

THE COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

DECLARATION OF USES, COVENANTS AND RESTRICTIONS

PURPOSE

It is the desire and intention of the Counties of Warren and Washington Industrial Development Agency (WWIDA) to develop Phase II of the Airport Industrial Park (the "Park") for light manufacturing, assembly, research or laboratory operation and related enterprises; to impose covenants, conditions and restrictions upon the land for the benefit of both the property and the community of which it is a part; and to ensure that the property is developed in ways that are compatible with both the natural and developed environments of the area. To these ends, the WWIDA has adopted standard to:

- A. Ensure proper use and appropriate development of the Park as a whole and for the improvement of each building site in the Park;
- B. Protect the owners and tenants of building sites therein against any use which may be incompatible with the purposes of the Park;
- C. Guard against the erection of structures built of improper or unsuitable materials;
- D. Encourage erection of harmoniously located, attractive improvements in the Park;
- E. Secure and maintain proper setbacks from streets and provide adequate free space between structures;
- F. Provide ample uncongested space and circulation for all owners and tenants; and
- G. Provide maximum flexibility for expansion, changes in use and adaptation for owners and tenants.

The following standards are to be used by architects, engineers and builders when preparing plans for structures to be located within the Park. Nothing below is to be construed, however, as allowing exceptions to any local, state or federal statute, law or ordinance.

ARTICLE I
DEFINITIONS

The following words shall have the following meanings when used in this Declaration of Uses, Covenants and Restrictions:

- 1.01 "WWIDA" shall mean the Counties of Warren and Washington Industrial Development Agency.
- 1.02 "Lot" shall mean any parcel in the Park heretofore or hereafter created by the subdivision or re-subdivision of the property or any part thereof.
- 1.03 "Owner" shall mean any person, firm or corporation holding title or record in and to any lot or portion thereof and any person, firm or corporation holding any security interest in and to any lot or portion thereof, including, without limitation, any mortgagee, any trustee under a deed of trust, any beneficiary of a deed of trust, or any long term lessee holding under the WWIDA.
- 1.04 "Park" shall mean those certain tracts or parcels of land containing in the aggregate, 105 acres of land, more or less, situate, lying and being in the Town of Kingsbury in Washington County and more particularly described in Exhibit A, annexed hereto and made a part hereof.
- 1.05 "Structure" shall mean all man made improvements, including buildings, temporary structures, and fences.

ARTICLE II
LAND USE

Section 2.01 Zoning

No land shall be used for any purpose other than light manufacturing, assembly, research, or laboratory operation, and as may be permitted by the WWIDA from time to time in the manner set forth in Article VIII hereof.

Section 2.02 Lot Size and Frontage

The minimum lot size for any development parcel in the Park shall be in excess of 75,000 sq. ft. or 1.72 acres per plot, and the frontage shall not be less than 200 feet, unless approved by the WWIDA in the manner set forth in Article VIII hereof.

ARTICLE III
USE OF PROPERTY: RESTRICTIONS

Section 3.01 Setback Restrictions

Setback Restrictions shall be the same as those set forth in the Town of Kingsbury Zoning Ordinance.

Section 3.02 Accessory Buildings

The construction, size and location of accessory buildings shall be governed by the Town of Kingsbury Zoning Ordinance.

Section 3.03 Underground Utilities, Pipes, Etc.

No pipe, conduit cable, line or the like for water, gas sewage, drainage, stem, electricity or any other utility or service shall be installed or maintained upon any lot (outside of any building) above the surface of the ground. Any exception to the above conditions can only be in such manner and upon such conditions as may be specifically approved by the WWIDA.

Section 3.04 Parking

All parking areas on each lot shall be the same as set forth in the Town of Kingsbury Zoning Ordinance.

Section 3.05 Loading

All provisions for vehicle loading shall be provided on the lot. No on-street vehicle loading shall be permitted. Vehicle loading shall be permitted only at the rear of buildings or on a side; except that such loading performed on a side shall be screened from front street visibility and adjacent properties in a manner approved by the WWIDA.

Section 3.06 Outside Storage

No outside storage or operations of any kind shall be permitted on any lot, unless such activity is visually screened from all street and adjacent properties in a manner approved by the WWIDA. No outside storage shall extend above the top of such screening.

Section 3.07 Signs

The location, size, design and construction of signs shall be governed by the Town of Kingsbury Zoning Ordinance, must be in keeping with the character of the property and must be approved in writing by the WWIDA.

Section 3.08 Vibration

Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point along any of the exterior lot lines.

If vibration and/or concussion are either a constant or intermittent part of an operation, a report prepared by a licensed geotechnical engineer shall be presented to the WWIDA during the design process. This report shall state the probable effect of the operation and proposed mitigating measures. Such report shall be on factor to be considered by the WWIDA when determining whether to grant approval.

Section 3.09 Air Quality

Air pollutants, including but not limited to dust, smoke odors, gasses and fumes, shall not be released to the atmosphere without the proper permits from the New York State Department of Environmental Conservation or other body having jurisdiction.

Section 3.10 Maintenance - Refuse or Trash

The owner of every lot shall keep it and all buildings, parking lots and roadways, and all improvements used in connections with the lot, in a safe, clear, neat and sanitary condition and shall comply in all respects with all governmental zoning, health, fire and police requirements. Each owner shall remove at the owner's expense any rubbish or any character which may accumulate on owner's lot. During construction of any improvements on any lot, the owner thereof shall keep any construction site free of unsightly accumulations of rubbish and scrap materials; and construction materials, trailers, shacks and the like employed in connection with such construction shall be kept in a neat and orderly manner.

Section 3.11 Landscaping

Owners shall maintain all land and structures owned within the Park in a manner compatible with the provisions of these covenants and restrictions.

Section 3.12 Waste Water Disposal

All waste water discharged shall conform to all applicable federal, state and local requirements, regulations and/or local laws or ordinances.

Section 3.13 Solid Waste Disposal

It shall be the responsibility of each owner to 1) individually contract for removal and disposal of all waste material; 2) secure necessary permits for disposal of potentially toxic materials; and 3) ensured proper transportation of all waste materials to protect the health, safety and well-being of the public. Disposal of any waste material at the Park is prohibited. All landfills are specifically prohibited in the Park.

Section 3.14 Land Coverage

Land coverage regulations shall be the same as set forth in the Town of Kingsbury Zoning Ordinance.

Section 3.15 Temporary Structures

Temporary structures shall be the same as set forth in the Town of Kingsbury Zoning Ordinance.

Section 3.16 Animals

No livestock, poultry or other animals shall be kept on any lot except as required for research and development establishments and testing laboratories, and in no event shall any stable, hutch, barn, coop or other housings or shelter for animals or for the storage of materials be placed or maintained upon any lot, except as approved by the WWIDA.

Section 3.17 Noise

Offensive noise shall not be permitted. Noise shall be measured on any boundary of the lot on which the use generating the noise is located. Noise shall be muffled so as not to become objectionable due to intermittence, beat frequency, shrillness, intensity or other cause.

If any planned operations involves either a constant or intermittent noise, a report prepared by a professional engineer shall be presented to the WWIDA during the design process. This report shall state the probable effect of the operation and proposed mitigating measures. Such report shall be one factor to be considered by the WWIDA when determining whether to grant approval.

Section 3.18 Radioactive Materials

Any operation requiring licensing by the Nuclear Regulatory Commission (or its successor) shall also require the written approval of the WWIDA.

ARTICLE IV SUBMISSION AND APPROVAL PROCESS

Section 4.01 Submissions

No structure shall be constructed, altered or moved onto any lot, nor shall any new use be commenced on any lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the WWIDA. Plans and specifications shall be organized and such other drawings as are necessary to show the nature, exterior color scheme, kind, shape, height, type of materials and location with respect to the particular lot (including proposed front, rear and side setbacks and open spaces) of all structures and with reference to other structures on other portions of the property, and the number and location of all parking spaces and driveways on the lot; a grading plan for the lot; a planting plan; a site lighting plan; a plan of storm drainage facilities; a sign program; an Environmental Assessment Form (EAF); and such other details as may be required by the WWIDA from time to time.

Section 4.02 Approval, Disapproval, Revision

- A. Following submissions of plans to the WWIDA pursuant to Section 4.01, the WWIDA shall cause the plans to be carefully examined by its authorized representatives and with reasonable promptness shall:
1. Accept the plans as submitted; or
 2. Return the plans with suggestions for revisions; or
 3. Reject the plans with reasons therefore in writing.
- B. The WWIDA may reject the plans or return them for revision for any of the following:
1. Failure to comply with any of the standards and restrictions contained herein;
 2. Failure to include information in plans and specifications as may have been reasonably requested by the WWIDA;

3. Objection to the exterior design, appearance or materials of any proposed structure;
4. Objection on the grounds of incompatibility of any proposed structure or use with existing or proposed structures or uses on other lots in the property;
5. Objection to the grading or lighting plan for any lot;
6. Objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any structure;
7. Objection to the proposed signage; or
8. Any other matter which, in the judgement of the WWIDA would render the proposed structure or structures or use inharmonious with the general plan of improvement of the Park.

In any case, where the WWIDA disapproves any plans and specifications, or approves the plans and specifications with modifications or with specified conditions, that disapproval or qualified approval will be accompanied by a statement of the grounds upon which the action was based.

Section 4.03 Approval

Upon approval by the WWIDA of any plans and specifications, a copy of those plans and specifications, as approved, shall be retained for permanent record by the WWIDA and a copy of the plans and specifications bearing the approval, in writing, will be returned to the applicant.

Section 4.04 Rules and Regulations

The WWIDA may from time to time promulgate rules and regulations governing the form and content of plans and specifications to be submitted for approval, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters which require approval. These rules and statements of policy may be amended or revoked by the WWIDA at any time. Approval of any plans and specifications will not be deemed a waiver of the WWIDA's right, in its discretion, to disapprove those plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other lot or lots.

ARTICLE V
PROTECTION OF WETLANDS

Section 5.01 Designated Wetlands

Areas designated as shrub, emergent or forested wetland on the plan entitled *Subdivision Plat: Warren-Washington Counties Industrial Park - Phase IIA Development* dated November 2001, last revised April 4, 2003 (approved by the Kingsbury Planning Board on April 16, 2003 and subsequently filed in the Washington County Clerk's Office on the 28th day of April, 2003 in File # 31C-46), shall be designated as protected wetland areas in perpetuity. This includes all wetlands outside of the area labeled on the above-referenced plan as the Wetland Mitigation area with the EXCEPTION of the areas approved for fill as shown in lots 4, 5D, 6, 8, 9, 10 and in the former ditch.

Within the protected wetland areas, activities prohibited by any future owner include: dredging, filling or alteration of natural grade. There shall be no discharge of soil, sediment, construction debris or other fill material to the wetland or permanent stockpiling or disposal of leaves, yard waste, compost material or manmade materials or structures within the wetland boundaries. There shall be no clear cutting, mowing or removal of natural vegetation within the designated wetland. No activities in or adjacent to the wetland shall occur that will adversely affect wetland by flooding or draining the protected wetland.

Section 5.02 Wetland Mitigation Area

Secondly, all of the area within the boundary of the Wetland Mitigation Area and constructed ditch as shown on the plan entitled *Subdivision Plat: Warren-Washington Counties Industrial Park - Phase IIA Development* dated November 2001, last revised April 4, 2003 (approved by the Kingsbury Planning Board on April 16, 2003 and subsequently filed in the Washington County Clerk's Office on the 28th day of April, 2003 in File # 31C-46), shall also be protected from future disturbance in perpetuity. All restricted activities applicable to protected wetlands on the site shall apply to the Wetland Mitigation Area, with the exception of any activities with the purpose of enhancing, restoring or maintaining the created wetland and approved by the U.S. Army Corps of Engineers. These activities may include planting, seeding, alteration of water control structures, installation of monitoring wells, management of plant communities and minor grading to restore, maintain, monitor or improve wetland habitat within the constructed wetland areas.

ARTICLE VI
COVENANTS

Section 6.01 Covenants Run with Land

The foregoing covenants and restrictions shall run with bind and inure to the benefit of the land in the Park, and the WWIDA covenants and agrees to hold such land retained by

it, subject to all the terms, provisions and conditions of this Declaration of Uses, Covenants and Restrictions. Any and all sales, leases, mortgages, or other dispositions of such land or any part thereof shall be subject of this Declaration of Uses, Covenants and Restrictions. The WWIDA reserves the right, however, from time to time hereafter to delineate, plot, grant or reserve within the Park public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities , as it may deem necessary or desirable for the development of the Park (and from time to time to change the location of the same).

Section 6.02 Enforceability of Covenants

Said covenants and restrictions shall be enforceable by the WWIDA, its successors and assigns, and all future owners of property in the Park.

Section 6.03 Violation of Covenants

Violation of any of said restrictions or conditions or breach of any covenant or agreement herein contained shall give the WWIDA under Section 9.01, in addition to any other remedy under the laws of the United States, the State of New York, Washington County, or the Town of Kingsbury, (but not the obligation) to enter upon the lot as to which such violation or breach exists and summarily to abate and remove any erection or thing or correct any condition that may constitute such violation or breach at the expense of the then owner or tenant of such land, which expense shall be a lien on such lot enforceable in equity; provided however that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after the mailing by first class mail, postage prepaid, of notice of such violation or breach from the WWIDA or their assignees to the occupant of the lot on which the violation or breach has occurred.

ARTICLE VII TERM OF COVENANTS

Section 7.01 Term

This Declaration of Uses, Covenants and Restrictions shall continue in force for a period of fifty (50) years from the date hereof, at which time the aforesaid agreement shall cease and terminate and be of no further force and effect.

ARTICLE VIII
VARIANCE PROCEDURE

Section 8.01 Variance Procedure

The Zoning Board of Appeals of the Town of Kingsbury shall have the authority, pursuant to its rules and regulations, to grant variances to the restrictions set forth in Sections 3.01, 3.02, 3.04, 3.07, 3.14 and 3.15 of this instrument. The WWIDA reserves the right to grant variances to the restrictions set forth in Articles II and III of this instrument upon showing of need, reasonableness and compatibility with other businesses in the Park; and is not in violation of any governmental law, rule or regulation.

ARTICLE IX
WAIVER AND APPROVALS

Section 9.01 Waiver or Invalidation

Any waiver or failure to enforce any provision of this Declaration of Uses, Covenants and Restrictions in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the Park or of any other provision of this Declaration of Uses, Covenants and Restrictions. Invalidation by Court adjudication of any provisions of this Declaration of Uses, Covenants and Restrictions shall not affect the validity of any other provision, and all other provisions hereof shall remain in full force and effect.

Section 9.02 Approvals

All matters requiring approval of or waiver by the WWIDA shall be submitted to the WWIDA in writing.

ARTICLE X
NOMINEES AND SUCCESSORS OF THE WWIDA

Section 10.01 Nominees and Successors of the WWIDA

The WWIDA may from time to time, delegate any or all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate. It may also permanently assign any or all of its powers and duties, obligations, rights, title, easements and estates reserved to it, to any corporation, association or persons that will accept the same. Any such assignment shall be in writing recorded among the Land Records of Washington County and the assignee shall join therein for the purpose of evidencing its acceptance of the same, and such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to the WWIDA, and the WWIDA shall thereupon be released from any and all obligations set forth in this Agreement, as amended from time to time.

MAY 9 10 49 AM '03

ARTICLE XI
BINDING EFFECT

173
833
/ 173
433
LIBER PAGE 935 318
WASHI
DOHA
1000
THEO

Section 11.01 Binding Effect

This Declaration of Uses, Covenants and Restrictions shall be binding upon and shall inure to the benefit of the WWIDA, its successors and assigns and all future owners of property in the Park.

The foregoing covenants and restrictions were duly adopted by the Counties of Warren and Washington Industrial Development Agency on the 28th day of April, 2003.

Dated: MAY 1, 2003

COUNTIES OF WARREN AND
WASHINGTON INDUSTRIAL
DEVELOPMENT AGENCY

By: N. A. Caimano
Nicholas A. Caimano, Chairman

ATTEST:

Bruce A. Ferguson
Bruce A. Ferguson, Secretary

STATE OF NEW YORK)

COUNTY OF WARREN) ss.:

On the 1ST day of MAY in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **NICHOLAS A. CAIMANO and BRUCE A. FERGUSON**, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

Julie C. Sommo

Notary Public

JULIE C. SOMMO
Notary Public, State of New York
Warren County #01SO6035592
Commission Expires Jan. 3, 2006

PARCEL A

All that certain piece or parcel of land situate, lying and being in the Town of Kingsbury, County of Washington and the State of New York, more particularly bounded and described as follows: **BEGINNING** at a point in the proposed easterly bounds of County Line Road and located South 84 degrees, 12 minutes and 00 seconds East 50.01 feet from the northwest corner of the lands conveyed by Michael B. Casey to the Counties of Warren and Washington Industrial Development Agency by deed dated March 26, 1975, recorded in book 448 of deeds at page 338, being at the southwest corner of lands now or formerly of Jeremiah and Colleen P. Kelly; thence running along said lands of Kelly, South 84 degrees, 12 minutes and 00 seconds East, along a fence in the southerly bounds of lands conveyed to Kelly and the northerly bounds of Lot 53 of the Kingsbury Patent, a distance of 818.34 feet; thence running South 84 degrees, 13 minutes and 00 seconds East, still along the same, a distance of 1078.01 feet; thence running South 84 degrees, 22 minutes and 00 seconds East, still along the same, a distance of 162.46 feet; thence running South 09 degrees, 29 minutes and 06 seconds West, through the lands conveyed to said Counties of Warren and Washington Industrial Development Agency by said deed, a distance of 1331.51 feet to a point in the proposed northerly bounds of Casey Road; thence running westerly along the proposed northerly bounds thereof, the following five courses and distances:

- (1) North 83 degrees, 50 minutes and 00 seconds West, a distance of 371.53 feet;
- (2) North 83 degrees, 29 minutes and 30 seconds West, a distance of 707.98 feet;
- (3) North 82 degrees, 43 minutes and 30 seconds West, a distance of 365.49 feet;
- (4) North 81 degrees, 03 minutes and 00 seconds West, a distance of 404.36 feet;
- (5) North 75 degrees, 10 minutes and 00 seconds West, a distance of 110.50 feet to the proposed easterly bounds of said County Line Road, also known as Queensbury Avenue; thence running along the same North 05 degrees, 38 minutes and 00 seconds East, a distance of 451.74 feet; continuing along the same North 05 degrees, 38 minutes and 00 seconds East, a distance of 451.74 feet; continuing along the same, North 05 degrees, 08 minutes and 30 seconds East, a distance of 537.58 feet to the point and place of beginning, containing 60.52 acres of land to be the same more or less.

Bearings given in the above description refer to magnetic North.

Excepting that portion of Casey Road lying within the bounds of the above described parcel.

TOGETHER with and **SUBJECT** to all enforceable covenants, easements, restrictions, and conditions of record.

BEING a portion of the lands conveyed by Michael B. Casey to the Counties of Warren and Washington Industrial Development Agency by deed dated March 26, 1975 and recorded in the Washington County Clerk's Office on March 26, 1975 in Book 448 of Deeds at page 338.

PARCEL B

All that certain piece or parcel of land situate, lying and being in the Town of Kingsbury, County of Washington and the State of New York, more particularly bounded and described as follows: **BEGINNING** at a point in the proposed northerly bounds of Casey Road and located North 20 degrees, 45 minutes and 00 seconds East, a distance of 51.56 feet from the southwest corner of lands now or formerly of Edward L. Lowell Jr. and Sharon Marie Lowell; running from thence North 83 degrees, 50 minutes and 00 seconds West, along the proposed northerly bounds of Casey Road, a distance of 78.26 feet; thence running North 09 degrees, 29 minutes and 06 seconds East, a distance of 1331.51 feet to the northwest corner of the lands conveyed by Counties of Warren and Washington Industrial Development Agency to Country Developers Inc. by deed dated August 5, 1988 recorded in book 581 of deeds at page 223, being also the northwest corner of the lands conveyed by the treasurer of Washington County to Counties of Warren and Washington Industrial Development Agency by deed dated April 19, 1996, recorded in book 756 of deeds at page 155; thence running along the outer perimeter of said deed, South 84 degrees, 22 minutes and 00 seconds East, a distance of 500.00 feet to the southeast corner of lands now or formerly of Jeremiah J. and Colleen P. Kelly; thence along the easterly bounds of said lands of Kelly the following two courses and distances:

(1) North 06 degrees, 36 minutes and 00 seconds East, a distance of 436.43 feet;
 (2) North 06 degrees, 30 minutes and 30 seconds East, a distance of 898.29 feet to a point on the southerly line of the lands formerly owned by King Farm; thence along said southerly line of said King Farm the following three courses and distances:

(1) South 82 degrees, 35 minutes and 30 seconds East, a distance of 141.82 feet;
 (2) South 83 degrees, 41 minutes and 30 seconds East, a distance of 182.96 feet;
 (3) South 84 degrees, 04 minutes and 00 seconds East, a distance of 307.18 feet; thence running along the lands conveyed by David Wood to Thomas C. and Jane B. Steele by deed dated January 16, 1973 and recorded in the Washington County Clerks Office in book 435 of deeds at page 916, the following nine courses and distances:

(1) South 83 degrees, 09 Minutes and 00 seconds East, a distance of 275.89 feet;
 (2) South 06 degrees, 39 minutes and 00 seconds West, a distance of 444.48 feet;
 (3) South 15 degrees, 26 minutes and 30 seconds West, a distance of 29.86 feet;
 (4) North 83 degrees, 12 minutes and 00 seconds West, a distance of 278.45 feet;
 (5) South 07 degrees, 41 minutes and 30 seconds West, a distance of 233.64 feet;
 (6) South 07 degrees, 47 minutes and 30 seconds West, a distance of 391.39 feet;
 (7) South 05 degrees, 23 minutes and 30 seconds West, a distance of 613.24 feet;
 (8) South 02 degrees, 10 minutes and 00 seconds West, a distance of 393.96 feet;
 (9) South 01 degrees, 08 minutes and 00 seconds West, a distance of 344.56 feet; thence running along the northerly line of lands conveyed by the Counties of Warren and Washington Industrial Development Agency to Michael B. Casey now owned or reputedly owned by Edward L. Lowell Sr. and Jane B. Lowell and continuing along the said northerly line of said lands reputedly owned by Lowell, North 64 degrees, 31 minutes and 30 seconds West, a distance of 1087.83 feet to a point marking the northwest corner of said lands conveyed by the Industrial Agency, to Casey and now owned by Lowell; thence running along the westerly line of said lands of Lowell, South 20 degrees, 45 minutes and 00 seconds West, along the center of a stone wall, a distance of 596.91 feet to the point and place of beginning, containing 47.81 acres of land to be the same more or less.

Bearings given in the above description refer to magnetic North.

Excepting that portion of Casey Road lying within the bounds of the above described parcel.

TOGETHER with and **SUBJECT** to all enforceable covenants, easements, restrictions, and conditions of record.

BEING the same premises conveyed by the Treasurer of Washington County to the Counties of Warren and Washington Industrial Development Agency by deed dated April 19, 1996 and recorded on June 14, 1996 in the Washington County Clerk's Office in Book 756 of Deeds at Page 155.

R & R Fitzgerald Morris Baker Frith
PO Box 2017
Colonyville WV 25801