fin					
<b>PERENNIAL PLANTS</b>														
Yarrow	Achillea	filipendula 'Cloth of Gold'	24"	24"	s	dec	gm	gm	med	sum	yel			ferry foliage, droughty
Yarrow	Achillea x	moonshine 'Moonshine'	18"	24"	s	dec	grg	grg	med	sum	yel			fragrant, herdy
Yarrow	Achillea	x taygetea 'Summer Pastels'	24"	24"	s	dec	gm	gm	med	sum				pastel colors, droughty
Yarrow	Achillea	x taygetea 'Summer Pastels'	24"	24"	s	dec	gm	gm	fin	sum				var. colors, butterfly
Butterfly Milkweed	Asclepias	tuberosa 'Gay butterflies'	24"	24"	s	dec	gm	gm	fin	sum				var. colors, butterfly
Alert Aster	Aster	'Alert'	12"	15"	s	dec	gm	gm	fin	fall	cr			dwarf
Alert Aster	Aster	novi-belgi 'Professor Kippenburg'	16"	24"	s	dec	gm	gm	fin	fall	lav			compact mounds
Aster	Aster	novi-belgi 'Professor Kippenburg'	16"	24"	s	dec	gm	gm	fin	fall	lav			compact mounds
Petite Blum Buddleia	Buddleia	davidii 'Petite Plum'	2'	2'	s/p	dec	grg	grg	fine	sum	pur			attracts butterfly
Blue Mist Spirea	Caryopteris	x clandonensis 'Dark Knight'	3'	3'	s	dec	gm	gm	fin	fall	blu			masses of blue flower
Shasta Daisy	Chrysanthemum	maxmum 'Giant Double Exhibition'	3'	2'	s	dec	gm	gm	fin	sum	wht			large blooms
Painted Daisy	Chrysanthemum	x coccineum 'Robinson's Giant'	2'	2'	s	dec	gm	gm	fin	spr	pnk			dainty, ferny, pink&red
Coreopsis	Coreopsis	grandiflora 'Early Sunrise'	2'	2'	s	dec	gm	gm	fin	sum	yel			compact plants
Coreopsis	Coreopsis	grandiflora 'Early Sunrise'	2'	2'	s	dec	gm	gm	fin	sum	yel			compact plants
Coreopsis	Coreopsis	grandiflora 'Early Sunrise'	2'	2'	s	dec	gm	gm	med	sum	pnk			droughty, needle like
Coreopsis	Coreopsis	verticillata 'Roses'	15"	1'	s	dec	gm	gm	fin	spr	pnk			droughty, needle like
Coreopsis	Coreopsis	verticillata 'Moonbeam'	2'	2'	s	dec	gm	gm	fin	sum	yel			pale yellow
Coreopsis	Coreopsis	verticillata 'Moonbeam'	2'	2'	s	dec	gm	gm	med	sum	pnk			rosy color, butterfly
Purple Coneflower	Echinacea	purpurea 'Magnus'	2'	2'	s	dec	gm	gm	med	sum	pnk			rosy color, butterfly
White Coneflower	Echinacea	purpurea 'White Swan'	3'	3'	s/p	dec	gm	gm	cor	fall	wht			attracts butterfly
White Coneflower	Echinacea	purpurea 'White Swan'	3'	3'	s/p	dec	gm	gm	cor	fall	wht			attracts butterfly
Fleabane	Erigeron	x karvinskianus 'Profusion'	12"	15"	s	dec	gm	gm	fin	spr	wht			spreading, droughty
Gaillardia	Gaillardia	x grandiflora 'Goblin' & 'Golden Goblin'	12"	24"	s	dec	gm	gm	cor	sum	yel			red flowers, yel edged
Gaillardia	Gaillardia	x grandiflora 'Goblin' & 'Golden Goblin'	12"	24"	s	dec	gm	gm	cor	sum	yel			red flowers, yel edged
Dwarf Goblin Gaillardia	Gaillardia	x grandiflora 'Dwarf Goblin'	15"	24"	s	dec	gm	gm	med	sum	yel			red with gold border
Hosta	Hosta	fortunei 'Albo Marginata'	15"	2'	sh	dec	gm	gm	med	sum	lav			narrow white border
Hosta	Hosta	fortunei 'Golden Tiana'	12"		sh	dec	gm	gm	fin	sum	lav			yellow banded, spread
Hosta	Hosta	fortunei 'Golden Tiana'	12"		sh	dec	gm	gm	fin	sum	lav			yellow banded, spread
Hosta	Hosta	fortunei 'Krossa Regal'	24"	30"	sh	dec	blu	blu	med	sum	pnk			blue-gray wavy, veined
Hosta	Hosta	fortunei 'Krossa Regal'	24"	30"	sh	dec	blu	blu	med	sum	wht			good specimen plant
Hosta	Hosta	sieboldiana 'Elegans'	24"	30"	sh	dec	blu	blu	med	sum	wht			good specimen plant
Hosta	Hosta	sieboldiana 'Elegans'	24"	30"	sh	dec	gm	gm	med	sum	blu			gr. cover/specimen
Hosta	Hosta	ventricosa	24"	30"	sh	dec	gm	gm	med	sum	blu			gr. cover/specimen
Hosta	Hosta	ventricosa	24"	30"	sh	dec	gm	gm	med	sum	pur			tall flower spikes
Kansas Gayfeather	Liatris	spicata 'Blazing Star Purple'	2.5'	2'	s	dec	gm	gm	med	sum	wht			drought tolerant
Kansas Gayfeather	Liatris	spicata 'Blazing Star White'	2.5'	2'	s	dec	gm	gm	med	sum	wht			drought tolerant

BOOK 772 PAGE 577



**AMENDMENT TO THE  
Declaration of Covenants, Conditions and Restrictions  
for development at the  
Manhattan Corporate Technology Park  
Manhattan, Kansas**



This Amendment to The Declaration of Covenants, Conditions and Restrictions (the "Amendment") for the Manhattan Corporate Technology Park (the "Park") is hereby made this 7<sup>th</sup> day of June, 2005, by the City of Manhattan, Kansas, a municipal corporation, and hereinafter sometimes referred to as the "City", or the "Declarant".

**WITNESSETH:**

- A. **WHEREAS**, the Declaration of Covenants, Conditions and Restrictions (CCRs) are filed with the Riley County Register of Deeds, beginning at Book 772, Page 540, and establish terms and conditions for the development and use of property within the Park; run with the land and are legally binding on all property owners; and, are intended to protect the value, desirability and attractiveness of all lots within the Park; and,
- B. **WHEREAS**, the City of Manhattan is the Declarant, as defined in the CCRs, and the City of Manhattan, is also the majority property owner as of the date of this Amendment; and,
- C. **WHEREAS**, Article 10 of the CCRs provides that they may be amended with the written consent of the owners of fifty-one percent (51%) of the area of the property subject to the CCRs; and,
- D. **WHEREAS**, the City, as the owner of more than fifty-one percent(51%) of the area of the property subject to the CCRs, desires to amend certain sections of the CCRs.

**NOW THEREFORE**, the City, as Declarant, and also as the owner of more than fifty-one percent (51%) of the area of the property subject to the CCRs, does hereby declare that the CCRs are amended, as follows:

- 1. That Sections 3.1, 3.2, 3.3, and 3.4 of the CCRs are hereby amended to read, as follows:

**3.1 Permitted Uses**

The development of the Park is divided into two separate land use Areas. The two Areas have been defined herein as "Area 1" and "Area 2". Each such area has specific permitted uses, as more fully set forth below. Such approved uses 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, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or nontoxic matter (including steam), nor create a potential for explosion or other hazard. Certain activities, such as storage of large or bulky material, which cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in writing, and further provided such activity is screened so as not to be visible from neighboring property and streets. All

lighting is to be shielded so as not to produce glare visible from neighboring property.

### 3.2 Uses Permitted in Area 1

Area 1 is designated for certain light-industrial uses, research and development uses, industrial support and service uses, and business and professional office uses. The Declarant may amend this Section 3.2 from time to time to allow other and different uses. The following operations and uses are permitted within Area 1:

- 3.2.1 Art and handicraft fabrication or processing
- 3.2.2 Assembly of electronics, household appliances or equipment
- 3.2.3 Bookbinding and publishing
- 3.2.4 Business and professional offices
- 3.2.5 Corporate headquarters
- 3.2.6 Manufacturing of pharmaceutical products
- 3.2.7 Garment or apparel production
- 3.2.8 Government buildings
- 3.2.9 Instrument fabrication or processing
- 3.2.10 Mail order houses
- 3.2.11 Optical goods fabrication or processing
- 3.2.12 Research facilities
- 3.2.13 Stationary and paper products
- 3.2.14 Banks and financial institutions, including drive-in type
- 3.2.15 Health, fitness and service clubs
- 3.2.16 Hotels
- 3.2.17 Child Care facilities
- 3.2.18 Public Utilities
- 3.2.19 Convention centers, exhibit halls and meeting rooms
- 3.2.20 Convenience Stores
- 3.2.21 Restaurants, including drive-in type
- 3.2.22 Any use specifically authorized by action of the Declarant pursuant to Section 3.5.

### 3.3 Uses Permitted in Area 2

Area 2 is designated for certain light- and medium-industrial uses, research and development uses, and industrial support and service uses. The Declarant may amend this Section 3.3 from time to time to allow other and different uses. The following operations and uses are permitted within Area 2:

- 3.3.1 Warehousing and Wholesale Distribution
- 3.3.2 Welding Shops
- 3.3.3 Machine Shops
- 3.3.4 Tool and Die Shops
- 3.3.5 Tool and Appliance Repair
- 3.3.6 Electric Motor Repair
- 3.3.7 Electrical, Heating, Plumbing or General Contractors
- 3.3.8 Printing and Publishing
- 3.3.9 Manufacturing, fabrication, processing, treatment, packaging or assembly of semi-finished materials into final products including any of the following:
  - (a) electronics
  - (b) instruments

- (c) appliances
  - (d) equipment
  - (e) machinery
  - (f) vehicles
  - (g) aircraft or aircraft components
  - (h) food products
  - (i) clay products
  - (j) glass products
  - (k) leather products
  - (l) rubber products
  - (m) wood products
  - (n) metal products
  - (o) signs
  - (p) textiles and apparel
  - (q) pharmaceutical products
- 3.3.10 Government Buildings
  - 3.3.11 Public Utilities
  - 3.3.12 Research Facilities
  - 3.3.13 Banks and financial institutions, including drive-in type
  - 3.3.14 Business and professional offices
  - 3.3.15 Convenience Stores
  - 3.3.16 Group day care centers
  - 3.3.17 Health and fitness clubs
  - 3.3.18 Restaurants, including drive-in type
  - 3.3.19 Any use specifically authorized by action of the Declarant pursuant to Section 3.5.

### 3.4 Prohibited Uses

The following operations and uses are prohibited, as either a principal use or accessory use, within the Park:

- 3.4.1 Residential use of any type, except quarters for a night watchman
- 3.4.2 Trailer courts or recreational vehicle campgrounds
- 3.4.3 Junkyards or recycling facilities
- 3.4.4 Drilling for and removing oil, gas, or other hydrocarbon substances
- 3.4.5 Refining of petroleum or any of its products
- 3.4.6 Commercial petroleum storage yards
- 3.4.7 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 3
- 3.4.8 Distillation of bones
- 3.4.9 Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse
- 3.4.10 Fat rendering
- 3.4.11 Stockyard or slaughter of animals
- 3.4.12 Smelting of iron, tin, zinc, or any other ore or ores
- 3.4.13 Cemeteries
- 3.4.14 Jail or honor farms
- 3.4.15 Labor or migrant worker camps
- 3.4.16 Humane societies or any kennels for animals
- 3.4.17 Salvage yards
- 3.4.18 Hospitals

- 3.4.19 Radio and television broadcasting stations
- 3.4.20 Automobile rental service
- 3.4.21 Car washes
- 3.4.22 Wholesale fuel storage and distribution
- 3.4.23 Large truck and equipment repair
- 3.4.24 Building maintenance services
- 3.4.25 Laundry, dry cleaning and carpet cleaning
- 3.4.26 Motor vehicle and tire repair
- 3.4.27 Freestanding towers
- 3.4.28 Any use not authorized as a permitted use shall not be allowed, except as provided in Section 3.5.

2. That Sections 6.8 and 6.9 of the CCRs are amended to read, as follows:

### **6.8 Design Standards - Area 1**

The following design standards shall be adhered to in the design and construction of new buildings in the Manhattan Corporate Technology Park contained within Area 1.

- 6.8.1 *Permissible Building Materials.* The front facade of every building shall be of brick, stucco, textured masonite, stone masonry, split-face concrete block, architectural concrete panels, architectural metal, wood or glass. Glass block may be used as an accent material. Building materials that are neither specifically permitted under this paragraph (1) nor prohibited under paragraph (2) below may be allowed by the Architectural Review Committee if they are deemed similar to a permitted building material.
- 6.8.2 *Prohibited Building Materials.* The following building materials are forbidden on the front facade and discouraged on other areas of any new building or any remodeled, enlarged or diminished building: prefabricated metal siding, smooth masonite, concrete cinder block, or vinyl.
- 6.8.3 *Building Colors.* Building colors, except for trim colors, shall be subdued earth tones, white or similar suitable colors. Earth tone colors include, but are not limited to, red, beige, taupe brown, granite gray, gray blue, greenish blue and dark brown. The Architectural Review committee may reject proposals for buildings with symbolic design or color schemes for reasons of advertising.
- 6.8.4 *Trim Colors/Window Colors.* Trim colors and the colors of window frames shall be earth tones, white or a color that clearly complements the main color of the building.
- 6.8.5 *Foundations.* Concrete foundations shall be covered with a permissible building material so that no more than twelve (12) inches in height of the concrete of any building shall be visible.
- 6.8.6 *Mechanical Equipment.* All mechanical equipment on buildings (such as air conditioning units) shall be screened from view. All roof mounted equipment on buildings shall be architecturally designed to be hidden from the front and the sides of the building. Ground-mounted equipment shall be concealed by walls constructed of a permissible building material or by a combination of such walls and evergreen plant material.

- 6.8.7 *Maximum Building Coverage.* The maximum building coverage shall not exceed thirty (30) percent of the lot area.
- 6.8.8 *Maximum Site Coverage.* The total impervious surface including the principal building, accessory structures, parking and other impermeable surfaces shall not exceed sixty (60) percent of the lot area.
- 6.8.9 *Required Front Yard.* Every front yard shall be at least fifty (50) feet in depth.
- 6.8.10 *Required Side Yard.* Every side yard shall be at least twenty-five (25) feet in width. The required side yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.8.11 *Required Rear Yard.* Every rear yard shall be at least twenty-five (25) feet in depth. The required rear yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.8.12 *Maximum Building Height.* No building or structure shall exceed forty (40) feet in height. More excessive limitations to height may be applicable subject to the Airport Overlay District Zoning Regulations and Federal Aviation Regulation Part 77 Surfaces.

## 6.9 Design Standards - Area 2

The following design standards shall be adhered to in the design and construction of new buildings in the Manhattan Corporate Technology Park contained within Area 2.

- 6.9.1 *Permissible Building Materials.* The front facade of every building shall be of brick, stucco, textured masonite, stone masonry, split-face concrete block, architectural concrete panels, tilt-up concrete, smooth masonite, permastone, painted steel siding, wood, or glass. Glass block may be used as an accent material. Building materials that are neither specifically permitted under this paragraph (1) nor prohibited under paragraph (2) below may be allowed by the Architectural Review Committee if they are deemed similar to a permitted building material.
- 6.9.2 *Prohibited Building Materials.* The following building materials are forbidden on the front facade and discouraged on other areas of any new building or any remodeled, enlarged or diminished building: metal (except painted steel siding), concrete cinder block, or vinyl.
- 6.9.3 *Building Colors.* Building colors should be tasteful in appearance. The Architectural Review committee may reject proposals for building with symbolic design or color schemes for reasons of advertising.
- 6.9.4 *Foundations.* Concrete foundations along the front facade of every building shall be covered with a permissible building material so that no more than twelve (12) inches in height of the concrete of any building shall be visible. This requirement may be waived by the Architectural Review Committee for good cause.
- 6.9.5 *Mechanical Equipment.* Efforts shall be made to screen mechanical equipment on buildings (such as air conditioning units). All roof mounted equipment on buildings shall be architecturally designed to be hidden from the front of the building.
- 6.9.6 *Maximum Building Coverage.* The maximum building coverage shall not exceed forty-five (45) percent of the lot area.
- 6.9.7 *Maximum Site Coverage.* The total impervious surface including the principal building, accessory structures, parking and other impermeable

- surfaces shall not exceed seventy-five (75) percent of the lot area.
- 6.9.8 *Required Front Yard.* Every front yard shall be at least forty (40) feet in depth.
- 6.9.9 *Required Side Yard.* Every side yard shall be at least twenty (20) feet in width. The required side yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.9.10 *Required Rear Yard.* Every rear yard shall be at least twenty (20) feet in depth. The required rear yard shall be increased to seventy-five (75) feet on lots abutting residentially-zoned properties.
- 6.8.11 *Maximum Building Height.* No building or structure shall exceed forty (40) feet in height. More excessive limitations to height may be applicable subject to the Airport Overlay District , Zoning Regulations and Federal Aviation Regulation Part 77 Surfaces.

3. All portions of the CCRs, not amended hereby, shall remain in full force and effect.

This Amendment is hereby executed by the authorized representatives of the City of Manhattan, Kansas, on this 7<sup>th</sup> day of June, 2005.

ATTEST:

CITY OF MANHATTAN

BY: [Signature]  
GARY FEES,  
CITY CLERK

BY: [Signature]  
ED KLIMEK,  
MAYOR

ACKNOWLEDGMENT

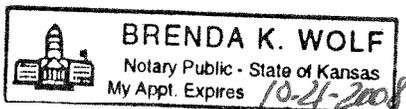
STATE OF KANSAS, COUNTY OF RILEY, SS:

BE IT REMEMBERED, that on this 7<sup>th</sup> day of June, 2005, before me, the undersigned, a notary public in and for the County and State aforesaid, came Ed Klimek, Mayor of the City of Manhattan, Kansas, and Gary Fees, City Clerk, and who are personally known to me to be the same persons who executed the foregoing Amendment, and duly acknowledged the execution of the same on behalf of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

[Signature]  
NOTARY PUBLIC

My appointment expires:



**Exhibit A**  
**Properties Subject To The**

**AMENDMENT TO THE**  
**Declaration of Covenants, Conditions and Restrictions**  
for development at the  
**Manhattan Corporate Technology Park**  
Manhattan, Kansas

Made this 7th day of June, 2005, by the City of Manhattan, Kansas, a municipal corporation, and referred to as the "City", or the "Declarant" in the said Amendment.

Lots 4 & 5, Manhattan Corporate Technology Park, Unit 2; Lots 6-9, Lots 11-20, Lots 23-29, Manhattan Corporate Technology Park, Unit 3; Lot 10, Manhattan Corporate Technology Park, Unit 4; and Lots 21A and 22A in Manhattan Corporate Technology Park, Unit 3, as shown on the Boundary Line Adjustment for previous Lots 21 and 22; all in the City of Manhattan, Riley County, Kansas.