

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: MARCH 29, 2018

AGENDA ITEM NUMBER: 4 A&B

SUBJECT: A. RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PROTECTIVE COVENANTS FOR TANGLEWOOD BUSINESS PARK

B. RESOLUTION AUTHORIZING THE CREATION OF A PROPERTY OWNERS' ASSOCIATION FOR TANGLEWOOD BUSINESS PARK

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION: See Attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Dudley Adams, Jr.* DATE: March 28, 2018
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF
PROTECTIVE COVENANTS FOR TANGLEWOOD BUSINESS PARK**

WHEREAS, Forsyth County owns and seeks to develop property located in Forsyth County, North Carolina as Tanglewood Business Park; and

WHEREAS, Forsyth County desires to place and impose on the said property covenants, conditions, restrictions and easements regarding the proper use, development, maintenance, and improvement thereof;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the County Manager to execute, on behalf of Forsyth County, a Declaration of Protective Covenants for Tanglewood Business Park, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the Forsyth County Attorney.

Adopted this 29th day of March 2018.

Improvement. Improvement includes both original Improvements to the Property and all later changes and additions thereto.

SECTION 1.6 "Infrastructure Improvements" shall mean all improvements necessary to construct the basic framework of public works necessary for the operation of the Property as a business park. These improvements may include, without limitation, Common Area, streets, entrances, curbs and gutters, common area storm water management facilities, and lines and hook-ups for water, sewer, electric, and other utility services

SECTION 1.7 "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Property with the exception of the dedicated roadways.

SECTION 1.8 "Member" shall mean each Owner in its capacity as a member of the Association.

SECTION 1.9 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to the Property or any Lot thereon, excluding those having such interest merely as security for the performance of any obligation.

SECTION 1.10 "Park" shall mean the Property, which Park shall be known as the Idols Business Park.

SECTION 1.11 "Plat" shall mean the plat or plats that cumulatively constitute the Park and designates boundaries, Lots, Access Roads, and Common Areas, and are recorded by the Declarant in the Forsyth County Registry.

SECTION 1.12 "Public Utility Lines" shall mean those lines and facilities for water, sewer, electricity, gas, telephone, cable television and other telecommunications lines (such as fiber optic cable) installed within the boundary lines of the Property. Public Utility Lines shall be deemed to include any private utility lines on or off the Property which ultimately connect to Public Utility Lines either on or off the Property.

SECTION 1.13 "Requirements" mean the applicable laws, ordinances, regulations, overlay requirements, and restrictions of the County of Forsyth with respect to the Property, and all other laws, regulations and ordinances of Federal, State or local governmental authorities affecting the Property.

II.

RESERVATION OF EASEMENTS

SECTION 2.1 Access Easement. Declarant hereby conveys for use by Declarant and each of the Owners of the Lots, or any portion thereof, and their respective tenants, subtenants, licensees, and each of their respective employees, agents, independent contractors, customers, and invitees, a nonexclusive perpetual easement appurtenant to each of the Lots, or any portion thereof, for ingress and egress to and from each Lot over all Access Roads shown on the Plat so that each Lot will have access to a public right of way (the "Access Easement"). For purposes of clarity, and not limitation, the Access Easement shall include that Access Easement shown on the Plat recorded in Plat Book 67, Page 76 of the Forsyth County Registry. The Access Easement shall extend from each Lot over the interior roads. No building structures or obstructions shall be

placed within the Access Easement which would unreasonably interfere with or unreasonably obstruct the free flow of traffic; provided, however, minor encroachments for concrete medians and islands, together with landscaping, irrigation and other improvements, shall not be construed as obstructions.

SECTION 2.2. Utility Easements. Declarant hereby conveys for use by Declarant and each of the Owners of a Lot for the benefit of each and their respective tenants, subtenants, licensees, and each of their respective employees, agents, independent contractors, customers and invitees, a nonexclusive perpetual easement to connect to the Public Utility Lines serving the Property and a nonexclusive easement to use the common utility lines and mains installed and/or to be installed in and under the Access Roads or in the Utility Easements. After completion of the construction, reconstruction or relocation of any Public Utility Lines on a Lot and upon the written request of Declarant, the Owner of the Lot on which the utility construction, reconstruction or relocation occurred shall provide the Declarant with as-built plans or an as-built survey correctly identifying the type and location of each of the Public Utility Lines.

SECTION 2.3 Temporary Construction Easement. Each Owner hereby grants to each other Owner a temporary, nonexclusive easement for incidental encroachments upon the granting Owner's adjoining Lot and easements which may occur as a result of any construction performed on the grantee Owner's Lot, so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as the Owner utilizing any such easement maintains in effect comprehensive commercial general liability insurance providing coverage of at least \$1,000,000 combined single limit for bodily injury, death and property damage per occurrence and protecting the Owner of the adjoining Lot on which such encroachment is taking place from the risk involved, from insurers admitted or qualified to do business in the State of North Carolina and rated at the time such insurance is provided at least A/V as that category is defined in the edition of A.M. Best's Insurance Guide current as of the Effective Date.

SECTION 2.4 Barriers and Traffic Control. No walls, fences or barriers of any sort or kind shall be constructed or maintained in the Access Roads, or any portion thereof, which shall prevent or impair, in any material respect, the use or exercise of any of the easements granted herein, or the free access and movement, including, without limitation, pedestrian and vehicular traffic over the Access Roads, provided, however, that such reasonable traffic control as may be reasonably necessary to guide and control the orderly flow of traffic may be installed, and access to portions of each Lot may be limited during construction of improvements on the Lot.

SECTION 2.5 Construction Period. Notwithstanding anything else contained in this Declaration to the contrary, the Owner of any Lot performing any work permitted by this Declaration shall perform such work so as to create the least inconvenience to the other Lots as is reasonably possible. In addition, the Owner of any Lot performing any such work permitted pursuant to this Declaration will repair any damage to the other Lots or Common Areas caused by construction vehicles. Construction vehicles and contractors, subcontractors and materialmen and their employees will not be permitted by the Owner of any Lot to park on the other Lots during any construction on any Lot, and Declarant may restrict the areas within the Common Areas where such vehicles may park. During construction, all Lots will have on site construction dumpsters and the site must be clean and free of hazardous debris and trash.

III.

GOAL OF DEVELOPMENT

SECTION 3.1 The goal in the development of the Tanglewood Business Park is the creation of a harmonious development which will preserve and enhance the long term property values and which will provide a pleasant and productive working environment and create development compatible with property adjacent to the Tanglewood Business Park. To achieve this goal, the Tanglewood Business Park shall be improved with attractive, well-spaced buildings that are properly constructed, durable and easily maintained. This Declaration is established and promulgated in the interest of promoting this goal in a manner that encourages planning and design consistent with the goal.

IV.

GENERAL USE RESTRICTIONS

SECTION 4.1 The Property shall be used solely and exclusively for light industrial purposes, as identified in the attached list of limited uses in Exhibit B, which is incorporated herein by reference, and no residential dwelling shall be erected or allowed to remain upon the Property.

SECTION 4.2 No structure of a temporary character such as a tent, shack, garage, barn or other outbuilding of any type shall be located on the Property at any time; provided, however, that during construction on the Property, a building contractor may place a construction trailer on the Property. No mobile or modular home or office shall be placed or allowed to remain on the Property.

SECTION 4.3 No recreational vehicle, boat, or trailer, or similar equipment of recreational characteristics of any kind shall be left or permitted to remain upon the Property or on any street adjacent to the Property by any Owner, or guest or invitee of an Owner of the Property, without prior written consent of Declarant or its successors and assigns.

SECTION 4.4 No animals, livestock, fowl, swine or goats of any kind shall be raised or bred on the Property.

SECTION 4.5 The Property shall not be used, maintained or allowed to become a dumping ground for scraps, litter, leaves, limbs, rubbish or any substance which will cause the Property to appear unclean. No substance, thing or material shall be kept on the Property which will emit foul or obnoxious odors. Trash, garbage and other waste shall be kept in sanitary containers which shall be stored in a screened enclosure, either man-made or natural.

SECTION 4.6 No noxious or offensive activities shall be carried on upon the Property, and no Owner shall allow any activity to be carried on upon the Property which will cause any annoyance or nuisance to Owners of adjacent property, or which destroys or threatens to destroy public or private property, or which otherwise disturbs the peace, quiet, comfort, serenity or safety of other property Owners. Notwithstanding the foregoing, an Owner shall not be in violation of this Section 4.6 for any objectionable or offensive odors, fumes, or smells emanating from its Lot ("Odors") so long as the Odors are not the result of a failure to comply with any other provision of these Covenants or any applicable federal or state law or regulation.

SECTION 4.7 No Owner or other occupant of the Property (including guests or invitees of an Owner) shall cause or permit the existence upon, or the discharge from the Property of any Hazardous Material as defined in applicable federal and state laws dealing with the discharge of hazardous substances into the environment, and shall immediately notify the Declarant of the existence of any Hazardous Material discovered on the Property, whether placed there by spill, release, discharge, disposal or storage, and shall promptly pay, discharge, or remove any claim, charge or lien upon the Property, resulting from such Hazardous Waste that exists upon or is discharged from the Property, provided that pharmaceutical products normally utilized in the conduct of any medical practice may be stored on and disseminated from the Property, even if it might otherwise technically be classified as a Hazardous Substance as set forth above.

As used herein, "Hazardous Material" shall mean any hazardous or toxic substance, material, waste or similar term which is regulated by local authorities, the State of North Carolina or the United States of America, or any administrative agency thereof and is not generally used by any occupant of any Lot in the course of operating their business and in accordance with all applicable laws.

V.

BUILDING RESTRICTIONS

SECTION 5.1 No Improvement(s) shall be commenced, erected or maintained, nor shall any exterior addition, change or alteration thereto be made, upon the Property, or to any structure located thereon, unless all plans and specifications setting forth such Improvement(s) therefor have been submitted to and approved in writing by all applicable government entities.

The plans and specifications to be so submitted shall comply with the provisions of all applicable Unified Development Ordinances and shall include, to the extent appropriate, the following:

- (i) A topographical plot showing existing contour grades, major trees and the location of all Improvements. Existing and finished grades shall be shown at Property corners and at corners of proposed Improvements. Property drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the Property contours is contemplated.
- (ii) Exterior elevations.
- (iii) Exterior materials, colors, textures, and shapes.
- (iv) Structural design.
- (v) Landscaping plan, including buffers, walkways, fences and walls, elevation changes, watering systems, vegetation and ground cover.
- (vi) Parking area and driveway plan.
- (vii) Screening, including size, location, and type of material.
- (viii) Utility connections and facilities and plans for the disposal of waste other than by public sewage methods (such as shredding, compaction, incineration, reclamation or chemical dissolution).
- (ix) Exterior illumination, including hours of operation, installation (underground wiring), the plan, color, type, mounting method and height, location and method.
- (x) Fire protection system.

- (xi) Signs, including size, shape, color, location and materials shall comply with all applicable Unified Development Ordinances and all other ordinances that are applicable to the Lots.
- (xii) A description of proposed use of the Improvements in sufficient detail to permit a determination of the extent of any noise, odor, glare, vibration, smoke, dust, gases, hazard, radiation, radioactivity or liquid wastes that may be created, and of whether or not the proposed use complies with then existing zoning ordinances, this Declaration, and other laws and governmental regulations applicable thereto.

SECTION 5.2 The exterior materials for buildings shall be limited to architectural CMU, brick, stone, concrete, glass, exterior insulated finish systems (EFIS), and architectural insulated composite metal panels. Corrugated metal siding is not allowed except only on one side where a future phase/expansion is proposed and shown on the original final development plan. Any corrugated metal siding visible from a public way shall be screened with a staggered double row of primary evergreens spaced ten feet (10') on center. Exposed standard concrete blocks shall be prohibited. Any accessory building shall be of similar materials and designed to complement the principal structure(s).

SECTION 5.3 All exterior mechanical and electrical equipment whether on the roof, on the wall or on the ground, shall be screened so that the predominant design lines of the building or structure continue without visual distraction or interruption and shall not be visible from a public street. However, roof top equipment does not have to be screened if it is located at least 30' from the nearest edge of the roof. All utilities shall be placed underground. No building should extend over fifty feet (50') in height or up to fifty-five feet (55') if parapets are constructed at edges of roofs.

SECTION 5.4 Front parking areas visible from the interior street(s) of the Park shall be bermed with an undulating berm having an average height of three (3) to four (4) feet and planted with street yard plantings. The street yard shall consist of three (3) large variety trees every 100 linear feet. Shrubs and primary evergreen plantings should be used and grouped to provide additional visual interest – quantities required are five (5) primary evergreens and twenty (20) shrubs per 100 linear feet.

SECTION 5.5 Access driveways shall not be nearer than 15 feet from side and rear property lines of each Lot.

SECTION 5.6 Sidewalks are required along visitor parking areas constructed on any Lots and along any parking areas in front of buildings and must link to the primary entrance to the building. Pedestrian sidewalks are also required to link each Lot with the internal sidewalk network of the park located on such Lot.

SECTION 5.7 No storage or overnight parking of trucks or truck trailers shall be permitted except in off-street loading areas or in off-street truck or trailer parking or trailer storage areas. The provision for handling all truck service shall be totally within each Lot. No off-street loading areas or loading docks shall be permitted on or along the front wall of any building facing Topsider Drive.

SECTION 5.8 All exterior lighting shall consist of full cut-off, shoe-box style lights, no taller than twenty-five (25) feet in height. There shall be no neon lights and no traveling, flashing, or intermittent lighting of any kind. All exterior lighting fixtures and poles shall be anodized aluminum or black in color. All exterior lighting shall be fully operated by the Owner from dusk until midnight, at a minimum. A photometric lighting plan demonstrating that the 0.5 foot-candle is contained on the property must be submitted to the Declarant as part of any Owner's submitted plans. All outside wiring for exterior lighting shall be underground. Additionally all exterior electrical power wiring service feeding from the power company to serve the Lot must be underground.

SECTION 5.9 There shall be no outside display or storage of materials or merchandise. Dumpsters and other refuse collection/recycling containers must be adequately bermed and/or screened from view from any street or front building line. Any vertical bulk storage tanks over 8' tall only have to be screened to a point 8' above ground.

SECTION 5.10 Storage areas, incinerators, storage tanks, trash containers and maintenance facilities, shall either be housed in closed buildings or otherwise completely screened from public view and from other facilities located adjacent to the Property in a manner and at a location approved in writing by the Declarant. Such screening will normally include landscaping or permanent fences of solid materials and be located as far from property lines as reasonably possible.

SECTION 5.11 Except as provided herein, buildings shall be constructed on any Lot in compliance with the provisions of all applicable Unified Development Ordinances relating to front, side, and rear property lines applicable to the Lot(s).

SECTION 5.12 All exterior utility sources, lines, pipes, cables and other conduits shall be installed underground, except for temporary service used during the construction of any Improvement.

SECTION 5.13 Any additions to or enlargements of any existing storm drainage system shall be subject to the prior written approval of the Declarant.

SECTION 5.14 Each Lot shall contain sufficient area to permit the construction and creation of (and the required parking spaces shall be constructed and created on such Lot), at least the minimum number of parking spaces as required by all applicable Unified Development Ordinances.

SECTION 5.15 Landscaping:

a) Generally. An Owner shall establish and maintain landscaped areas in all open areas on the Lots not used for Improvements, including parking areas and driveways. All open areas on each Lot not occupied by buildings, structures, outside storage areas, parking areas, streets, paved areas, driveways, walkways and off-street loading areas shall be suitably graded and drained and shall be landscaped with lawns, trees and shrubs. Any new landscaped areas that are inconsistent with the aesthetic and appearance of the Park in Declarant's reasonable judgment shall be subject to the prior written approval of the Declarant, and all existing landscaped areas shall be properly maintained by each Owner.

b) Landscape Buffer. Each Owner shall comply with the zoning ordinances applicable to the Lot(s) as it relates to landscape buffers. To provide visual breaks between properties and provide additional landscaping, each Building Site shall provide a minimum fifteen (15) foot wide landscape buffer along the side and rear yards. Each buffer shall consist of lawns, along with large variety trees planting at a rate of three (3) per one hundred (100) linear feet. Shrubs and primary evergreen plantings should be used and grouped to provide additional visual interest – quantities required are five (5) primary evergreens. Existing natural woods are also acceptable as buffers for both the rear and side yards.

SECTION 5.16 Signage shall be limited to a single six (6) foot high, thirty-six (36) square foot in area monument sign per Lot. Attached signage is permitted as allowed by any applicable Unified Development Ordinances. Declarant shall construct a Business Park sign for the entire Park at both entrances to the Park. These signs shall be limited to twelve (12) feet in height and one hundred (100) square foot in area – The signs constructed by Declarant shall contain the name of the business park, along with the tenants of the business park. All signs, either constructed upon a Lot or visible from the exterior of any improvement, shall be approved in writing by the Declarant prior to installation. Signs of a flashing or moving character, and signs inappropriately colored, will not be permitted. The Declarant shall have the right to enter upon any Lot and remove any sign which has not been approved after providing the Owner of such Lot with notice to remove the sign and a period of thirty (30) days to remove such sign.

SECTION 5.17 Fencing shall be installed on a Lot only in connection with design screening. All fencing shall be constructed with materials used in the primary building or, at a minimum, any fencing must be black, vinyl-coated chain link fence. All metal fencing shall be screened by landscaping and berming. Razor and barbed wire fences are not allowed. All fencing to be constructed or installed on any Lot(s) shall require prior approval of Declarant.

SECTION 5.18 The Property, or any portion thereof, once conveyed by the Declarant, may not be subdivided, by sale or otherwise, into separate Lots without approval from the Declarant in the Forsyth County Registry; provided, however, the creation of a condominium containing condominium units pursuant to Chapter 47C of the North Carolina General Statutes, shall not be considered a subdivision of the Property into Lots and is permissible hereunder, so long as the remaining terms and provisions of this Declaration are complied with.

SECTION 5.19 The Declarant shall have the responsibility and obligation to install the Infrastructure Improvements to the extent described in Exhibit C (the Phase I Infrastructure) at Declarant's sole costs and expense. The Declarant shall make every reasonable effort to facilitate the availability of electricity, natural gas, and data/cable/telephone service to the park.

VI.

MAINTENANCE

SECTION 6.1 All buildings, driveways, parking areas, fences, walls, and other exterior features of Improvements located on a Lot must be maintained and in good working order by the Owner. All landscaping on any Lot shall be properly maintained and shall include all necessary planting, cutting, watering, fertilizing, aerating, seeding, spraying, pruning and required

replacement of dead/dying material. As part of the Owner's obligation hereunder, the Owner shall be responsible for the following: prompt removal of all litter, trash, refuse, and waste from the Lot; lawn mowing of the Lot; tree and shrub pruning (and replacement in the event of dead trees and shrubs) of the Lot; watering of the Lot; keeping exterior lighting on the Lot in working order; keeping lawn and garden areas on the Lot attractive and free of weeds and dead or dying trees, plants and shrubbery; keeping parking areas, driveways, and roads on the Lot in clear and good repair, without potholes, cracks and other deterioration; complying with all government, health and police requirements; striping and repaving of parking areas on the Lot and repainting of Improvements (including signs) on the Lot; and, repair and replacement of exterior damage to Improvements on the Lot.

SECTION 6.2 In the event any responsible party fails to properly fulfill its maintenance obligations hereunder, then such failure shall be deemed a default under this Declaration; however, such default shall not in any manner cause any easements to be revoked as they shall exist in perpetuity. Except when entry is required due to an emergency situation, the Declarant shall afford the Owner written notice and an opportunity to cure the problem prior to entry as provided herein. The Declarant and any nondefaulting Owner shall have the right to demand, in writing, sent by certified mail, return receipt requested, that the defaulting Owner cure its default. The notice of default shall specify in detail the specific nature of the items which are not being properly maintained. If, within thirty (30) days after such notification, maintenance and/or repairs shall have not been brought to acceptable standards, or for such additional reasonable time if it reasonably will take more time to perform said maintenance and repair and the defaulting Owner is actively and continuously pursuing said maintenance and repair, then the Declarant or any nondefaulting Owner shall have the right to enter the defaulting party's Lot and have the necessary work done at the defaulting Owner's expense and to enforce collection against the defaulting Owner of all reasonable costs of such work, plus interest at the rate of eight percent (8%) (prejudgment and post judgment) and any reasonable attorney's fees and costs actually incurred by the Declarant or any nondefaulting Owner in collecting any monies advanced by the Declarant or any nondefaulting Owner for such purpose; provided, however, the same shall not constitute a lien against a defaulting Owner's Lot unless said claim is the subject of a final judgment from an appropriate court of law. In the case of an emergency, the Declarant or any non-defaulting Owner may cure the maintenance deficiency without having given notice but notice shall be given as soon as reasonably practicable. All enforcement rights of the Declarant in this Section 6.2 may also be enforced by the Association.

VII.

COMMON MAINTENANCE CHARGES

SECTION 7.1 The Common Area shall be maintained by the Association even though if it is not owned by the Association. In the event that the Association should be dissolved or cease to exist, then in that event all Owners of record at the time of any required maintenance to the Common Area shall be jointly and severally liable for any and all costs attendant to such maintenance.

SECTION 7.2 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass

with the title to every Lot, subject to the following provisions:

(a) the easements herein reserved by Declarant or created in favor of the Association;

(b) the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid and for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

(c) the right of the Association to dedicate or grant non-exclusive easements on, over and upon all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association's Board of Directors; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded in the Office of the Forsyth County Register of Deeds;

(d) the right of the Association, if it is record Owner of Common Area and has the consent of the Members entitled to cast at least seventy-five percent (75%) of the votes in the Association, to dedicate or transfer fee title to all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon; and

(f) the right of the Association, if it is the record Owner of Common Area, to borrow money for the purpose of improving such Common Area and facilities thereon and, with the assent of the Members entitled to cast at least seventy-five percent (75%) of the votes in the Association, mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances.

ASSOCIATION

SECTION 8.1 Tanglewood Business Park Association has been formed for the purpose of maintaining the Common Area and any other property which may hereafter be conveyed to the Association and is hereinafter referred to as the Common Area.

SECTION 8.2 Members of the Association shall be every Owner of a Lot which is subject to a lien for assessments. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, provided, however, that a Member may assign in writing his membership and voting rights to an occupant of a Lot upon such terms as are pre-approved by the Association. No assignment of Membership rights shall release the Owner from the obligation to pay the Assessments described herein.

SECTION 8.3 The Association shall have two (2) classes of voting membership, as follows:

- (a) Class A: Class A members shall be all Members except Declarant and shall be entitled to one (1) vote for each Lot owned. The vote for a Lot with multiple Owners shall be exercised as such Owner among themselves determine but in no event shall the votes with respect to any jointly owned Lot be case separately.
- (b) The Class B member shall be Declarant. Declarant shall have five (5) votes for every Lot that it owns. Class B membership shall cease for Declarant on the happening of any of the following events, whichever occurs earlier:
 - (i) upon the Declarant no longer owning any Lot(s) as part of the Property;
 - (ii) twenty (20) years after the date of this Declaration; or
 - (iii) upon the resignation of Declarant as the Class B Owner.

SECTION 8.4 The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the Assessments (as described below) on a specified Lot have been paid. The Association shall have the right to suspend the voting rights of any Owner for any period during which any Assessment against his Lot (as described below) remains unpaid.

SECTION 8.5 Declarant, and every other Owner hereafter, by acceptance of a deed for a Lot, hereby covenants, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges ("Annual Assessments"), and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided ("Special Assessments," together with Annual Assessments being the "Assessments"). The Annual Assessments and any

Special Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for the delinquent Assessment shall not pass to his successors in title unless expressly assumed by them.

SECTION 8.6 Annual Assessments

(a) The Annual Assessments established by the Association shall be used to provide necessary operating funds for the management and maintenance of the Common Area and Common Easements, including but not limited to the costs of repairs, replacements and additions to the Common Area, the cost of labor, equipment, materials, management and supervision, the procurement and maintenance of insurance in accordance with the bylaws of the Association, the employment of attorneys to represent the Association when necessary, and such other normal operating needs as may arise. The Association shall be responsible for payment of Assessments for public and private improvements made to or for the benefit of the Common Area.

(b) Annual Assessment shall be established each calendar year by the Board of Directors of the Association on March 1, without approval by the Members and shall be an amount not to exceed five percent (5%) of the Annual Assessment during the previous calendar year. An increase of more than five percent (5%) in the Annual Assessment shall require a majority vote of the voting membership of the Association. With respect to the any Lot, Annual Assessments shall commence on the first day of the month following the date that a Certificate of Occupancy is issued for a structure constructed upon such Lot. The Annual Assessment for the year 2018 shall not exceed ten thousand and 00/100 dollars (\$10,000.00).

(c) The Annual Assessment for any expenses incurred by the Association shall be levied by proration based upon a formula of multiplying each Lot's acreage, as each Lot may be subdivided or otherwise changed from time to time, by the total number of acres of the Park. The Board of Directors shall fix the amount of the Annual Assessment against each Lot and shall send written notice of the year's Annual Assessment to every Owner subject thereto. Annual Assessments shall be delinquent if not paid in full within thirty (30) days from the date that notice establishing the Annual Assessment is sent.

(d) The cost of the initial development of Common Area shall not be shared as an Annual Assessment and shall be borne solely by the Declarant.

SECTION 8.7 Special Assessments

(a) In addition to the Annual Assessment authorized above, the Association may levy, in any calendar year, a Special Assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of any of the Common Area, provided that any such assessment shall have the assent of at least a simple majority of all votes of the Members who are entitled to vote at a meeting duly called for this purpose. All Special

Assessments shall be prorated based upon the same formula for the payment of Annual Assessments in Section 8.6 above, and shall be delinquent if not paid within thirty (30) days from the date that notice establishing the Special Assessment is sent.

(b) Written notice of any meeting called for the purpose of establishing a Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast at least seventy-five percent (75%) of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 8.8 Any delinquent Assessment shall bear interest from the date it became delinquent at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

SECTION 8.9 In the event the Association becomes the record Owner of Common Area, the Association shall pay all ad valorem taxes levied upon such Common Area when due. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to, or for the benefit of, the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the Park, shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessment in an amount determined by dividing the total taxes and/or assessment due the governmental authority by the total number of acres in the Park, and shall be prorated among Owners, including the Declarant, based upon a per acre proration. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 8.10 The liens provided for herein shall be subordinate to the lien of any deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. In the event of the acquisition of any Lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners, including such purchaser, as a common expense, provided nothing contained herein shall release the party personally liable for a delinquent assessment from the payment thereof or the enforcement of collection of such

assessment by means other than foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any deed of trust.

SECTION 8.11 All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Common Area and the Common Easements, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation, and the bylaws of the Association. As monies for any Assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of the Common Areas, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge, or in any manner transfer any interest in such funds. When an Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Common Areas and Common Easements.

SECTION 8.12 The Association shall be free to appoint a third party to collect and manage all funds and monies of the Association. Until the Association formally appoints a third party to collect and manage the funds and monies of the Association, such duties shall be vested in Declarant.

IX

DEVELOPMENT RIGHTS

SECTION 9.1 Declarant's Right to Add Additional Real Estate. Declarant expressly reserves the right for a period of fifteen (15) years from the date of recording this Declaration to annex and add additional real property (the "Additional Real Estate") to the Park that is adjacent to or contiguous to the Park and to create on the Additional Real Estate, Lots and Common Area without the consent of any Lot Owner or Mortgagee. Declarant is not obligated to add Additional Real Estate or may add Additional Real Estate at different times and from time to time and in any sequence, all in the sole discretion of Declarant.

SECTION 9.2 Conversion of Lots to Common Areas. Declarant hereby reserves the right for fifteen (15) years from the date of recording of this Declaration to convert an existing Lot or Lots owned by Declarant entirely to Common Area, without the consent of any Lot Owner or Mortgagee. Declarant's right under this Section 9.2 shall apply to Lots created under this Declaration as well as to Lots which may be created on any Additional Real Estate added to the Park pursuant to Section 9.1.

SECTION 9.3 Method of Exercising Development Rights.

(a) In the event Declarant exercises any of its Development Rights under this Article IX, Declarant shall prepare, execute with the same formalities as a deed, and record an amendment to this Declaration in the public records of Forsyth County, North Carolina, such amendment to refer specifically to the recording data identifying this Declaration.

(b) In addition to the execution and recordation of an amendment to the Declaration described above, Declarant shall record in the public records of Forsyth County either new plats of the Property and the Additional Real Estate evidencing the changes effected by Declarant's exercise of its development rights, or new certifications of the plats previously recorded if the Property continues to conform to those plats and plans.

(c) Each Lot Owner, by his acceptance of the deed to a Lot, shall be deemed to have consented to the Development Rights reserved in this Article and to any amendments thereafter executed by Declarant pursuant to this Article

SECTION 9.4 Declarant hereby reserves the right to combine, re-combine and subdivide any of the Lots from time to time.

X.

OTHER PROVISIONS

SECTION 10.1 It is the express intention of the Declarant and all purchasers from Declarant that the covenants and restrictions of this Declaration shall be a covenant to run with the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years, unless terminated by an instrument signed by Owners holding at least 75% of the outstanding votes in the Association, encumbering each of the Lots, and it shall bind and inure to the benefit of the Owners of the Lots, their respective successors, assignees, grantees, mortgagees, tenants, invitees and licensees as their interests may appear. To the extent that any Lot is further subdivided with Declarant's written consent, any and all parcels resulting from the further subdivision of any Lot shall be subject to the terms and provisions of this Declaration. In the event of a violation of the covenants contained in this Declaration, the nondefaulting party shall be entitled to all remedies permissible under North Carolina law, including, without limitation, injunctive and declaratory relief. Upon the sale and conveyance by the Owner of a Lot of its entire interest therein, such Owner shall automatically be deemed to be released of all obligations thereafter arising under this Declaration.

SECTION 10.2 The Declarant, its successors and assigns (including any Owner of the Property or the property described on Exhibit A), and any Owner, shall have the right to enforce the restrictions contained in this Declaration, and failure to enforce any restriction shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 10.3 In the event any party hereto shall be delayed or hindered in or prevented from the performance of any act required to be performed by it under this Declaration by reason of

acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, war or other reason beyond its reasonable control, then the time for performance of such acts shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the reasonable control of such party.

SECTION 10.4 No duty or obligation is imposed upon the Declarant to enforce or attempt to enforce any of the restrictions or other provisions contained in this Declaration, nor shall the Declarant be subject to any liability of any kind or nature whatsoever from any third party from failing to enforce same. Approval of any building plans, specifications, site or landscape plans or elevations or any other approvals or consents given by the Declarant pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that any such buildings, improvements, landscaping or other action taken pursuant hereto or in reliance thereon complies with any or all applicable laws, rules, requirements, or regulations, the sole responsibility for all of same being upon the respective Owner or person seeking such approval, and, the Declarant is expressly released and relieved of any and all liability in connection therewith.

SECTION 10.5 Notwithstanding the provisions and intentions of this Declaration, provision herein shall be deemed to require, either expressly or impliedly, Declarant to improve, construct, or develop all or any portion of the Property in any manner whatsoever, except that any development shall comply with the restrictions set forth in this Declaration as may be amended.

SECTION 10.6 This Declaration may be amended by the Declarant so long as there is a Class B Member. Provided, however any such amendment may not further restrict the use of any Lot or amend the method of proration of Assessments described in Section 8.6(c) without the approval of at least seventy-five percent (75%) of Class A Members. So long as there is a Class B Member, such member must approve any amendment. During the first twenty (20) year period, unless the Declarant makes such amendment, any such amendment shall be by an instrument signed by not less than seventy-five percent (75%) of the members of the Association, and thereafter by an instrument signed by not less than sixty-six percent (66%) of the members, provide that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded in the Forsyth County Registry.

SECTION 10.7 In the event of a conflict between the restrictions contained in this Declaration and any applicable law, ordinance or regulation of any properly constituted governmental body having jurisdiction over the Property, then such applicable law, ordinance or regulation shall control.

SECTION 10.8 Invalidation of any one restriction contained in this Declaration by judgment, court order, operation of law or otherwise, shall in no way affect the other restrictions contained herein which shall continue in full force and effect.

SECTION 10.9 In the event of dissolution and liquidation of the Declarant then, as a part of the winding up of its affairs, the Declarant may designate the person or entity to carry out any function which the Declarant has reserved in this Declaration. Any such substitution shall not

become effective until documented by a written instrument duly executed, acknowledged and recorded in the Office of the Register of Deeds of Forsyth County, North Carolina.

SECTION 10.10 The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

SECTION 10.11 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as may be required by the context of this Declaration.

SECTION 10.12 Any notices required to be given pursuant to this Declaration shall be deemed received upon delivery and/or delivery and refusal, if hand delivered or if sent by (i) United States registered mail or United States certified mail - return receipt requested, three (3) days later; or (ii) a nationally recognized courier service (such as Federal Express), one (1) business day later at such address as any of the Owners of a Lot may hereafter specify in writing to the other Owners of the Lots. Such addresses may be changed by the giving of written notice as provided in this paragraph. It is the responsibility of each Owner to advise Declarant of its current address, telephone number, fax number, and name of agent responsible for receiving notices.

SECTION 10.13 If any of the covenants, conditions, restrictions, or other provisions of this Declaration are declared by a court to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall be deemed to be reformed to vest the particular interest within 90 years of the creation of the interest in compliance with the provisions of NCGS § 41-17.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Protective Covenants to be properly executed and sealed the date and year first written above.

FORSYTH COUNTY, NORTH CAROLINA

By: _____
County Manager

ATTEST:

Clerk to the Board

(Seal)

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

I, _____, a Notary Public of the county and state aforesaid, do certify that _____ personally came before me this day and acknowledged that she is the Clerk to the Board and by authority duly given, the foregoing instrument was signed in its name by its County Manager, sealed with its corporate seal, and attested to by as its Clerk to the Board.

WITNESS my hand and notarial seal, this the _____ day of _____, 2018.

Notary Public (Seal)

My commission expires: _____

Exhibit A

THE PROPERTY A tract or parcel of land lying in Clemmons Township, Forsyth County, North Carolina, more particularly described as follows:

BEGINNING at an existing concrete monument with rebar in the East right-of-way line of the Southern Railroad right-of-way along Idols Road at the Northwest corner of property conveyed to Duke Power Company by deed recorded in Book 640, Page 290, Forsyth County, North Carolina Registry and located North 29° 32' 41" East 147.80 feet from milepost 131; running thence with said right-of-way line 1) North 02° 47' 36" East 654.55 feet to an existing iron, 2) North 02° 58' 01" East 405.10 feet to a point, 3) North 02° 50' 11" East 478.82 feet to a point, 4) North 03° 15' 21" East 100.00 feet, 5) North 04° 58' 01" East 100.00, 6) North 08° 02' 52" East 100.00 feet, 7) North 11° 12' 39" East 100.00 feet, 8) North 14° 13' 02" East 100.00 feet, 9) North 17° 14' 20" East 100.00 feet, 10) North 20° 21' 16" East 100.00 feet, 11) North 23° 31' 21" East 100.00 feet, 12) North 26° 41' 12" East 100.00 feet, 13) North 29° 55' 01" East 100.00 feet, 14) North 32° 04' 38" East 100.00 feet, 15) North 34° 45' 52" East 100.00 feet, 16) North 40° 33' 46" East 100.00 feet, 17) North 41° 47' 11" East 100.00 feet, 18) North 44° 26' 45" East 100.00 feet, 19) North 45° 52' 56" East 100.00 feet, 20) North 45° 50' 29" East 413.01 feet, 21) North 46° 10' 22" East 100.00 feet, 22) North 46° 54' 53" East 100.00 feet, 23) North 50° 26' 14" East 100.00 feet, 24) North 54° 28' 58" East 100.00 feet, 25) North 59° 40' 47" East 100.00 feet to an existing iron marking the intersection of said right-of-way with a West line of property conveyed to Joseph R. Poindexter, Jr., et al by deed recorded in Book 1040, Page 578, Forsyth County, North Carolina Registry; running thence with the West line of said property conveyed to Poindexter South 03° 57' 16" East 337.92 feet to a stone; thence with another West line of said property conveyed to Poindexter, South 25° 58' 16" East 193.43 feet to a stone; thence with a South line of said property conveyed to Poindexter, North 87° 44' 27" East 732.02 feet to a stone; thence with a Southwest line of said property conveyed to Poindexter South 40° 50' 30" East 1913.72 feet (crossing an iron at 925.29 feet) to a stone in the Northwest line of property now or formerly owned by E. E. Phelps; thence with the Northwest line of said property now or formerly owned by E. E. Phelps South 46° 25' 16" West 819.96 feet to a stone marking the corner of said property now or formerly owned by E. E. Phelps; thence with the Southwest line of said property now or formerly owned by E. E. Phelps South 39° 24' 35" East 90.26 feet to a stone marking a corner of property conveyed to Richard V. Phelps by deed recorded in Book 1280, Page 1131, Forsyth County Registry; thence with a Northwest line of said property conveyed to Richard V. Phelps, South 50° 22' 28" West 310.95 feet to a stone; thence with a North line of said property conveyed to Richard V. Phelps, North 70° 52' 30" West 865.12 feet to an existing 3/4 inch pinched iron in pile of stone; thence with a Northeast line of said property conveyed to Richard V. Phelps, North 40° 47' 04" West 517.30 feet to a stone 3-inch subsurface; thence with a Northwest line of said property conveyed to Richard V. Phelps and falling in with the Northwest line of property conveyed to Lily

Davis LaCoste Tesh, et al by deed recorded in Book 1781, Page 2364, Forsyth County Registry, South 25° 25' 40" West 1388.60 feet to an iron; thence with the South line of said property conveyed to Lily Davis LaCoste Tesh, et al South 87° 44' 05" East 566.11 feet to a 24-inch dead pine tree marking a corner of property conveyed to Duke Power Company by deed recorded in Book 640, Page 290, Forsyth County Registry; thence with a West line of said property conveyed to Duke Power Company South 16° 55' 03" West 842.63 feet to a nail set at base of existing iron; thence with a North line of said property conveyed to Duke Power Company North 64° 15' 17" West 1445.09 feet to the point and place of BEGINNING containing 169.726 acres more or less as shown on Map for Tanglewood Park Foundation, Inc., prepared by Larry L. Callahan Surveying Co., Inc., dated December 22, 1993 and being further known and designated as tract labeled "Formerly Property of R. Murray Lybrook" as shown on Map entitled "Property of R.J. Reynolds Tobacco Co.," as recorded in Plat Book 18, Page 176, Forsyth County Registry and being further known and designated as Tax Lots 1, 2, 3 and 4 of Tax Block 4204 and Tax Lots 26 and 27 of Tax Block 4203, Forsyth County City Tax Maps as presently constituted.

Exhibit B

Limited Light Industrial Uses for Tanglewood Business Park

The following land uses shall be allowed as either principal or accessory uses:

- Academic Biomedical Research
- Academic Medical Center
- Arts and Crafts Studio
- Banking and Financial Services
- Building Contractors, General
- Building Materials Supply
- College or University
- Government Offices, Neighborhood Organization, or Post Office
- Hospital or Health Center
- Manufacturing A (as defined by the applicable Unified Development Ordinance)
- Manufacturing B (as defined by the applicable Unified Development Ordinance)
- Micro-Brewery or Micro-Distillery
- Offices
- Police or Fire Station
- Postal Processing Facility
- School, Vocational or Professional
- Special Events Center
- Storage Services, Retail
- Testing and Research Lab
- Utilities
- Warehousing
- Wholesale Trade A (as defined by the applicable Unified Development Ordinance)
- Wholesale Trade B (as defined by the applicable Unified Development Ordinance)
- Access Easement, Private Off-Site

Exhibit C

Phase I Infrastructure

The following shall constitute the Phase I Infrastructure:

- Extension of Topsider Drive over the 60' Access Easement shown in Plat Book 67, Page 76, Forsyth County Registry
- Public Utilities to serve Lot 1 to include water, storm drainage systems, fire hydrants, street lights, curb and gutter, and sidewalks
- Sanitary Sewer to serve Lot 1
- A stormwater retention pond to serve Lot 1, Topsider Drive, and any additional property described in Deed Book 2143, Page 2515, Forsyth County Registry if required by the applicable Planning and Zoning governmental entity

**RESOLUTION AUTHORIZING THE CREATION OF A PROPERTY OWNERS'
ASSOCIATION FOR TANGLEWOOD BUSINESS PARK**

WHEREAS, it is recommended that a Property Owners' Association be formed for Tanglewood Business Park for the purpose of imposing rules and regulations for the ownership, use, enjoyment, and assessments for costs of maintenance and improvement of the common areas and easements of the Tanglewood Business Park consistent with the provisions of the Declaration of Protective Covenants for Tanglewood Business Park; and

WHEREAS, County staff recommends that the Property Owners' Association be named, Tanglewood Business Park Association, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the creation of a Property Owners' Association for Tanglewood Business Park to be named, Tanglewood Business Park Association, Inc. and will operate for the purpose of imposing rules and regulations for the ownership, use, enjoyment, and assessments for costs of maintenance and improvement of the common areas and easements of the Tanglewood Business Park, consistent with the provisions of the Declaration of Protective Covenants for Tanglewood Business Park, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the Forsyth County Attorney.

Adopted this 29th day of March 2018.